IN THE SUPREME COURT OF THE STATE OF NEVADA

NEWS+MEDIA CAPITAL GROUP LLC, a Delaware limited liability company; and LAS VEGAS REVIEW-JOURNAL, INC., a Delaware corporation, Appellants/Cross-Respondents v. LAS VEGAS SUN, INC., a Nevada corporation, Respondent/Cross-Appellant.	Supreme Court No. 80511 Electronically Filed Jun 01 2020 10:11 p.m. Elizabeth A. Brown Clerk of Supreme Court

APPELLANTS/CROSS-RESPONDENTS' APPENDIX
VOL. 2

Appeal from the Eighth Judicial District Court of the State of Nevada in and for the County of Clark
The Honorable Timothy Williams
District Court Case No: A-18-772591-B

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2020, the foregoing **Appellants'/Cross Respondents' Appendix – Volume 2** was served electronically with the Clerk of the Supreme Court of Nevada by using the court's electronic filing system, which will send notice of electronic filing to the following:

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I further certify that hard copies of the sealed version was served by First Class U.S. Mail, postage prepaid, addressed as follows:

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada corporation, Plaintiff, vs. NEWS+MEDIA CAPITAL GROUP LLC, a Delaware limited liability company; LAS VEGAS REVIEW-JOURNAL, INC., a Delaware corporation; and DOES, I-X, inclusive, Defendants.	Case No. A-18-772591-B DEPT.: XVI **HEARING REQUESTED** **DEFENDANTS' MOTION TO VACATE ARBITRATION AWARD**

Defendants News+Media Capital Group LLC and Las Vegas Review-Journal, Inc. (collectively "Review-Journal"), by and through their counsel of record, hereby respectfully submit this Motion to Vacate Arbitration Award.

This Motion is made and based upon the following Memorandum of Points and Authorities, the Declaration of Michael Gayan, the exhibits attached thereto, the pleadings and papers on file herein, the oral argument of counsel, and such other or further information as this Honorable Court may request.

DATED this 18th day of September, 2019.

Respectfully submitted,

KEMP, JONES & COULTHARD, LLP

/s/ J. Randall Jones

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is the rare case where an arbitration award is so irrational and so inconsistent with the parties' contract and fundamental legal principles that vacating it is the only option under controlling law. The Arbitrator disregarded the contract provisions that formed the basis for the entire dispute. He rewrote the parties' agreement, forcing the Review-Journal into a business arrangement with financial terms that it did not choose and that still has over 20 years remaining on its term. The Arbitrator's error is manifest, and correcting it will dispose of all the issues raised in the pending motions to vacate because all of the Sun's claims are premised on an incorrect reading of the controlling agreement [redacted]. The Court should vacate the Award [redacted].[1]

The core issue addressed by the Arbitrator here was straightforward: when the Review-Journal subtracts expenses from revenues in order to calculate its EBITDA (earnings before interest, taxes, depreciation, and amortization) for the purpose of determining the Sun's share of the Review-Journal's profits, should the Review-Journal's editorial expenses and promotional expenses be subtracted from its revenues, similar to other expenses? [redacted] the contract between the parties expressly and unambiguously states that these expenses, which are incurred to generate revenues that benefit both parties, are to be deducted as part of the EBITDA calculation. [redacted].

The operative contract in this case is a 2005 joint operating arrangement ("2005 JOA") between the Review-Journal, which was then owned by Stephens Media Group, and the Sun. The 2005 JOA superseded the parties' prior agreement (the 1989 Agreement). In the 2005 JOA, the parties restructured their relationship so that rather than distribute two separate daily newspapers, the Sun became an insert to the Review-Journal.

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[1] To the extent the Court is inclined to confirm any part of the Award, it should only confirm [redacted], for the reasons discussed in the Review-Journal's forthcoming opposition to the Sun's motion to confirm the award in part and vacate it in part.

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The 2005 JOA expressly states how EBITDA is to be calculated for the purpose of determining the Sun's share of the Review-Journal's profits (the Sun's "Annual Profits Payment"). The contract states that "[t]he Parties intend that EBITDA be calculated in a manner consistent with the computation of '**Retention**' as that line item appears on the profit and loss statement for Stephens Media Group for the period ended December 31, 2004." Ex. A, App'x. D, p. 19 (emphasis added).[2] Retention is a way of computing earnings in the newspaper industry that is very similar to EBITDA. [redacted].

To repeat: Appendix D of the contract specifically sets forth how to calculate EBITDA. [redacted]

[2] All exhibits are attached to the Declaration of Michael Gayan filed concurrently herewith.

[3] [redacted]

[redacted]

Section 4.2 is irrelevant and does not state that the Review-Journal's editorial expenses must be excluded from the EBITDA calculation. Section 4.2 has nothing whatsoever to do with the EBITDA calculation. [redacted]

First, Section 4.2 did not change anything with respect to how the Review-Journal's editorial expenses were handled. The Review-Journal paid its own editorial expenses (and deducted those expenses from its earnings) both before and after the 2005 JOA. [redacted] Section 4.2 only impacted ***the Sun's*** editorial expenses, not the Review-Journal's. Under the parties' prior agreement, the Review-Journal had paid the editorial expenses of ***both*** newspapers. Section 4.2 simply made it clear that under the 2005 JOA the Sun was responsible for paying its own editorial expenses.

Second, Section 4.2 was not any "newer" than the EBITDA formula. Both Section 4.2 and the EBITDA formula were added to the 2005 JOA at the same time. It is not as if Section 4.2 was newly added and the EBITDA formula in Appendix D was an artifact of a prior agreement that had been left in the contract by accident. ***Third***, the 2005 JOA has a specific provision identifying expenses to be excluded from EBITDA in calculating the Sun's profit payment. This

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provision states, for example, that certain equipment expenses are to be excluded. This provision does not mention editorial expenses being excluded. If the parties had intended editorial expenses to be excluded, they would have listed them in this provision or at minimum cross-referenced Section 4.2. ***Finally***, for nine years the Sun read the contract as requiring editorial and promotional expenses to be deducted, just as the Review-Journal did. [redacted] In sum, Section 4.2 has nothing to do with the EBITDA formula [redacted] But, like Section 4.2, Section 5.1.4 has nothing to do with the EBITDA calculation. Section 5.1.4 does not state that promotional expenses paid by the Review-Journal must be excluded from the EBITDA calculation unless they feature the Sun in equal prominence. Indeed, the section of the JOA that specifically covers expenses that should not be deducted in calculating EBITDA, Appendix D, does not state that expenses for promotional activities not prominently featuring the Sun should be excluded. Section 5.1.4 is in a separate part of the contract and does not even mention EBITDA. As with editorial expenses, promotional expenses paid by the Review-Journal are properly deducted when calculating the earnings of the Review-Journal. This is why [redacted] the 2005 JOA requires them to be deducted by reference to that profit and loss statement. Ex. A, App'x D, p. 19.

[redacted]

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[redacted] The 2005 JOA limits the Arbitrator's authority to resolving post-audit disputes about amounts owed to the Sun. *See* Ex. A, at App'x D, p. 20. [redacted] When the governing contract is read correctly, the Sun's claims for declaratory relief, breach of contract, "tortious" breach, and attorneys' fees all necessarily fail, because each is premised on the argument that the 2005 JOA prohibits the Review-Journal from deducting editorial and promotional expenses from EBITDA. [redacted][4]

[4] Because the plain language of the 2005 JOA compels a finding that the Review-Journal did not breach the JOA by deducting editorial and promotional expenses when calculating EBITDA, a rehearing would be inappropriate and unnecessary.

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II. STATEMENT OF FACTS

A. The Review-Journal And Sun Entered A Joint Operating Arrangement To Rescue The Failing Sun.

The Review-Journal and the Sun are newspapers serving the Las Vegas metropolitan area. In June 1989, when the Sun was on the verge of financial collapse, the Review-Journal and the Sun entered a joint operating arrangement (the 1989 Agreement) pursuant to the Newspaper Preservation Act, 15 U.S.C. §1801, et seq. ("NPA"). The NPA governs joint operating arrangements between a failing newspaper and a successful one willing to help out the failing newspaper. Under the 1989 Agreement, the Sun, which was the failing newspaper, remained a separate and independent daily afternoon newspaper, but the Review-Journal handled for the Sun all of the Sun's non-editorial business needs. *See, e.g.,* Ex. D, at 1 and App'x B.

B. The Parties Replaced Their Original Agreement With The 2005 JOA.

The relationship between the Sun and the Review-Journal's prior owners under the 1989 Agreement was rocky. The Sun frequently complained that it was entitled to more money for editorial expenses than the Review-Journal was paying. To resolve the tension and settle the disputes, in June 2005 the parties entered the 2005 JOA.[5] The 2005 JOA significantly restructured the relationship between the newspapers, as described below.

1. The 2005 JOA Converted The Sun From A Standalone Paper To An Insert To The Review-Journal.

Under the 2005 JOA, the Sun ceased publishing as a standalone daily afternoon newspaper. Instead, the Sun became a six-to-ten page insert to the Review-Journal. Ex. A, ¶ 5.1 and App'x A.

2. The 2005 JOA Gave The Sun An Annual Profits Payment Based On A Formula Tied To EBITDA.

Consistent with the conversion of the Sun to an insert in the Review-Journal, the 2005 JOA provided that the Sun would receive an Annual Profits Payment based on a formula tied to the earnings of the Review-Journal, including both earnings from the combined Review-Journal/Sun and earnings from the Review-Journal's other print publications. Ex. A, App'x D,

[5] *See* the Sun's Complaint, ¶ 30.

pp. 18-19. Under the formula set forth in Appendix D to the 2005 JOA, the Sun's Annual Profits Payment would rise or fall each year by the same percentage that the EBITDA of the Review-Journal print publications rose or fell. *Id.*, App'x D, p. 18.

3. The 2005 JOA Expressly And Specifically Stated How EBITDA Was To Be Calculated.

The 2005 JOA expressly defined how EBITDA was to be calculated for the purpose of determining the Sun's Annual Profits Payment. It was to be calculated the same way that the owner of the Review-Journal, who at the time was Stephens Media Group, had calculated "Retention" in the past for the Review-Journal. Ex. A, App'x D, pp. 18-19. Retention, as noted above, is a newspaper term of art for earnings that is very similar to EBITDA. Appendix D to the 2005 JOA states: "[t]he parties intend that EBITDA be calculated in a manner consistent with the computation of 'Retention' as that line item appears on the profit and loss statement for Stephens Media Group for the period ended December 31, 2004." *Id.*, App'x D, p. 19.

[redacted]

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There is nothing surprising or unusual about this. It is how EBITDA is normally calculated. EBITDA is a common way of figuring out a company's earnings. Earnings are determined by subtracting expenses from revenues.[6]

To the extent that the parties wanted to exclude certain expenses from the EBITDA calculation, they expressly identified those excluded expenses in the 2005 JOA. Ex. A, App'x. D, p. 19. For example, expenses relating to certain press equipment must be excluded from the calculation of the Review-Journal's EBITDA. *Id.*

4. The 2005 JOA Required The Sun To Bear Its Own Editorial Expenses.

Under the 1989 Agreement, the Review-Journal had paid the editorial expenses of both the Review-Journal and the Sun according to an allocation formula. Ex. D, ¶ 4.2 and App'x B. The 2005 JOA changed this. Section 4.2 of the 2005 JOA provides that "[t]he Review-Journal and the Sun shall each bear their own respective editorial costs and shall establish whatever budgets each deems appropriate." Ex. A, ¶ 4.2. As a result, under the 2005 JOA, the Review-Journal had to bear its own editorial expenses, as it had always had, but the Sun now became responsible for its own editorial expenses.

Significantly, Section 4.2 does not state that editorial expenses paid by the Review-Journal are to be excluded from the EBITDA calculation. *Id.* Likewise, editorial expenses are not on the list of expenses that the parties agreed to exclude from the EBITDA calculation in Appendix D. *Id.*, App'x D, p. 19.

5. The 2005 JOA Treated Promotional Activities Differently.

The 1989 Agreement had required the Review-Journal to establish a budget for promotional activities to be allocated between both newspapers. Ex. D, ¶ 5.1.4. Reflecting the fact that the Sun was now an insert to the Review-Journal, and not a separate newspaper, Section

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[6] With EBITDA, once the earnings are calculated, depreciation and amortization are added back in. https://m.wikihow.com/Calculate-EBITDA, last visited 9/6/19; Earnings Before Interest and Taxes—EBIT, https://www.investopedia.com/terms/e/ebit.asp, last visited 9/6/19; EBITDA Guide, https://www.myaccountingcourse.com/financial-ratios/ebitda, last visited 9/6/19; What Is EBITDA, https://corporatefinanceinstitute.com/resources/knowledge/finance/what-is-ebitda/, last visited 9/6/19. [redacted]

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5.1.4 of the 2005 JOA required the Review-Journal to use reasonable efforts to promote both newspapers. Ex. A, ¶ 5.1.4. The 2005 JOA mandated that "[a]ny promotion of the Review-Journal as an advertising medium or to advance circulation shall include mention of equal prominence for the Sun." *Id.* However, it also provided that the Sun and the Review-Journal could "undertake additional promotional activities for their respective newspaper[s] at their own expense." *Id.*

Significantly, Section 5.1.4 does ***not*** state that if promotional activities do not include the Sun in equal prominence then they must be excluded from the EBITDA calculation. *Id.* Likewise, expenses for promoting the Review-Journal are ***not*** on the list of expenses that the parties agreed to exclude from the EBITDA calculation in Appendix D. *Id.*, App'x D, p. 19.

C. **The Arbitration and Award.**

In February 2018, the Sun, no longer satisfied with its profit-sharing payments, attempted to initiate an arbitration against the Review-Journal. Among other things, the Sun contended that the Review-Journal breached the 2005 JOA by including the Review-Journal's editorial expenses and separate promotional expenses in its calculation of the Review-Journal's EBITDA—even though the Sun accepted these deductions as part of the profit calculation for the first nine years of the 2005 JOA. The Court ordered the parties to arbitrate some of the Sun's claims.

As required by the 2005 JOA, the Arbitrator was a certified public accountant. Ex. A, p. 20. [redacted]

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[redacted]

the only time it is appropriate for a company to deduct an expense when calculating EBITDA is when the company is actually paying (or "bearing") that expense.

[redacted]

The Sun claimed for the first time that editorial expenses could not be deducted from EBITDA in 2014, after accepting the Review-Journal's calculations for nine years. The Sun's conduct demonstrates that the Sun knows perfectly well that the Review-Journal has been calculating its EBITDA correctly, and that the Sun's claims were not brought in good faith. [redacted]

As noted above and as further explained below, Section 5.1.4 does not mention the EBITDA calculation and is in an entirely different section of the 2005 JOA than the provisions addressing

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the EBITDA calculation. Ex. A, ¶ 5.1.4. [redacted]

[redacted]

III. THE AWARD MUST BE VACATED.

[redacted]

Under Nevada law, an arbitration award must be vacated if the Arbitrator ignores the express language of the parties' agreement, or refuses to apply established principles of contract law. *Coblentz*, 112 Nev. at 1169 (1996) (reversing trial court order affirming an arbitration award, where the arbitrator disregarded the contract's plain language and interpreted the contract in a way that rendered one of its provisions meaningless); *Wichinsky*, 109 Nev. at 89 (If an award is "unsupported by the agreement, it may not be enforced") (quoting *Exber, Inc. v. Sletten Constr. Co.*, 92 Nev. 721, 731, 558 P.2d 517, 523 (1976)); *Kreeger v. BCC Capital Partners LLC*, No.

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CVS041061KJDLRL, 2005 WL 8161910 at *2 (D. Nev. 2005) ("Under Nevada law, an arbitration award must be vacated where the arbitrator . . . refuses to apply established principles of contract law, or ignores the express language of the agreement.").

Coblentz is on point. That case involved a lease agreement that required the lessee to name the property owner as an additional insured under on its liability insurance policy. 112 Nev. at 1164-65. After a guest slipped and fell on the property's outdoor stairs and sued both the property owner and the lessee, it was revealed that the lessee had not named the property owner as an additional insured. *Id.* at 1165. The property owner filed a cross-claim against the lessee, and the issue of their liability to the injured guest was ultimately submitted to arbitration. *Id.* at 1165. Notwithstanding the contract's plain language, the arbitrators held that the lessee did not breach its contractual obligation to name the property owner as an additional insured. *Id.* at 1168. The trial court affirmed the award. *Id.* The Nevada Supreme Court reversed, holding that: "The arbitrators' conclusion that the Fund [i.e., the Lessee] had no duty to name the Coblentzes on its insurance policy rendered one of the lease agreement's provisions meaningless and without effect and thus constitutes a manifest disregard of the law." *Id.* at 1169. [redacted]

Kreeger is also instructive. *Kreeger* involved a dispute over the termination of a contract under which the plaintiff employed the defendant to assist with the creation of an employee stock ownership plan (ESOP) for its business. 2005 WL 8161910 at *1. The arbitrator found the defendant to be in breach. *Id.* The award was premised on the finding that it would be impossible for the defendant to complete the ESOP before a December 31, 2003 deadline—however, the contract contained no such deadline. *Id.* at *1. Citing *Coblentz*, the *Kreeger* court explained that under Nevada law, "an arbitration award must be vacated where the arbitrator . . . refuses to apply established principles of contract law, or ignores the express language of the agreement." *Id.* at *2. Applying this rule, the court vacated the award because the arbitrator disregarded the contract's plain language, added new terms, and provided no reasoned basis for doing so. *Id.*

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Other courts are in accord with Nevada. *See, e.g., In re Vital Basics Inc.*, 472 F.3d 12, 17 (1st Cir. 2006) ("[W]e can vacate an award where it is contrary to the plain language of the relevant contract, or where the arbitrator has construed the contract "in a way that cannot possibly be described as plausible or rational."); *Int'l Union of Operating Eng'rs, AFL–CIO, Local No. 670 v. Kerr–McGee Refining Corp.*, 618 F.2d 657, 659 (10th Cir. 1980) (holding that "an award cannot be upheld if it is contrary to the express language of the contract"); *Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.*, 126 F.3d 15, 25 (2d Cir. 1997) ("We will overturn an award where the arbitrator merely mak[es] the right noises—noises of contract interpretation—while ignoring the clear meaning of contract terms. We apply a notion of 'manifest disregard' to the terms of the agreement analogous to that employed in the context of manifest disregard of the law.") (citations omitted, punctuation in original); *Pennsylvania Turnpike Com'n v. Teamsters' Local Union No. 77*, 45 A.3d 1159, 1166 (Pa. Cmwlth. 2011) ("a court may vacate an arbitration award if the . . . interpretation of the agreement was 'totally unsupported by principles of contract construction' or if it is manifestly unreasonable.") (citations omitted).

[redacted]

The 2005 JOA clearly stated—and even illustrated—how EBITDA was to be calculated: "The parties intend that EBITDA be calculated in a manner consistent with the computation of 'Retention' as that line item appears on the profit and loss statement for Stephens Media Group for the period ended December 31, 2004." Ex. A, App'x. D, p. 19.

The 2005 JOA is not ambiguous. It identifies a specific document that calculates Retention, and states that EBITDA is to be calculated the same way. The Stephens Media profit and loss statement calculates Retention by adding up revenues and then subtracting operating expenses, ***including editorial expenses***. Ex. B, p. 2. [redacted]

[redacted] As noted above, courts must vacate an arbitration award if the arbitrator manifestly disregarded the law and, as the Nevada Supreme Court held in *Coblentz*, this standard is met when the arbitrator ignores settled contract law principles. *Coblentz*, 112 Nev. at 1169; *Kreeger*, 2005 WL 8161910 at *2; *see also Graber v. Comstock Bank*, 111 Nev. 1421, 1428, 905 P.2d 1112, 1116 (1995) (reversing trial court's order affirming arbitration award, and holding that the trial court "had the authority and obligation to review the arbitrator's award to determine whether the arbitrator manifestly disregarded the law.").

[redacted]

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[redacted]

Section 4.2 did not change anything with respect to the Review-Journal's editorial expenses. The Review-Journal has always borne its own editorial expenses (and it deducted those expenses from its earnings) both before and after the 2005 JOA.

[redacted]

Section 4.2 only impacted ***the Sun's*** editorial expenses, in that it made the Sun responsible for its own editorial expenses.

[redacted]

[redacted] Under the prior agreement, the Review-Journal was paying both newspapers' editorial costs, and the Sun's compensation was structured differently and did not involve an EBITDA calculation. Ex. D, App'x B. The EBITDA formula in the 2005 JOA was not a forgotten carryover from the prior agreement, as the Arbitrator wrongly implied. Rather, it was new language that specifically set forth the method for calculating EBITDA under the 2005 JOA. To suggest that Section 4.2 is the more specific provision with regard to the EBITDA calculation is baseless, since that provision does not mention EBITDA at all. Ex. A, ¶ 4.2.

[redacted]

Bearing an expense means paying that expense. The Review-Journal has always borne its own editorial expenses, i.e., it paid the costs of its newsroom. *See* Ex. B, p. 2; Ex. D, App'x B. Indeed if the Review-Journal were not bearing its editorial costs, it would be ***improper*** to deduct those editorial costs as an expense. The only change made by Section 4.2 was that the Sun would now have to bear its own editorial expenses, unlike before. The Review-Journal, having borne its own editorial expenses all along, deducted the editorial expenses it paid from earnings when calculating Retention (or EBITDA), as shown on the Stephens Media profit and loss statement

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from 2004 that the parties used as a roadmap for how to calculate EBITDA under the 2005 JOA. Ex. A, App'x D, pp. 18-19; Ex. B, p. 2.

[redacted]

[redacted] Section 4.2 is perfectly consistent with the EBITDA formula. Ex. C, p. 5. There is nothing contradictory about requiring the Review-Journal to pay its own editorial expenses and also deduct the expenses it paid when calculating its EBITDA. Because Section 4.2 and Appendix D are harmonious on their face, the Arbitrator should not have read them as contradictory. This is yet another way in which the Arbitrator ignored basic contract law. *See, e.g., Chemeon Surface Technology, LLC v. Metalast International, Inc.*, No. 315CV00294MMDVPC, 2017 WL 1015009, *1 (D. Nev. 2017) ("The usual rule of interpretation of contracts is to read provisions so that they harmonize with each other, not contradict each other.").

[redacted] The purpose of the EBITDA calculation is to determine the Sun's share of the Review-Journal's profits. The Sun's Annual Profits Payment rises if the Review-Journal's earnings rise and falls if the Review-Journal's earnings fall. [redacted]

The 2005 JOA defines "additional promotional expenses" as promotional activities that are not joint, but instead are undertaken by the Review-Journal and the Sun to promote their respective newspapers without

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mention of the other newspaper. Ex. A, ¶ 5.1.4. [redacted] In addition, promotional expenses are not on the 2005 JOA's list of expenses that must be excluded from the EBITDA calculation. Ex. A, App'x D, p. 19. Thus, under the contract's plain language, the parties intended for the Review-Journal to deduct its promotional expenses in calculating EBITDA. *Id.*, App'x D, p. 19. [redacted] Moreover, it makes perfect sense that the promotional activities for the Review-Journal would be deducted when calculating EBITDA for the purpose of the Sun's Annual Profits Payment—the Sun is getting a cut of the Review-Journal's profits, so it reaps the benefit of any successful promotions, whether the Sun is featured or not. Ex. A, App'x D.

[redacted] Section 5.1.4, which requires certain promotions to feature the Sun in equal prominence, has nothing to do with the EBITDA calculation. It is in a completely different section of the contract, and that section makes clear the parties can also promote their newspapers without promoting the other. Nowhere in Section 5.1.4–or anywhere else in the 2005 JOA—does it say that promotional activities must feature the Sun equally to be included in the EBITDA calculation. If the parties had believed that any promotions that did not feature the Sun should be excluded from the EBITDA calculation, they would have expressly stated this in Appendix D's list of excluded expenses. But they did not do this. Ex. A, App'x D, p. 19. Moreover, as the more specific provision directly addressing the EBITDA calculation, Appendix D would control over Section 5.1.4 in the event there were a conflict—though there is no conflict because, again, Section 5.1.4 has nothing to do with the EBITDA calculation at all.

[redacted] As explained above, the 2005 JOA provides for promotional expenses to be deducted from earnings in the EBITDA calculation, and the EBITDA calculation is required to include all revenues and expenses associated with printed Review-Journal publications regardless of whether they have anything to do with the Sun. Ex. A, App'x D, p. 19. [redacted]

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[redacted]

Under Nevada law, a court may vacate an arbitration award if it is arbitrary and capricious. *Wichinsky*, 109 Nev. at 89. An award is arbitrary and capricious if the arbitrator's findings are not supported by substantial evidence. *Graber*, 111 Nev. at 1428.

[redacted]

An arbitration award must be vacated where the arbitrator "exceeded his or her powers." NRS 38.241(1)(d). An arbitrator exceeds his powers if he "addresses issues or make[s] awards outside the scope of the governing contract." *Health Plan of Nev., Inc. v. Rainbow Med., LLC*, 120 Nev. 689, 697, 100 P.3d 172, 178 (2004).

[redacted]

[redacted]

[redacted]

IV. CONCLUSION

The 2005 JOA is clear and unambiguous that EBITDA is to be calculated "consistent with the computation of 'Retention' as that line item appears on the profit and loss statement for Stephens Media Group for the period ended December 31, 2004." Ex. A, App'x D, p. 19. [redacted]

[redacted]

[redacted] Settled Nevada law requires the Award to be vacated under these circumstances.

DATED this 18th day of September, 2019.

KEMP, JONES & COULTHARD, LLP

By: /s/ J. Randall Jones
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Certificate of Service

I hereby certify that on the 18th day of September, 2019, I served a true and correct copy of the foregoing **DEFENDANTS' MOTION TO VACATE ARBITRATION AWARD** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Pamela Montgomery
An employee of Kemp, Jones & Coulthard, LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada corporation, Plaintiff, v. NEWS+MEDIA CAPITAL GROUP LLC, a Delaware limited liability company; and LAS VEGAS REVIEW-JOURNAL, INC., a Delaware limited liability company, Defendants.	Case No.: A-18-772591-B Dept. No.: XVI **DECLARATION OF MICHAEL J. GAYAN IN SUPPORT OF DEFENDANTS' MOTION TO VACATE ARBITRATION AWARD** Hearing Date: September 25, 2019 Hearing Time: 9:00 a.m.

DECLARATION OF MICHAEL J. GAYAN

I, Michael J. Gayan, declare as follows:

1. I am an active member of the State Bar of Nevada, and am employed by the law firm of Kemp, Jones & Coulthard, LLP, counsel for Defendants News+Media Capital Group LLC and Las Vegas Review-Journal, Inc. (collectively "Review-Journal") in this action.

2. I have personal knowledge of the facts stated in this declaration. If called as a witness, I could and would testify as set forth herein.

3. Attached hereto as Exhibit A is a true and correct copy of the fully executed Amended and Restated Agreement ("2005 JOA"), signed by Stephens Media Group, Inc. ("Stephens Media"), and the Las Vegas Sun, Inc. ("Las Vegas Sun"), dated June 10, 2005.

4. Attached hereto as Exhibit B is a true and correct copy of the Stephens Media profit and loss statement for the period which ended on December 31, 2004 which was Exhibit 77 in the Arbitration.

5. Attached hereto as Exhibit C is a true and correct copy of the Final Award of Arbitrator for the arbitration between the Las Vegas Sun and Review-Journal, dated July 2, 2019.

6. Attached hereto as Exhibit D is a true and correct copy of the Agreement ("1989 JOA"), signed by Donrey, Inc, and the Las Vegas Sun, dated June 12, 1989.

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

DATED this 18th day of September, 2019.

KEMP, JONES & COULTHARD, LLP

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Exhibit A

AMENDED AND RESTATED AGREEMENT

This Amended and Restated Agreement ("Restated Agreement") dated as of June 10, 2005 between DR Partners, a Nevada General Partnership, the successor-in-interest to Donrey of Nevada, Inc. ("DR") and the Las Vegas Sun, Inc., a Nevada corporation ("Sun").

PRELIMINARY STATEMENT

WHEREAS, DR owns and publishes in Las Vegas, Nevada, a morning newspaper on weekdays, a morning newspaper on Saturdays and holidays, and a Sunday newspaper, each known as the Las Vegas Review-Journal (hereinafter referred to as the "Review-Journal"); and

WHEREAS, Sun owns in Las Vegas, Nevada, an afternoon newspaper on weekdays, known as the Las Vegas Sun (hereinafter referred to as the "Sun") and a combined Saturday and Sunday paper with the Review-Journal; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I
REGULATORY FILING AND TERM

1.1 Regulatory Filing. Within ten business days (or on such later day as the parties may agree) the Parties agree to file the Restated Agreement with the Attorney General of the United States under the Newspaper Preservation Act within the Department of Justice and to use their best efforts and take all action necessary to effect the intent of this Restated Agreement. In the event of any action by the United States Department of Justice after the filing of the Restated Agreement which, in the sole opinion of either party, hinders, impairs, seeks to halt or otherwise materially impacts this Restated Agreement, then either party may declare the Restated Agreement null and void, and the 1989 Agreement between the parties shall be reinstituted and remain in full force and effect. The Restated Agreement does not constitute any limitation on either party's obligation to engage in good faith labor negotiations if and as required by the National Labor Relations Act, and to implement any understandings it may reach in such negotiations.

Upon execution hereof, each party shall furnish to the other a written opinion of its counsel that all necessary corporate or partnership action has been taken to authorize this Restated Agreement and that, subject to the conditions of the preceding paragraph, this Restated Agreement shall constitute the valid and binding obligation of the respective party. The parties agree to cooperate in coordinating meetings with government officials, community leaders, employees and their representatives, advertisers and others to explain the Restated Agreement.

Each party shall pay its own costs and professional fees in connection with the formulation and drafting of the Restated Agreement and the preparation and filing of the Restated Agreement with the Department of Justice. From and after the filing of such Restated Agreement, all costs and professional fees in connection with seeking any required approval by the Department of Justice shall be controlled and approved by the Review-Journal and such cost and shall be borne solely by Review-Journal.

1.2 Term. The term of this Restated Agreement shall begin at 12:00 a.m. on June 10, 2005 ("the Effective Date"). The 1989 Agreement shall remain in full force and effect through September 30, 2005 (the "Transition Date"). Subject to the termination provisions set forth in Article 9, the Restated Agreement shall continue for an initial period ending at the close of business on the 31st day of December of the fiftieth (50th) year from July 1, 1990. The Restated Agreement shall then automatically renew for succeeding periods of ten (10) years unless either party shall notify the other in writing at least two (2) years prior to the end of the then current period that it elects to terminate the Restated Agreement at the end of said period. The phrase "term of this Agreement" as used hereafter shall mean the initial period and any renewal period or periods.

ARTICLE 2
AGENCY
Intentionally omitted

ARTICLE 3
Intentionally omitted

ARTICLE 4
NEWS AND EDITORIAL COPY, FEATURES AND SERVICES

4.1 Maintenance of News and Editorial Staff; Feature Materials. Review-Journal and Sun each shall maintain a staff of news and editorial employees, and shall license such feature materials (including, but not limited to, news and editorial services supplied by third parties), adequate to provide its respective newspaper with all of the news and editorial copy and related services deemed necessary by each of them as to its respective newspaper. Review-Journal shall use commercially reasonable efforts to cause third party suppliers of feature materials and professional associations to provide such feature materials and association memberships to Sun at rates equivalent to those currently charged to Sun.

4.2 News and Editorial Allocations. The Review-Journal and the Sun shall each bear their own respective editorial costs and shall establish whatever budgets each deems appropriate.

4.3 Furnishing News and Editorial Copy and Services. In furnishing features, news and editorial copy, and like materials to Review-Journal for publication in the Sun, and in providing layout for such material, Sun shall provide all such material in a form appropriate for the production of its newspaper, in conformity with the mechanical standards, deadlines and production requirements which prevail in the Review-Journal plant from time to time, including

deadlines, page sizes, column widths, and cut-offs established by Review-Journal, upon reasonable notice to Sun. Sun shall acquire and maintain at its expense such newsroom equipment (including, but not limited to, newspaper production systems, i.e., "front-end" systems) as may be required to interface with Review-Journal production facilities. In the event that the newspaper production system used by the Review-Journal is changed and (i) the Sun has utilized a production system that is current with systems commonly employed in the newspaper industry; (ii) the change by the Review-Journal results in any loss of a fully functional interface with the Sun newspaper production system, the Review-Journal shall be responsible to furnish such additional software, hardware and technical services to the Sun as may be necessary to establish such an interface. The Review-Journal shall give Sun ninety (90) days advance notice of anticipated changes to the Review-Journal's production system, including technical specifications for the new or modified system. The Sun shall treat any software provided as confidential and conform to all applicable licensing requirements for such software. Newshole limitations and other matters are set forth in Appendix A hereto. The parties agree to begin the publication cycle changes for the Sun on the Transition Date (or on such latter day as the parties may agree). The Review-Journal reserves the right to print conspicuous notices to the effect that the news content of the non-Sun portion of the Newspapers, including locally produced supplements, is produced by Review-Journal personnel. The Sun reserves the right to print conspicuous notices to the effect that the news content of the non-Review-Journal portion of the Newspapers, including locally produced supplements, is produced by Sun personnel.

4.4 Intentionally omitted.

ARTICLE 5

CONTINUING PUBLICATION AND
NEWS AND EDITORIAL AUTONOMY

5.1 Production and Promotion of the Newspapers. Subject to the terms of the Restated Agreement, and as of the Transition Date, Sun shall be a daily morning newspaper as specified in Appendix A. The Review-Journal shall be a daily morning newspaper, as specified in Appendix A, including such sections and materials as are consistent with custom and practice in the United States metropolitan daily newspaper industry. So long as Sun furnishes news and editorial copy, features and services to Review-Journal in accordance with Article 4 of this Restated Agreement, Review-Journal agrees to produce the Sun daily as a morning newspaper as provided herein to include the Sun copy and to sell all advertising for, promote and circulate such newspapers as provided herein. The daily Sun and the daily Review-Journal are hereinbefore and hereinafter referred to as the "Newspapers". Review-Journal shall print the Newspapers in the Review-Journal plant or plants located at such place or places as Review-Journal may determine, and all operations under this Restated Agreement, except the operation of the Sun' news and editorial department, shall be carried on and performed by the Review-Journal with Review-Journal employees and equipment and in the Review-Journal's said plant or plants or by independent contractors selected by the Review-Journal. All costs, including capital expenditures, of operations under this Restated Agreement, except the operation of the Sun's news and editorial department, shall be borne by Review-Journal.

The Review-Journal shall control, supervise, manage and perform all operations involved in managing and operating under this Restated Agreement, including the need, if any, for Sunday supplements and comics, total or zoned market coverage, direct mail or other publication programs, zoned editions, and printing, selling and distributing the Newspapers, shall determine page sizes, number of columns per page, cut-offs, page makeup of non-news and non-editorial (subject to Appendix A), and all other mechanical and technical functions of the Newspapers, shall purchase newsprint, materials and supplies as required and shall determine the rates for, solicit and sell all advertising space in the Newspapers, shall determine circulation rates, collect the Newspapers' circulation and advertising accounts receivable, and shall make all determinations and decisions and do any and all acts and things related to the foregoing activities, provided:

5.1.1 Format. Review-Journal shall not change the format of the Sun to any size or format different from that of the Review-Journal without approval of Sun.

5.1.2 Sun Editions. The number of Sun editions shall not be changed without approval of Sun.

5.1.3 Circulation. Review-Journal shall use commercially reasonable efforts to maximize the circulation of the Newspapers.

5.1.4 Promotional Activities. Review-Journal shall use commercially reasonable efforts to promote the Newspapers. Any promotion of the Review-Journal as an advertising medium or to advance circulation shall include mention of equal prominence for the Sun. Either the Review-Journal or Sun may undertake additional promotional activities for their respective newspaper at their own expense. For all promotional activities for the Newspapers paid for by the Review-Journal, the Review-Journal shall be responsible for all promotional copy preparation and placement, provided however, that the Sun shall have the right to approve all promotional copy for the Sun that does not generically and concurrently promote both Newspapers.

5.1.5 Intentionally omitted.

5.1.6 Meetings of JOA Participants. DR senior management shall meet quarterly with Sun senior management to discuss performance under this Restated Agreement.

5.1.7 Advertising Acceptability. Sun may reject any advertising or types of advertising for the Sun which is, in the opinion of Sun, undesirable or inappropriate for publication therein, and shall notify Review-Journal in writing of any specific advertising or types of advertising that Sun deems undesirable for publication. Review-Journal shall accept all advertising for the Sun other than the advertising indicated on Sun's written notice, subject to all laws affecting the acceptability of advertising.

5.1.8 Intentionally omitted.

5.2. News and Editorial Autonomy. Preservation of the news and editorial independence and autonomy of both the Review-Journal and the Sun is of the essence of this Restated Agreement. Sun shall have exclusive and complete control, authority and direction over the news and editorial content, features and services to be furnished by Sun to Review-Journal to be included in its newspaper, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. Review-Journal shall have exclusive and complete control, authority and direction over the news and editorial content, features and services in its newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. The Review-Journal and Sun each hereby agrees to preserve high standards of newspaper quality throughout the term of this Restated Agreement consistent with United States metropolitan daily newspapers.

5.3. Performance and Cooperation. Sun and Review-Journal agree to take all corporate action necessary to carry out and effectuate the intent, purposes and provisions of this Restated Agreement, and to cooperate with the other party in every reasonable way that will promote successful and lawful operation under this Restated Agreement for both parties.

5.4 Sun Office Space. The Sun shall provide and pay for its own offices for its news and editorial department and management.

ARTICLE 6
Intentionally omitted

ARTICLE 7
PAYMENT

During the term of this Restated Agreement, DR and the Sun shall receive the amounts set forth in Appendix D.

ARTICLE 8
NON-LIABILITY PROVISIONS

8.1 Defense of Claims and Indemnification. Any claim, demand, suit, action, obligation or other liability asserted against or sustained by Review-Journal and Sun, or either of them, in respect of any third party ("Claims") shall be dealt with as provided in this Article 8. For all purposes of this Article 8, the term "cost or expense" shall include reasonable attorneys' fees and costs, whether or not taken to trial or appeal or in any bankruptcy or other related proceeding.

8.1.1 Claims Related to the Joint Operation. Review-Journal shall defend and shall control the defense or settlement of any third party Claims related to the joint operations or to its performance or non-performance under this Restated Agreement (including but not limited to Claims arising from any advertising published in, or excluded from, any of the Newspapers -

except as provided in Section 8.1.2 - and claims in respect of feature, news and editorial content furnished by Sun hereunder arising as a result of any act or omission on the part of Review-Journal other than republication in the form furnished by Sun), devoting reasonable efforts to minimizing any resulting liability and related cost or expense. Any such liability, and the cost of expense related thereto, shall be borne by the Review-Journal, except to the extent any such Claim shall be covered by insurance.

8.1.2 Other Claims. Except as specifically provided in Section 8.1.1, or elsewhere in this Restated Agreement, neither party hereto shall be charged with or held responsible for any third party Claims, arising before or after the Effective Date by reason of any act or omission on the part of the other party, and the responsible party shall defend and indemnify and hold the other party harmless therefrom, including all related cost or expense. The responsible party shall defend, settle, pay or discharge any such Claim and shall indemnify and hold harmless the other party against any such Claim, and from any liability, cost or expense arising therefrom. By way of example under this Section 8.1.2 and without limitation, the entire cost or expense of defending, settling or paying and discharging Claims relating to any feature, news or editorial copy published in, or excluded from the daily Review-Journal or arising by reason of anything done or omitted by the news and editorial department of the Review-Journal in regard to its daily newspaper or arising by reason of any advertising rejected by the Review-Journal or accepted by the Review-Journal in situations where such advertising would be rejected pursuant to Sun guidelines, shall be borne by DR and any such liability, cost or expense on account of claims relating to any feature, news or editorial copy published in, or excluded by Sun from the daily Sun or, or arising by reason of anything done or omitted by the news and editorial department of the Sun, or arising by reason of any advertising rejected by the Review-Journal pursuant to Sun guidelines, or accepted in situations where such advertising would be rejected pursuant to Review-Journal guidelines, shall be borne by Sun, unless such Claims shall be an expense of the Review-Journal by reason of the operation of Section 8.1.1.

8.1.3 Insurance. For the purpose of this Article 8, each party shall separately maintain and pay for, as an item of news and editorial expense, insurance to the extent reasonably available protecting against losses from libel, invasion of privacy, copyright or trademark infringement and other matters related to the gathering or preparation of news and editorial matter for publication, in such amounts as the parties may agree upon from time to time, but in no event less than Ten Million Dollars ($10,000,000), and the other party shall be named as an additional insured.

8.2 Force Majeure. Neither party shall be liable to the other for any failure or delay in performance under this Restated Agreement, occasioned by war, riot, government action, act of God or public enemy, acts of terrorism, damage to or destruction of facilities, strike, labor dispute, failure of suppliers or worker, inability to obtain adequate newsprint or supplies, or any other cause substantially beyond the control of the party required to perform, provided that in the event partial performance under this Restated Agreement is feasible, notwithstanding the occurrence of one or more of the foregoing, performance shall be allocated between the newspapers by the Review-Journal, in its sole judgment, notwithstanding the provisions of Appendix A hereto, provided, that the Sun portion shall not be less than six (6) pages.

ARTICLE 9
TERMINATION

9.1 Events of Termination. This Restated Agreement shall continue in full force and effect unless and until it may be terminated by the occurrence of one of the following events of termination:

9.1.1 Stated Duration. Expiration of the term set forth in Section 1.1

9.1.2 Bankruptcy or Default. If either party hereto makes an assignment of its assets for the benefit of creditors, an order of relief is entered by any bankruptcy court or has a receiver appointed for its business by a court of competent jurisdiction (provided, that such assignment, order of relief or adjudication shall continue unstayed on appeal or otherwise in effect for a period of ninety (90) days after the assignment, the entry of the order of relief or decree related thereto before such assignment or adjudication becomes an event of termination, and further provided that the appointment of the receiver must continue unvacated, not set aside, not stayed or otherwise in effect for a period of ninety (90) days after such appointment before such appointment becomes an event of termination), or if either party defaults in the performance of any of its material obligations hereunder and does not cure such default within sixty (60) days after receiving written notice thereof from the other party, then such other party may, at its election, and in addition to all other remedies available to it at law or in equity, terminate this Restated Agreement. In the event of the entry of an unstayed order of relief in an involuntary bankruptcy by DR, the Sun shall have the right, at its option, to purchase from DR, the equipment necessary to publish the Sun. The value of the equipment shall be set by the bankruptcy trustee. In the event of an unstayed order of relief in an involuntary bankruptcy, the Sun may lease, at fair market value, for a period not to exceed five (5) years the assets necessary to the publish the Sun.

9.1.3. Change of Controlling Interest. In view of the nature of the relationship established by this Restated Agreement and the fact that the Sun is published under the direction and control of the Estate of Herman Greenspun and Brian L. Greenspun, the Review-Journal shall not be required to carry out the terms of this Restated Agreement or be associated with another party to which it reasonably objects. Accordingly, ownership or control of the Sun shall not be transferred to any other entity or person without notice to and prior approval by the Review-Journal, provided that the Review-Journal will not object to any transfer of the ownership or control of Sun to any entity under the immediate direction of Brian L. Greenspun, or any other lineal descendant of Herman M. Greenspun. Notwithstanding the foregoing, controlling interest of the Sun may be transferred to any person that can provide the necessary editorial background and expertise to produce the Sun pursuant to the terms of this Restated Agreement. Following an approved or permitted change of control of Sun, if a subsequent change of control occurs, notice as hereinabove shall be given and the Review-Journal may exercise the rights provided herein.

9.1.4 Intentionally omitted.

9.2 Intentionally omitted.

9.3 Duties Upon Termination. Upon termination of this Restated Agreement, either by expiration of its term or otherwise, the Review-Journal shall provide Sun with a complete list (including all contact information) of current newspaper subscribers and advertisers.

ARTICLE 10
MISCELLANEOUS

10.1 Notices. Each notice or other communication given pursuant to this Agreement shall be given in writing, delivered in person or mailed by registered or certified mail, addressed to the respective parties as follows:

Review-Journal: DR Partners
P. O. Box 70
Las Vegas, NV 89125
Attention: Sherman Frederick

Sun: Brian L. Greenspun, Esq.
President & Editor
Las Vegas Sun
2275 Corporate Circle Drive
Suite 300
Henderson, Nevada 89074

Or, in case of either party hereto, at such other address or marked for the attention of such other person, as such party may set forth in a written notice to the other party.

10.2 Disclaimer of Labor Related Obligations. The parties specifically agree that neither party hereby assumes any obligations of the other party related to its employment practices or to any of its employees, whether or not arising under any collective bargaining agreements or arising prior to, on or subsequent to the Effective Date.

10.3 Intentionally omitted.

10.4 Limited Effect. Nothing herein contained shall constitute the parties hereto partners, joint venturers, successors, alter egos, joint employers, an unincorporated association, or as having any relationship other than as specifically provided by this Restated Agreement. This Restated Agreement is intended solely for the benefit of the parties hereto, and their permitted successors and assigns and not for the benefit of any other person or party. This Restated Agreement, including Appendices A through D hereto, and the contracts and agreements supplemental hereto, comprises the entire understanding and agreement of the parties hereto on the subject matter herein contained and any and all other representations or agreements, which heretofore may have been made on such subject matter, whether oral or in

writing, by any agent of either party shall be null, void and of no effect whatsoever. Time is of the essence of this Restated Agreement.

10.5 Intentionally omitted.

10.6 Sun Trademark, Tradenames, Service Marks and Copyrights. In its use of such Sun trademarks, tradenames, service marks and copyrights as may be required to perform its obligations under this Restated Agreement, including promotion of the Newspapers, Review-Journal shall use commercially reasonable effort to comply substantially with all relevant laws of the State of Nevada and of the United States pertaining to trademarks, tradenames, service marks and copyrights in force at any time during the term of this Restated Agreement. Review-Journal shall have the exclusive right and the obligation to distribute the Sun through electronic replica technology (i.e. technology customarily used by metropolitan daily newspapers which transmits an entire Sun page to the subscriber or consumer in any form) to the same extent the Review-Journal distributes its own pages by such means provided, however, that Sun shall have the right to republish, license, or otherwise use its editorial content in any form or media, other than as an entire Sun page or pages, upon the earliest of: (i) 7:00 a.m., (ii) the time the Review-Journal guarantees delivery to its subscribers, or (iii) the time the Review-Journal first uses its editorial content in any form or media other than in the printed newspaper or replica technology. Sun shall use commercial reasonable efforts to maintain in effect said trademarks, trade names, services marks and copyrights, and shall make applications for the registration and/or renewal thereof if and when required by law. Review-Journal acknowledges Sun's right, title and interest in and to said trademarks, trade names, service marks and copyrights and all renewals thereof, and agrees that it shall not at any time permit, take, or cause to be taken any action within its control in any way impairing or tending to impair any part of such right, title and interest. Review-Journal agrees to publish such notices in the Sun as Sun reasonably may request in order to protect said trademarks, trade names, service marks and copyrights, or any of them. Review-Journal shall not in any manner represent that it has any ownership interest in said trademarks, trade names, services marks or copyrights or in the registration thereof, and Review-Journal acknowledges that its use hereunder of said trademarks, trade names, services marks or copyrights shall not create in its favor any right, title or interest in or to same beyond those created by this Restated Agreement. The Review-Journal shall have the right to republish, license, or otherwise use its editorial content in any form or media.

10.7 Tax Treatment of Payments to Sun. Its is contemplated by the parties that the payments to Sun under Appendix D of this Restated Agreement will be, for federal income tax purposes, ordinary income to Sun and will be deductible by DR as a business expense.

10.8 Specific Performance. Because of the public interest in maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages in the event of default in the performance of material obligations hereunder, each party shall have the right to seek specific performance of the material provisions of this Restated Agreement, provided, that in the event of any action by either party for specific performance, if that party does not obtain an order of specific

performance, the other party shall be entitled to recover in such action its attorneys' fees and costs.

10.9 Successors and Assignment. This Restated Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their permitted successors and assigns.

10.10 Governing Law; Modification. This Restated Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. This Restated Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, modification or discharge shall be sought.

10.11 Headings. Headings have been inserted in this Restated Agreement for the purpose of convenience only. They shall not be used to interpret or construe the meaning of any Articles or Sections, nor shall they have the effect of limiting or enlarging the meaning thereof.

10.12 Ancillary Publications. Nothing in this Restated Agreement shall preclude either party from engaging in any lawful business outside of this Restated Agreement, except that neither Review-Journal, or any Affiliate of Review-Journal nor Sun, or any Affiliate of Sun, shall, outside of this Restated Agreement, publish a newspaper that is published three or more days per week and that is directed primarily to Clark, Nye, or Lincoln Counties, Nevada or any parts thereof. As used in this Restated Agreement, "Affiliate" means any person, corporation, partnership, trust or other entity which controls, is controlled by, or is under common control with either party.

10.13 Release. As a material inducement to DR to enter into this Restated Agreement, and for other good and valuable consideration, Sun, for itself, and its assigns, hereby unconditionally releases and forever discharges DR and the Las Vegas Review-Journal and their partners, predecessors, successors, assigns, agents, stockholders, directors, officers, current or former employees, representatives, attorneys, divisions, subsidiaries, affiliates, receivers, trustees, shareholders and all persons acting by, through, under or in concert with any of them from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including, but not limited to, attorneys' fees and costs actually incurred of any nature whatsoever with respect to all those claims asserted or which could have been asserted which arise out of, or are related to, operation of the Las Vegas Review-Journal or Sun between June 17, 1989, and June 10, 2005, known or unknown, including, but not limited to, any claims connected with operations under the 1989 Joint Operating Agreement between the parties, during that time period, including those items set forth on Exhibit C to a release agreement between the parties dated June 20, 2002 and any claims related to the conduct or operation of lvrj.com, reviewjournal.com, lasvegasnewspapers.com.

As a material inducement to Sun to enter into this Restated Agreement, and for other good and valuable consideration, DR, for itself, its affiliates and assigns, hereby unconditionally releases and forever discharges Sun its partners, predecessors, successors, assigns, agents, stockholders, directors, officers, current or former employees, representatives, attorneys,

divisions, subsidiaries, affiliates, receivers, trustees, shareholders and all persons acting by, through, under or in concert with any of them from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including, but not limited to, attorneys' fees and costs actually incurred of any nature whatsoever with respect to all those claims asserted or which could have been asserted which arise out of, or are related to, operation of the Las Vegas Review-Journal or Sun between June 17, 1989, and June 10, 2005, known or unknown, including, but not limited to, any claims connected with operations under the 1989 Joint Operating Agreement between the parties, during that time period, including those items set forth on Exhibit D to a release agreement between the parties dated June 20, 2002 and any claims related to the conduct or operation of lasvegassun.com or lasvegasnewspapers.com.

IN WITNESS WHEREOF, this Restated Agreement has been executed by the parties' respective corporate officers thereto duly authorized as of the day and year first above written.

DR PARTNERS.
By: Stephens Group, Inc.
General Partner

By: Warren A. Stephens
Warren Stephens
Chief Executive Officer

LAS VEGAS SUN, INC.

By:
Brian L. Greenspun
President

JOA 020705

Salt Lake-1517193 085205-00001

APPENDIX A

A.1. Intentionally omitted

A.2. Pursuant to Section 4.3. of this Restated Agreement, the number, placement, and characteristics of Sun pages shall be in accordance with the following specifications:

(a) For Monday through Friday editions, the Sun shall be composed of an open front page with the Las Vegas Sun flag and seven (7) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The remaining pages may include advertising, subject to the restrictions in (d) below. For Monday-Friday editions, the Review-Journal shall be composed of as many pages as Review-Journal management determines in its sole discretion.

(b) For the Sunday edition, the Sun shall be composed of an open front page with the Las Vegas Sun flag and nine (9) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The remaining pages may include advertising, subject to restrictions in (d) below. The Review-Journal shall determine the number of pages for a comic section for the Sunday edition which shall consist of strips and features selected by the Review-Journal. The Sunday paper, including comics, shall be composed of as many Review-Journal pages as Review-Journal management determines in its sole discretion.

(c) For Saturday and holiday editions, the Sun shall be composed of an open front page with the Las Vegas Sun flag and five (5) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The Saturday and holiday editions shall be composed of as many Review-Journal pages as Review-Journal management determines in its sole discretion. The remaining pages may include advertising, subject to restrictions in (d) below.

(d) The Sun shall not include any Review-Journal editorial content. Standard materials such as weather pages, comics, standardized television listings and the like shall not be considered Review-Journal editorial material and may be included in the Sun as additional pages unless the Sun objects in writing thereto. Other than open pages, the Sun may include advertising. No Sun page shall be more than 50% advertising, except for full page ads, and no advertising shall appear "above the fold" in the Sun, except for full page ads. Notwithstanding the foregoing, pages may contain, from time to time, more than 50% advertising due to production issues and advertising demands. Advertising will not be stacked in a pyramid format and shall be evened out in terms of height on the page. The Monday-Sunday editions of the Review-Journal shall include a noticeable mention of the

Sun, on the front page of the Review-Journal. The noticeable mention will appear in a box above the Review-Journal's masthead (the "Sun Box") and shall be in the form shown on Appendix B. The Sun Box shall not be smaller in proportion than shown in Appendix B. The Sun Box shall also include the Sun's masthead, and any emblem that is part of the Sun's masthead. The Sun Box shall include a promotion of a story in the Sun and refer readers to the Sun inside. The type face, editorial artwork, font, and editorial promotional content appearing in the Sun Box shall be determined by Sun, in its sole discretion. Any color in the Sun Box shall be restricted to constituent colors used by the Review-Journal on its front page. The Sun Box shall be the left-hand box unless it would be obscured by a spaeda fold, in which case the Sun Box shall be the right-hand box. In the event of major breaking news or for exigent production circumstances, the Sun Box may be moved below the Review-Journal's masthead. The Sun, on average, will receive as much editorial color as the local news section of the Review-Journal.

A.3. Edition times for Monday through Sunday issues of the Review-Journal shall be established by the Review-Journal in accordance with normal industry standards. Deadlines for the Sun shall be the same as those established for the last local news sections of the Review-Journal. The Sun will be placed as the third section of the Newspapers except on occasions when exigent production circumstances require that it be placed as the fourth section. The Sun will be printed in the same press run as the Review-Journal local news section. The Review-Journal shall be solely responsible for determining the need for replating the Newspapers, and shall treat the Sun and the Review-Journal equally with respect to replating of page one for major breaking national or international news events

A.4. If the Review-Journal determines that it is feasible to publish an "extra" edition, such edition shall be a Review-Journal edition and the content of any "extra" edition shall be determined solely by the Review-Journal.

A.5. In the event the Review-Journal determines that the Sun's continued placement in the Review-Journal has a material and substantial negative financial impact on the revenue and profit of the Newspapers it may deliver the Sun separately from the Review-Journal but at the same time, place, and manner as the Review-Journal. The Review-Journal shall provide written notice to the Sun within fifteen (15) days of beginning such separate delivery specifying in detail the factual basis for its determination.

In the event the Sun disagrees with the Review-Journal's determination, it shall within seven (7) days of receipt of notice from the Review-Journal, request that the matter be submitted to arbitration by an arbiter mutually agreed upon by the parties. If Sun requests arbitration, the Review-Journal shall not deliver the Sun separately until sixty (60) days after selection of the arbitrator. In the event the parties are not able to agree upon an arbiter within seven (7) days, an arbiter shall selected by the Chairman of the Department of Journalism of Northwestern University, Evanston, Illinois, or a similar journalism school if Northwestern University has ceased operations of its School of Journalism. The parties shall request the arbitrator to render a decision within sixty (60) days of his or her selection, and Sun and the Review-Journal each

hereby covenant to cooperate with the arbitrator to facilitate such request.

The arbitrator shall have experience in the senior management of metropolitan daily newspapers. In determining material and substantial negative financial impact, only the following factors shall be considered; advertiser abandonment of the Newspapers specifically due to the Sun's inclusion within the Review-Journal or subscriber cancellations of the Newspapers specifically due to the Sun's inclusion within the Review-Journal. The material and substantial negative financial impact shall be determined by reference to generally accepted standard newspaper industry sources. The decision of the arbitrator shall be final. The cost of the arbitration shall be borne by the non-prevailing party. The Review-Journal's rights under this section shall be cumulative and may not be exercised more often than once every eighteen (18) months.

In the event Sun determines, in its sole discretion, that the Sun's continued placement in the Review-Journal negatively impacts the Sun, the Review-Journal shall, upon fifteen (15) day written notice from Sun, thereafter deliver the Sun separately from the Review-Journal but at the same time, place and manner as the Review-Journal, provided that Sun shall pay any incremental expenditure reasonably incurred because of such separate delivery, which separate delivery shall be effected without any derogation in the publication, production, or delivery of the Review-Journal. Prior to giving its fifteen (15) day written notice, Sun may request and the Review-Journal shall provide a good faith estimate of such incremental expenditures and the parties shall meet and confer regarding the estimate. If the Sun is separately delivered, it will no longer receive noticeable mention in the Review-Journal.

APPENDIX B

[Sample to be attached]

LAS VEGAS SUN

DOE knew of Yucca e-mails in December

Batter Up

Help pick the new Las Vegas city seal

LAS VEGAS REVIEW-JOURNAL

PUBLIC VIEWING OF POPE

Mourners pay respects

Thousands pack St. Peter's Square to see John Paul II ahead of burial

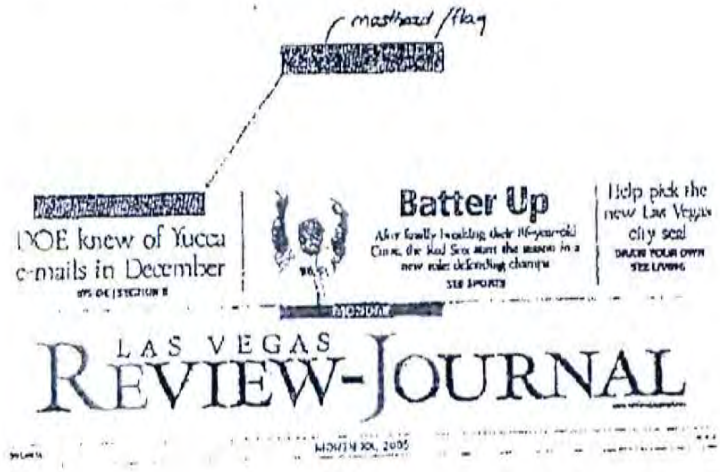
Agency pursued damage control

Oil concerns increase as prices soar to record level

Supreme Court rules IRAs protected from bankruptcy

Witness says Michael Jackson molested him


LAS VEGAS SUN
Batter Up
Help pick the new Las Vegas city seal
LAS VEGAS
REVIEW-JOURNAL


masthead/flag
DOE knew of Yucca e-mails in December
Batter Up
Help pick the new Las Vegas city seal
LAS VEGAS
REVIEW-JOURNAL

APPENDIX C
Intentionally omitted

APPENDIX D

Sun shall receive an annual profits payment (the "Annual Profits Payment"), one-twelfth ($1/12^{th}$) of which shall be paid monthly in advance on the first day of each month during the Term. For the fiscal year beginning April 1, 2005, the Annual Profits Payment shall be Twelve Million Dollars ($12,000,000), provided, however, that payments to Sun shall continue in accordance with the 1989 Agreement until the Transition Date. Each fiscal year thereafter during the term of this Agreement the Annual Profits Payment shall be adjusted as set forth in this Appendix D. Within thirty (30) days following the beginning of each such fiscal year, Review-Journal shall calculate the percentage change (the "Percentage Change") between the earnings, before interest, taxes, depreciation and amortization ("EBITDA") for the fiscal year immediately preceding (the "LTM EBITDA") and the EBITDA for the penultimate fiscal year (the "Prior Period EBITDA"). The Annual Profits Payment shall be increased, or decreased, as the case may be, by the Percentage Change between the LTM EBITDA and the Prior Period EBITDA.

In calculating the EBITDA (i) for any period that includes earnings prior to April 1, 2005, such earnings shall not be reduced by any amounts that during such period may have been otherwise been deducted from earnings under section A.1 of Appendix A or sections B.1.16, B.1.17, B.1.18, or B.3 of Appendix B of the 1989 Agreement and (ii) for any period whether before or after April 1, 2005, such earnings shall not be reduced by any amounts paid to Sun as a percentage of operating profit under Appendix D of the 1989 Agreement or under this Appendix D. Any expense of the Review-Journal attributable to a transaction with an Affiliate shall not exceed fair market value. EBITDA shall include the earnings of the Newspapers and the

earnings of the Review-Journal's Affiliates derived from publications generally circulated in Clark, Nye, or Lincoln Counties, Nevada or any parts thereof. For purposes of this paragraph, Press Equipment shall mean the press equipment currently owned by the Review-Journal and identified in Appendix D-1 and any additional equipment, whether owned by the Review-Journal or third parties, to the extent that it produces substantially the same product or result, and Other Equipment shall mean all equipment and facilities used for production or operation of the printed Newspapers or other print publications whose earnings are included in EBITDA other than Press Equipment. EBITDA, whether determined for any period before or after April 1, 2005, shall not include (a) any expense for rents, leases or similar expense for Other Equipment (i) if such expense, under generally accepted accounting principles, should be treated as a capitalized lease obligation, or (ii) if such expense is made for the use of any capital asset the use of which is intended to replace any item of Other Equipment that is owned by the Review-Journal as of the Effective Date or (b) any expense for rents, leases, or similar expenses for Press Equipment, including any portion of a printing services contract that is fairly attributable to the use of Press Equipment. All calculations shall be made in accordance with generally accepted newspaper industry accounting principles consistently applied. The Parties intend that EBITDA be calculated in a manner consistent with the computation of "Retention" as that line item appears on the profit and loss statement for Stephens Media Group for the period ended December 31, 2004. Sun shall have the right, exercisable not more than once every twelve months and only after providing written notification no less than thirty days prior thereto, to appoint an certified public accounting firm or law firm as Sun's representative to examine and audit the books and records of the Review-Journal and the other publications whose earnings are included in EBITDA for purposes of verifying the determinations of the changes to the Annual Profit

Payments. Such representative shall agree in writing to maintain the confidentiality of all such financial records inspected. The confidentiality agreement shall not restrict the representative from disclosing to the management of Sun information concerning the audit of the Review-Journal, but shall restrict the representative from disclosing any specific individual salary information or advertiser-specific information (e.g., names, prices, contract terms, discounts, total inches) for the other publications whose earnings are included in EBIDTA. With respect to such other publications, the representative may only disclose summary information (e.g., total advertising revenue or total salaries) that is not identifiable with individual advertisers or employees. If as a result of such an audit, there is a dispute between Sun and the Review-Journal as to amounts owed to Sun and they are not able to resolve the dispute within 30 days, they shall select a certified public accountant to arbitrate the dispute. The arbitration shall be conducted according to the commercial arbitration rules of the American Arbitration Association, including such rules for the selection of a single arbitrator if Sun and the Review-Journal are not able to agree upon an arbitrator. Sun and the Review-Journal shall request the arbitrator to render a decision within sixty (60) days of his or her selection, and Sun and the Review-Journal each hereby covenant to cooperate with the arbitrator to facilitate such request. The arbitrator shall agree to be bound by terms of confidentiality to the same extent as the Sun's representative. The arbitrator shall make an award to Sun in the amount of the arrearage, if any, found to exist, together with interest thereon from the date any arrearage was due until paid at the corporate prime rate as quoted by the Wall Street Journal on the first business day of each month. The arbitrator shall also make an award of the fees and cost of arbitration, which may include a division of such fees and costs among the parties in a manner determined by the arbitrator to be reasonable in light of the positions asserted and the determination made.

DR shall be entitled to all of the profits of the Newspapers after the payments set forth above to the Sun during the term of this Restated Agreement.

APPENDIX D-1

1 Goss Urbanite Press (Parma Lane)
1 Goss Community Press (Press Annex)
2 Goss Newsliner presses (Main pressroom)
1 Didde press (Mailroom)
2 Lines of Heidelberg Inserters and GMA/Alphaliners

Defendants' Motion to Vacate Arbitration Award and Declaration of Michael Gayan in support, **Exhibits B-C**
[Filed Under Seal]
[Page Nos. 230-247]

Defendants' Motion to Vacate Arbitration Award and Declaration of Michael Gayan in support, **Exhibits B-C**
[Filed Under Seal]
[Page Nos. 230-247]

Exhibit D

JOA

AGREEMENT

This Agreement is dated as of June 11, 1989, between Donrey of Nevada, Inc., a Nevada corporation ("Donrey"), and the Las Vegas Sun, Inc., a Nevada corporation ("Sun").

PRELIMINARY STATEMENT

Donrey owns and publishes in Las Vegas, Nevada, an all day newspaper on weekdays, a morning newspaper on Saturdays and holidays, and a Sunday newspaper, each known as the Las Vegas Review-Journal (hereinafter referred to as the "Review-Journal"). Sun owns and publishes in Las Vegas, Nevada, a morning newspaper on weekdays and Saturdays and a Sunday newspaper, each known as the Las Vegas Sun (hereinafter referred to as the "Sun"). The Sun presently operates and for a number of years has operated at a substantial loss, and is in probable danger of financial failure. It is the firm belief of the parties that the continued publication of at least two newspapers of general circulation, editorially and reportorially separate and independent, is of paramount importance to the citizens of Las Vegas and its environs. The parties further believe that publication of the Sun can be carried on profitably, and its continued editorial existence and independence thereby assured, if its production, distribution and advertising functions and related non-news and non-editorial activities are conducted and performed by the Review-Journal, through a single staff of Review-Journal employees utilizing Review-Journal's plant and equipment under a joint

newspaper operating arrangement (hereinafter referred to as "Agreement"), under which the Review-Journal will act on its own behalf with respect to the Las Vegas Review-Journal and on behalf of the Sun with respect to the Las Vegas Sun.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

TERM

1.1 Effective Date. The term of this Agreement shall begin at 12:01 a.m. on the 10th day (or on such later day as the parties may agree) after the filing of written consent of the Attorney General of the United States to this Agreement under the Newspaper Preservation Act, which shall be known as "the Effective Date". The parties agree to pursue diligently the filing of the application for approval of this Agreement to the Department of Justice and to use their best efforts and take all action necessary to obtain such written consent as expeditiously as possible within the procedures set forth in applicable regulations of the Department of Justice. This Agreement does not constitute any limitation on either party's obligation to engage in good faith labor negotiations if and as required by the National Labor Relations Act, and to implement any understandings it may reach in such negotiations.

Upon execution hereof, each party shall furnish to the other a written opinion of its counsel that all necessary

corporate action has been taken to authorize this Agreement and that, subject to the conditions of the preceding paragraph, this Agreement shall constitute the valid and binding obligation of the respective party. The parties agree to cooperate in coordinating meetings with government officials, community leaders, employees and their representatives, advertisers and others to explain the Agreement.

If, within eighteen (18) months after the filing of the application with the Department of Justice, the application has neither been approved by the Attorney General without a hearing nor been the subject of an order for a hearing, or if, within eighteen (18) months after the Attorney General has issued an order for a hearing, the application has not been approved by the Attorney General, the parties shall discuss the feasibility of continuing to seek approval of the application and either party may, after notification to the other, withdraw from the application. The Review-Journal and Donrey intend to make a request, at the time of filing the application, under 28 CFR Section 48.5 for a protective order withholding from public disclosure their financial and other privileged and confidential commercial information to be filed with this application and restricting access to such materials to the applicants and the Department of Justice. If the request is not granted the Review-Journal and Donrey reserve the right to unilaterally withdraw the application. If the protective order is initially granted but, at a later date, access to or inspection of the protected information is to be afforded anyone other than the

applicants, the Department of Justice, or an administrative law judge, and their respective employees, without restrictions as to disclosure acceptable to the Review-Journal and Donrey, then the Review-Journal and Donrey shall have the unilateral right to withdraw the application and dismiss any further hearing or proceedings concerning the application.

Each party shall pay its own costs and professional fees in connection with the formulation and drafting of this Agreement and the preparation and filing of the application to the Department of Justice. From and after the filing of such application all costs and professional fees shall be borne equally by the parties with each party having reasonable approval of costs and fees to be incurred.

1.2 Duration. Subject to the termination provisions set forth in Article 9, this Agreement shall continue for an initial period ending at the close of business on the 31st day of December of the fiftieth (50th) year following the Effective Date. The Agreement shall automatically renew for succeeding renewal periods of ten (10) years each unless either party shall notify the other in writing at least two (2) years prior to the end of the initial period that it elects to terminate the Agreement at the end of said fiftieth (50th) year, or unless either party shall notify the other in writing at least two (2) years prior to the end of the renewal period that it elects to terminate the Agreement as of the end of said renewal

period. The phrase "term of this Agreement" as used hereafter shall mean the initial period and any renewal period or periods.

ARTICLE 2

AGENCY

Donrey of Nevada, Inc. now owns and operates the Review-Journal, together with other unrelated business operations in the State of Nevada. In order to facilitate management, administration, record keeping and tax administration under this Agreement, Donrey, as of the effective date of this Agreement, shall have established a separate Nevada business corporation which shall own or lease all assets related to the operation of the Las Vegas Review-Journal. Donrey shall cause such corporate entity to assume and agree to perform all duties and obligations of the Review-Journal under the terms of this Agreement.

ARTICLE 3

TRANSFER OF CONTRACTS AND SALE OF SUPPLIES, INVENTORY AND EQUIPMENT BY SUN TO REVIEW-JOURNAL

3.1 Transfer to and Assumption by Review-Journal of Certain Contracts. To enable Review-Journal to perform its functions hereunder on behalf of Sun, Sun shall (as of the Effective Date) transfer certain assets and assign certain contracts to Review-Journal subject to the procedures and conditions hereinafter specified in this Section 3.1.

3.1.1 Delivery of Contracts and Data to Review-Journal. Upon consent of the Attorney General as specified in Section 1.1, Sun shall furnish to the Review-Journal:

3.1.1.1 Circulation Contracts. All subscription, bulk sales, circulation, dealer and sub-dealer, and delivery agent lists and contracts related to the Sun in the possession or control of Sun, and all books and statements of account, records and other information relating to or concerning routes, daily draws by editions, distribution, delivery, sales returns, or prepaid subscriptions of the Sun in any territory, but not including the Sun's general books of account.

3.1.1.2 Contracts for Supplies. All contracts and other available information as may be reasonably necessary to form business judgments respecting such contracts, then held by Sun for the purchase of newsprint, film, ink and supplies for the Sun's mechanical departments, and all other similar contracts (other than those relating to the Sun's news and editorial departments) which would be helpful or beneficial to the Review-Journal in fulfilling its obligations hereunder.

3.1.1.3 Advertising Contracts. A list of all contracts then outstanding for publication of advertising in the Sun, which list shall indicate in each case the date of the contract, the name and address of the advertiser, the amount of space used up to that time, the amount unpaid and owing the Sun for advertising run to that time, the amount prepaid as of the Effective Date, the frequency of insertions, the rate, the expiration date, and any special conditions, records, requirements or publication orders with the date thereof, and any special instructions, agreements or commitments made by the Sun with

the advertiser with respect thereto, and all insertion orders for advertising subsequent to the Effective Date. Sun shall make available to the Review-Journal at the Review-Journal's request copies of any or all such contracts.

3.1.2 Analysis of Contracts and Assumption by Review-Journal. As soon as possible after such information and documents shall have been furnished to the Review-Journal, and in any event prior to the Effective Date, Review-Journal shall designate in writing to Sun those contracts that Sun shall assign to Review-Journal and which Review-Journal shall assume as of the Effective Date (excluding all portions which Sun had a duty to perform prior to the Effective Date); provided, that with respect to advertising contracts Review-Journal shall have no obligation to assume any advertising contract that is on a trade-out basis, and Review-Journal agrees that it will not refuse the assumption of any advertising contract solely on the basis of the contract rate. However, for advertising contracts containing rates which Review-Journal determines to be unreasonably low, Review-Journal shall have the right to charge to Sun the difference between the contract rate and a rate determined by Review-Journal to be reasonable, effective ninety (90) days after the date of assumption and continuing for the balance of such contracts. Subject to the foregoing, Review-Journal shall use its best efforts to maximize its designation of such contracts

to be assigned to and assumed by Review-Journal. Review-Journal's pre-assumption analysis of such contracts and information may include consultation with the contracting parties, and Sun agrees to assist Review-Journal in that process. Sun shall remit to Review-Journal (a) all dealers', vendors' and carriers' cash deposits (to the extent that the same shall not be due and owing to such depositors on the Effective Date) and (b) all sums in respect of prepaid subscriptions and prepaid advertising received by Sun but not earned prior to the Effective Date. As to any assigned and assumed advertising contracts, Review-Journal shall have the right to make adjustments, such as rebates or short ratings of any of same so long as this shall not alter indebtedness due Sun prior to the Effective Date without Sun's approval. All such contracts to be assumed by Review-Journal shall be assigned to Review-Journal by Sun as of the Effective Date, and such contracts shall be assumed by Review-Journal as of that date and thereafter shall be performed by Review-Journal, and Sun shall be relieved from any and all performance obligations under such contracts accruing after the Effective Date.

3.2 Newsprint. Review-Journal shall procure, as of the Effective Date and thereafter, a supply of newsprint adequate to produce the Newspapers as defined in Section 5.1 below;

provided, that Review-Journal shall have the purchase and assumption obligations specified in Section 3.3 as to Sun newsprint.

3.3 Sale of Supplies, Inventory and Equipment. As of the Effective Date, Review-Journal agrees to purchase Sun's inventory of newsprint and supplies common to or usable in the operations of both newspapers (i.e., newsracks, production film, rubber bands, plastic bags, etc.). Upon the consent of the Attorney General as specified in Section 1.1, Sun shall deliver to Review-Journal a schedule identifying all supplies, inventory (on hand or in transit) and equipment owned or leased by Sun and used or available to be used in the production and distribution of the Sun. On or before the Effective Date, Review-Journal shall designate in writing which of the scheduled items of supplies, inventory and equipment it wishes to purchase or sublease, as the case may be.

As to such of the equipment as is owned by Sun, which Review-Journal determines to purchase, Sun shall be obligated to sell and deliver same and Review-Journal shall be obligated to buy at a purchase price equal to the purchase cost of such equipment or its then market value, whichever is lower.

As to such of the supplies and inventory which Review-Journal is obligated to purchase or designates for purchase by it, Sun shall be obligated to sell and deliver same and Review-Journal shall be obligated to buy at a purchase price equal to the cost of same to Sun, or its then market value, whichever is lower.

Any newspaper production equipment of the Sun which is not purchased by the Review-Journal may be sold by the Sun to a third party, provided that the sale of any such equipment to any party within the State of Nevada shall require Donrey's prior approval.

ARTICLE 4

NEWS AND EDITORIAL COPY, FEATURES AND SERVICES

4.1 Maintenance of News and Editorial Staff; Feature Materials. Review-Journal and Sun each shall maintain a staff of news and editorial employees, and shall license such feature materials (including, but not limited to, news and editorial services supplied by third parties), adequate to provide its respective newspaper with all of the news and editorial copy and related services deemed necessary by each of them as to its respective newspaper.

4.2 News and Editorial Allocations. The Review-Journal and the Sun shall establish, in accordance with the provisions of Appendix A attached hereto and made a part hereof by reference, the amounts to be allocated to Agency Expense, as hereinafter defined, for each for news and editorial expenses.

4.3 Furnishing News and Editorial Copy and Services. In furnishing features, news and editorial copy, and like materials to Review-Journal for publication in the Sun or the Sun portion of jointly published newspapers as provided in Section 4.4, and in providing layout for such material, Sun shall provide all such material in a form appropriate for the production of its

newspaper or its portion of jointly published newspapers hereunder, in conformity with the mechanical standards, deadlines and production requirements which prevail in the Review-Journal plant from time to time, including page sizes, column widths, and cut-offs established by Review-Journal, upon reasonable notice to Sun. Sun shall acquire and maintain at its expense such newsroom equipment (including, but not limited to, typewriters, video terminals and news editing systems) as may be required as of the Effective Date to interface with Review-Journal production facilities. Any changes or additions thereafter required in such equipment shall be covered by Appendix B hereto. Newshole limitations and other matters for separate and jointly published newspapers are set forth in Appendix A hereto.

4.4 Furnishing Copy, Features and Services for Jointly Published Newspapers. Sun shall furnish editorial copy, features and comics to permit the Review-Journal to include them within jointly published newspapers, which shall be Sundays, Saturdays, holidays, other special editions and total market coverage editions. The Sun portion of jointly published newspapers shall be in accordance with Appendix A hereto. All components of jointly published newspapers shall bear the Review-Journal's headdress, typeface and style. The front page logo of all jointly published newspapers shall read "Las Vegas REVIEW-JOURNAL and SUN," and all folios shall similarly refer to both papers, except for editorial and other pages described in Appendix A as being for the use of only one newspaper, which

pages shall bear only the name of such newspaper. The Review-Journal shall provide all of the news content of jointly published newspapers, except for stories and features included on those pages described in Appendix A as being only for the use of the Sun. The Review-Journal reserves the right to print conspicuous notices in jointly published newspapers to the effect that the news content of the non-Sun portion of the newspaper, including locally produced supplements, is produced by Review-Journal personnel.

4.5 Showbiz Magazine. Showbiz Magazine, which is owned or controlled by Sun, is carried as an insert by the Sun and distributed to hotels in Las Vegas. As of the Effective Date, Showbiz Magazine shall be a department or division of the Sun and subject to the terms of this Agreement. If the Review-Journal determines that it no longer desires Showbiz Magazine to be governed by the terms of this Agreement and/or no longer desires to carry Showbiz Magazine as an insert in the jointly published Sunday newspaper, Review-Journal shall give sixty (60) days prior written notice to Sun, and Sun shall have the right to transfer Showbiz Magazine out of Sun, or continue publication and distribution of Showbiz Magazine, and in either case, outside the terms of this Agreement. In this event, Review-Journal agrees to perform, at the request of Sun, composition, production and printing services at reasonable costs and further agrees not to engage in the production of an entertainment magazine for distribution to Las Vegas hotels for a period of two (2) years.

ARTICLE 5

CONTINUING PUBLICATION AND
NEWS AND EDITORIAL AUTONOMY

5.1 Production and Promotion of the Newspapers. Subject to the terms of this Agreement, and as of the Effective Date, Sun shall be a daily afternoon newspaper and Review-Journal shall be a daily morning newspaper and on Saturday, Sunday, holidays, and other special editions the newspapers shall be jointly published as provided in Section 4.4. So long as Sun furnishes news and editorial copy, features and services to Review-Journal in accordance with Article 4 of this Agreement, Review-Journal agrees to produce the Sun daily as an afternoon newspaper as provided herein, to include the Sun copy and features in jointly published newspapers as specified in Article 4 above, and to sell all advertising for, promote and circulate such newspapers as provided herein. Review-Journal agrees that the afternoon Sun and the Sun portion of jointly published newspapers shall contain no editorial content other than that furnished by Sun. Also subject to the terms of this Agreement, Review-Journal further agrees to publish and produce for the term of this Agreement the Las Vegas Review-Journal daily as a morning newspaper and to produce jointly published newspapers as provided herein. The daily Sun and the Sun portion of jointly published newspapers, and the daily Review-Journal and the balance of the jointly published newspapers are hereinbefore and hereinafter referred to as the "Newspapers".

Review-Journal shall print the Newspapers on equipment owned or leased by the Review-Journal in the Review-Journal plant or plants located at such place or places as Review-Journal may determine, and all operations under this Agreement, except the operation of the Sun's news and editorial department, shall be carried on and performed by the Review-Journal with Review-Journal employees and equipment and in the Review-Journal's said plant or plants or by independent contractors selected by the Review-Journal.

The Review-Journal shall control, supervise, manage and perform all operations involved in managing and operating under this Agreement, including printing, selling and distributing the Newspapers, shall determine page sizes, number of columns per page, cut-offs, page makeup of non-news and non-editorial content (subject to the newshole formula set forth in Appendix A), and all other mechanical and technical functions of the Newspapers, shall purchase newsprint, materials and supplies as required (subject to Sun's obligations under Section 3.2), shall determine the rates for, solicit and sell all advertising space in the Newspapers, shall determine circulation rates, collect the Newspapers' circulation and advertising accounts receivable which come into existence after the Effective Date, and shall make all determinations and decisions and do any and all acts and things related to the foregoing activities, provided:

5.1.1 Format. Review-Journal shall not change the format of the Sun to any size or format different from that of the Review-Journal without approval of Sun.

5.1.2 Editions. The number of Sun editions shall not be changed without approval of Sun.

5.1.3 Best Efforts. Review-Jcurnal agrees that it will use its best efforts, using the same degree of diligence, to sell advertising space in the Sun and the Review-Journal and to promote and circulate the Sun and the Review-Journal.

5.1.4 Promotional Activities. Review-Journal shall establish for each fiscal year a budget for promotional activities which shall be allocated between the Review-Journal and the Sun in accordance with the provisions of Appendix A, attached hereto and made a part hereof by reference. Promotional activities may include radio and television, outdoor advertising, in-paper or house advertisements, and other advertising media. All expenses of such promotional activities shall be Agency Expense, up to the amount of the promotional budget allocation. If either the Review-Journal or the Sun determines that it wishes to incur expenses in excess of those in the promotional budget, such expenses shall not be included in Agency Expense. Direct circulation sales expenses, including such items as carrier premiums and expenses of order generation shall not be included in the promotional budget and shall be allocated by Review-Journal between the newspapers so as to maximize the maintenance and enhancement of the circulation of the newspapers to the

extent economically feasible. The newsroom of each newspaper shall determine the nature, extent and timing of its promotional activities and shall supply basic information therefor. Review-Journal promotion management shall be responsible for all final promotional copy preparation and placements.

5.1.5 Rates. Review-Journal shall not increase the single copy or subscription prices of the daily edition of the Sun to an amount higher than the comparable rates for the Review-Journal. Review-Journal shall not change the rates for advertising to be run solely in the Sun in relation to the rates charged for comparable advertising to be run solely in the Review-Journal, unless such change is justified by the then-relative circulation of the Sun and the Review-Journal and other factors considered relevant in the industry.

5.1.6 Meetings of JOA Participants. Periodically, not less than four times per year, Donrey senior management shall meet with Sun senior management to discuss operations under this Agreement and future plans and opportunities.

5.1.7 Advertising Acceptability. Sun may reject any advertising or types of advertising for the Sun which is in the opinion of Sun undesirable or inappropriate for publication therein, and shall notify Review-Journal in writing of any specific advertising or types of advertising that Sun deems undesirable for publication. Review-Journal shall accept all advertising for the Sun other than the advertising indicated on

Sun's written notice, subject to all laws affecting the acceptability of advertising.

5.1.8 Sun Distribution. To the extent economically feasible, Review-Journal shall use its best efforts to substantially maintain the historical area and extent of distribution of the Sun.

5.2 News and Editorial Autonomy. Preservation of the news and editorial independence and autonomy of both the Review-Journal and the Sun is of the essence of this Agreement. Sun shall have exclusive and complete control, authority and direction over the news and editorial content, features and services to be furnished by Sun to Review-Journal to be included in its newspaper and in its portion of the jointly published newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. Review-Journal shall have exclusive and complete control, authority and direction over the news and editorial content, features and services in its newspapers and in its portion of the jointly published newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. The Review-Journal and Sun each hereby agrees to preserve high standards of newspaper quality throughout the term of this Agreement. All news and editorial expense of the Sun or the Review-Journal in excess of the amounts set forth in Appendix A shall be borne by the respective newspaper.

5.3 Performance and Cooperation. Sun and Review-Journal agree to take all corporate action necessary to carry out and effectuate the intent, purposes and provisions of this Agreement, and to cooperate with the other party in every reasonable way that will promote successful and lawful operation under this Agreement for both parties.

5.4 Sun Office Space. The Sun shall have the option to provide its own offices for its news and editorial department and senior management, or to occupy office space, to be provided by the Review-Journal, adjacent to the Review-Journal's newspaper building.

ARTICLE 6

PAYMENT OF EXPENSES, DISTRIBUTION OF REVENUES, AND OTHER FINANCIAL PROVISIONS

6.1 Expenses and Revenues. Review-Journal shall pay and record all Agency Expense, as defined in Appendix B hereto, and collect and record all Agency Revenues as defined in Appendix C hereto, and shall pay to Sun, monthly, a sum for Sun news and editorial expense as provided in Appendix A hereto.

6.2 Accounting Records. Accounting records of Agency Revenues and Agency Expense shall be maintained by Review-Journal. Accounting records of news and editorial expense shall be separately maintained by the Review-Journal and the Sun for their respective newspapers. All such records shall be kept on a fiscal year basis in reasonable detail and in accordance with generally accepted accounting principles. Financial statements to be provided under Section 6.3 shall be prepared

in accordance with generally accepted accounting principles and the applicable provisions of this Agreement.

6.3 Financial Statements. Within ninety (90) days following the close of each fiscal year, Review-Journal shall furnish to Sun financial statements in respect of such year which summarize Agency Revenues and Agency Expense hereunder. Within thirty (30) days after the end of each month, except the last month of the fiscal year, Review-Journal shall furnish to Sun a monthly financial statement summarizing Agency Revenues and Agency Expense. All Agency financial statements furnished by Review-Journal shall be certified by a financial officer of Review-Journal.

6.4 Distributions. Payments of Sun's share of operating profit, pursuant to Appendix D, shall be made with each financial statement to be furnished to Sun under the provisions of Section 6.3 above.

ARTICLE 7

TRANSITIONAL MATTERS

7.1 Collection of Sun Receivables. After the Effective Date, Review-Journal shall use its best efforts (without any obligation to institute legal proceedings) to collect Sun advertising and circulation accounts receivable which are outstanding on the Effective Date and shall remit same to Sun on a monthly basis, less the Agency's reasonable collection costs specifically incurred in connection therewith. Such collections and collection costs recovered by Review-Journal shall not be Agency Revenues or Agency Expense. Any such

advertising accounts which have not been collected by Review-Journal within sixty (60) days after the Effective Date shall be returned to Sun. Collections from particular subscribers shall first be applied to circulation accounts receivable unless otherwise agreed by Sun. As to any Sun advertising or circulation contracts assumed by Review-Journal under Section 3.1 above, Review-Journal will remit to Sun the portion of the receipts thereunder reflecting advertising run or circulation delivered by Sun prior to the Effective Date but not payable until on or after that date, and such portion shall not be Agency Revenues.

7.2 Termination Obligations. Sun shall be solely responsible for all notices, severance allowances, accrued benefits, or other related payments or obligations which may become due or payable to any terminated employee or agent of Sun.

7.3 Sun Personnel. Review-Journal shall be under no obligation to employ any terminated Sun employee.

ARTICLE 8

NONLIABILITY PROVISIONS

8.1 Defense of Claims and Indemnification. Any claim, demand, suit, action, obligation or other liability asserted against or sustained by Review-Journal and Sun, or either of them, in respect of any third party ("Claims") shall be dealt with as provided in this Article 8. For all purposes of this Article 8, the term "cost or expense" shall include reasonable attorneys' fees.

8.1.1 Claims Related to the Joint Operation. Review-Journal shall defend and shall control the defense or settlement of any third party Claims related to the joint operations or to its performance or non-performance under this Agreement (including but not limited to Claims arising from any advertising published in, or excluded from, any of the Newspapers -- except as provided in Section 8.1.2 -- and Claims in respect of feature, news and editorial content furnished by Sun hereunder arising as a result of any act or omission on the part of Review-Journal other than republication in the form furnished by Sun), devoting reasonable efforts to minimizing any resulting liability and related cost or expense. Any such liability, and the cost or expense related thereto, shall be an Agency Expense, except to the extent any such Claim shall be covered by insurance. Review-Journal shall give written notice to Sun of any material Claims arising under this Section 8.1.1.

8.1.2 Other Claims. Except as specifically provided in Section 8.1.1. or elsewhere in this Agreement, neither party hereto shall be charged with or held responsible for any third party Claims (except to the extent certain Sun contracts shall be assumed by Review-Journal under Article 3), arising before or after the Effective Date by reason of any act or omission on the part of the other party, and the responsible party shall indemnify and hold the other party harmless therefrom, including all related cost or expense. The responsible party shall defend, settle, pay or discharge any such Claim and shall indemnify and hold harmless

the other party against any such Claim, and from any liability, cost or expense arising therefrom. By way of example under this Section 8.1.2 and without limitation, the entire cost or expense of defending, settling or paying and discharging Claims relating to any feature, news or editorial copy published in, or excluded from the daily Review-Journal or the Review-Journal portion of the jointly published newspaper, or arising by reason of anything done or omitted by the news and editorial department of the Review-Journal in regard to its daily newspaper or the Review-Journal portion of the jointly published newspaper, or arising by reason of any advertising rejected by the Review-Journal or accepted by the Review-Journal in situations where such advertising would be rejected pursuant to Sun guidelines, shall be borne by the Review-Journal, and any such liability, cost or expense on account of Claims relating to any feature, news or editorial copy published in, or excluded by Sun from the daily Sun or the Sun portion of any jointly published newspaper, or arising by reason of anything done or omitted by the news and editorial department of the Sun, or arising by reason of any advertising rejected by the Review-Journal pursuant to Sun guidelines, or accepted in situations where such advertising would be rejected pursuant to Review-Journal guidelines, shall be borne by Sun, unless such Claims shall be an Agency Expense by reason of the operation of Section 8.1.1.

8.1.3 Insurance. For the purposes of this Article 8, each party shall separately maintain and pay for, as an item of

news and editorial expense, insurance to the extent reasonably available protecting against losses from libel, invasion of privacy, copyright or trademark infringement and other matters related to the gathering or preparation of news and editorial matter for publication, in such amounts as the parties may agree upon from time to time, but in no event less than Ten Million Dollars ($10,000,000), and the other party shall be named as an additional insured.

8.2 Force Majeure. Neither party shall be liable to the other for any failure or delay in performance under this Agreement, occasioned by war, riot, government action, act of God or public enemy, damage to or destruction of facilities, strike, labor dispute, failure of suppliers or workers, inability to obtain adequate newsprint or supplies, or any other cause substantially beyond the control of the party required to perform, provided that in the event partial performance under this Agreement is feasible, notwithstanding the occurrence of one or more of the foregoing, performance shall be allocated between the newspapers by the Review-Journal, in its sole judgment, and if it is feasible to publish only one newspaper product, Review-Journal shall exercise its best efforts to produce a jointly published newspaper in which the Sun portion shall be determined by Review-Journal, notwithstanding the provisions of Appendix A hereto, provided, that the Sun portion shall not be less than two (2) pages.

ARTICLE 9

TERMINATION

9.1 Events of Termination. This Agreement shall continue in full force and effect unless and until it may be terminated by the occurrence of one of the following events of termination:

9.1.1 Voluntary Termination. Voluntary termination under the provisions of Section 1.1.

9.1.2 Bankruptcy or Default. If either party hereto makes an assignment of its assets for the benefit of creditors, is adjudged a bankrupt or has a receiver appointed for its business by a court of competent jurisdiction (provided, that such adjudication shall continue unstayed on appeal or otherwise in effect for a period of ninety (90) days after the entry of the decree related thereto before such adjudication becomes an event of termination, and further provided that the appointment of the receiver must continue unvacated, not set aside, not stayed or otherwise in effect for a period of ninety (90) days after such appointment before such appointment becomes an event of termination), or if either party defaults in the performance of any of its material obligations hereunder and does not cure such default within sixty (60) days after receiving written notice thereof from the other party, then such other party may, at its election, and in addition to all other remedies available to it at law or in equity, terminate this Agreement upon thirty (30) days' written notice by the Sun and sufficient notice by the Review-Journal to enable the Sun to arrange for the separate

production of the Sun, but not to exceed six (6) months; provided, that in the event of default, the other party shall have the additional option to cure such default and, on demand, be reimbursed by the defaulting party for all costs and expenses related thereto.

9.1.3 Change of Controlling Interest. In view of the nature of the relationship established by this Agreement and the fact that the Sun is published under the direction and control of Herman M. Greenspun and Brian L. Greenspun, the Review-Journal shall not be required to carry out the terms of this Agreement or be associated with another party to which it objects. Accordingly, ownership or control of the Sun shall not be transferred to any other entity or person without notice to and prior approval by the Review-Journal, provided that the Review-Journal will not object to any transfer of the ownership or control of Sun to any entity under the immediate direction and control of Herman M. Greenspun, or Brian L. Greenspun, or any other lineal descendant of Herman M. Greenspun. If, following an approved or permitted change of control of Sun, a subsequent change of control occurs, notice as hereinabove shall be given and the Review-Journal may exercise the rights provided herein.

9.1.4 Loss Operation. If there are any two (2) consecutive years in which the Agency does not have an operating profit (Agency Expenses in excess of Agency Revenues), despite the Review-Journal's good faith efforts to produce an operating

profit, the Review-Journal may terminate this Agreement upon ninety (90) days written notice.

9.2 Mechanics of Termination. Upon termination of this Agreement, Review-Journal shall take appropriate action to transfer to Sun: (a) all then current circulation contracts, agreements or lists concerning bulk sales, subscriptions, dealers and sub-dealers, distributions, deliveries, sales returns and prepaid subscriptions of the Sun's daily newspaper, and of all jointly published newspapers, plus all pertinent portions of then current records and data pertaining thereto, and all sums received by Review-Journal in respect of prepaid subscriptions and cash deposits relating to daily Sun circulation, and a pro rata portion of all sums received by Review-Journal in respect of such subscriptions and deposits relating to the jointly published newspaper circulation, and (b) all then current advertising contracts and all pertinent portions of then current records and data relating to advertising to be published in the Sun and in all jointly published newspapers. Review-Journal shall further provide Sun with the originals and all copies of all contracts relating solely to circulation and advertising of the daily Sun, and copies of all other contracts referred to in the immediately preceding sentence.

ARTICLE 10

MISCELLANEOUS

10.1 Notices. Each notice or other communication given pursuant to this Agreement shall be given in writing, delivered

in person or mailed by registered or certified mail, addressed to the respective parties as follows:

Review-Journal: Donrey, Inc.
P. O. Box 410
Las Vegas, NV 89125
Attention: Fred W. Smith

Sun: Las Vegas Sun, Inc.
P. O. Box 4279
Las Vegas, NV 89127
Attention: Brian L. Greenspun

or, in the case of either party hereto, at such other address or marked for the attention of such other person, as such party may set forth in a written notice to the other party.

10.2 Disclaimer of Labor Related Obligations. The parties specifically agree that neither party hereby assumes any obligations of the other party related to its employment practices or to any of its employees, whether or not arising under any collective bargaining agreements or arising prior to, on or subsequent to the Effective Date.

10.3 Inspection of Books and Records. Either party shall have the right to authorize its independent certified public accountants or any of its corporate officers to inspect the books and records of the other party hereto at reasonable times and intervals in regard to the financial statements specified in Article 6, but only as to the three (3) years preceding the exercise of the right of inspection, commencing with the year immediately preceding the year in which the right is exercised. The expenses of any such inspection shall be borne by the party

causing such inspection to be made and shall not be included in Agency Expenses.

10.4 Limited Effect. Nothing herein contained shall constitute the parties hereto partners, joint venturers, successors, alter egos, joint employers, an unincorporated association, or as having any relationship other than as specifically provided by this Agreement. This Agreement is intended solely for the benefit of the parties hereto, and their permitted successors and assigns and not for the benefit of any other person or party. This Agreement, including Appendices A through D hereto, and contracts and agreements supplemental hereto, comprises the entire understanding and agreement of the parties hereto on the subject matter herein contained and any and all other representations or agreements, which heretofore may have been made on such subject matter, whether oral or in writing, by any agent of either party shall be null, void and of no effect whatsoever. Time is of the essence of this Agreement.

10.5 Community Cable TV. As of the Effective Date, Sun shall assign or cause to be assigned to Donrey the right to receive ten percent (10%) of all dividends or distributions of any kind paid or made by Community Cable TV ("CCTV"), a Nevada corporation which owns and operates a cable television system serving Las Vegas and surrounding communities and certain unincorporated areas of Clark County, Nevada, to any of its shareholders, including any payments in excess of current salaries or current percentages of income as management or

consultant fees paid by CCTV to any of its shareholders. With respect to payments to be made to Donrey hereunder, Sun shall cause CCTV to make such payments, or make such payments directly to Donrey. As soon as permitted under the terms of certain shareholder and financing agreements, CCTV shall issue to Donrey ten percent (10%) of the total issued and outstanding common stock of CCTV, which shall be issued as fully paid and nonassessable. In addition, at such time as Sun or its affiliates have purchased all of the issued and outstanding common stock of CCTV owned by third parties, Donrey shall have the right to purchase an additional thirty-five percent (35%) of the issued and outstanding common stock of CCTV on the same terms and conditions, including price, as those on which Sun or its affiliates acquired such stock, which shall be issued as fully paid and nonassessable. In the event of the sale by Sun or its affiliates of any interest in CCTV prior to Donrey's acquisition of stock, Donrey shall be entitled to receive ten percent (10%) of the net sale proceeds, and Donrey's right to receive its ten percent (10%) stock interest shall be ratably reduced. Donrey's rights with respect to CCTV as herein provided shall survive the expiration or termination of this Agreement, provided, in the event the Review-Journal and Donrey withdraw from the application to the Department of Justice, pursuant to Section 1.1 of this Agreement, or if the Review-Journal terminates this Agreement pursuant to Section 9.1.4. within the first three (3) years of the term of this Agreement, Donrey's rights with

respect to CCTV shall terminate, and in the event Donrey has received any payments, issuances, or transfers of or with respect to CCTV stock pursuant hereto prior to Donrey's withdrawal from the application to the Department of Justice or the Review-Journal's termination of this Agreement as herein provided, such payments, issuances or transfers of or with respect to CCTV stock shall be refunded or rescinded.

10.6 Sun Trademark, Tradenames, Service Marks and Copyrights. In its use of such Sun trademarks, tradenames, service marks and copyrights as may be required to perform its obligations under this Agreement, Review-Journal shall use its best efforts to comply substantially with all relevant laws of the State of Nevada and of the United States pertaining to trademarks, tradenames, service marks and copyrights in force at any time during the term of this Agreement. Sun shall use its best efforts to maintain in effect said trademarks, tradenames, service marks and copyrights, and shall make applications for the registration and/or renewal thereof if and when required by law. Review-Journal acknowledges Sun's right, title and interest in and to said trademarks, tradenames, service marks and copyrights and all renewals thereof, and agrees that it shall not at any time permit, take, or cause to be taken any action within its control in any way impairing or tending to impair any part of such right, title and interest. Review-Journal agrees to publish such notices in the Sun and the jointly published newspapers as Sun reasonably may request in order to protect

said trademarks, tradenames, service marks and copyrights, or any of them. Review-Journal shall not in any manner represent that it has any ownership interest in said trademarks, tradenames, service marks or copyrights or in the registration thereof, and Review-Journal acknowledges that its use hereunder of said trademarks, tradenames, service marks or copyrights shall not create in its favor any right, title or interest in or to same beyond those created by this Agreement.

10.7 Tax Treatment of Payments to Sun. It is contemplated by the parties that the payments to Sun under Section 6.4 of this Agreement will be, for federal income tax purposes, ordinary income to Sun and will be deductible by Review-Journal as a business expense.

10.8 Specific Performance. Because of the public interest of maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages in the event of default in the performance of material obligations hereunder, each party shall have the right to seek specific performance of the material provisions of this Agreement, provided, that in the event of any action by Sun for specific performance against Review-Journal, if Sun does not obtain an order of specific performance, Review-Journal shall be entitled to recover in such action its attorneys' fees and costs.

10.9 Successors and Assignment. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their permitted successors and assigns.

10.10 Governing Law; Modification. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. This Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, modification or discharge shall be sought.

10.11 Headings. Headings have been inserted in this Agreement for the purpose of convenience only. They shall not be used to interpret or construe the meaning of any Articles or Sections, nor shall they have the effect of limiting or enlarging the meaning thereof.

IN WITNESS WHEREOF, this Agreement has been executed by the parties' respective corporate officers thereto duly authorized as of the day and year first above written.

DONREY, INC.

By _____
Fred W. Smith
President

LAS VEGAS SUN, INC.

By _____
Brian L. Greenspun
President

APPENDIX A

A.1. Pursuant to Section 4.2 of this Agreement, for each fiscal year after the Effective Date Review-Journal shall establish an allocation for Review-Journal news and editorial expenses, and the allocation for, news and editorial expenses for the Sun shall be equal to sixty-five percent (65%) of the Review-Journal allocation, subject to a minimum of Two Million Two Hundred Fifty Thousand Dollars ($2,250,000) per fiscal year, which shall be increased each year by a percentage equal to the percentage increase in the CPI for the Las Vegas metro area. Such allocations shall be prorated for any period less than a full fiscal year. The aggregate allocations for news and editorial expenses shall constitute Agency Expense. On the first day of each month following the Effective Date, Review Journal shall pay to Sun an amount equal to one-twelfth (1/12th) of the Sun's annual allocation for news and editorial expenses as herein provided.

A.2. Pursuant to Sections 4.3 and 4.4 of this Agreement, the reading content of the newspapers shall be in accordance with the following formulas:

(a) For Monday through Friday editions, the number of pages of the Sun and the number of pages of the Review-Journal shall be determined by the ratio of the number of inches of advertising to be printed in each newspaper and the size of the newshole in each newspaper shall be determined by the same ratio, provided that in no event

shall the average newshole of the Sun in any month be less than eighty-five percent (85%) of the newshole of the Review-Journal in such month.

(b) For the jointly published Sunday edition, Sun shall be entitled to a separate section of three (3) open pages (one cover page, one editorial page and one op. ed. page), plus four hundred fifty (450) column inches, provided, that the Review-Journal may add additional pages to the Sun section comprised of news and advertising, as may be required by composition or printing requirements. The Review-Journal shall attempt to place the Sun section within the first four (4) sections of the Sunday edition. The Review Journal shall determine the number of pages for a comic section for jointly published Sunday editions which shall consist of strips and features selected equally by the Review-Journal and the Sun.

(c) For jointly published Saturday and holiday editions, the Sun shall be entitled to one editorial or op. ed. page and one comic page.

A.3. Pursuant to Section 5.1.4 of this Agreement, the Review-Journal shall establish for each fiscal year after the ffective Date a budget for promotional activities of the eview-Journal and the Sun and at least forty percent (40%) of ach total budget shall be allocated to the Sun.

A.4. Edition times for Monday through Friday issues of the view-Journal and the Sun and for jointly published Sunday,

Saturday and holiday editions shall be established by the Review-Journal in accordance with normal industry standards.

A.5. If the Review-Journal determines that it is feasible to publish an "extra" edition, such edition shall be a jointly published edition, but the content of any "extra" edition shall be determined solely by the Review-Journal.

APPENDIX B

B.1. Except as otherwise expressly provided for in this Agreement, the term "Agency Expense" shall mean and include all costs and expenses of the performance of the Review-Journal's obligations under this Agreement, including but not limited to:

B.1.1. The amounts allocated to Review-Journal and Sun for news and editorial expenses and for promotional expenses as set forth in Appendix A.

B.1.2. Costs and expenses incurred by Review-Journal, with respect to the newspapers, supplements and Showbiz Magazine, for composition, printing, and distributing; news content of Showbiz Magazine; solicitation and sale of advertising; circulation sales expenses; collection of circulation and advertising accounts receivable, including a reasonable allowance for doubtful receivables and write-offs of receivables deemed uncollectible.

B.1.3. Compensation of Review-Journal's non-news and non-editorial employees, including, without limitation, salaries, commissions, payroll taxes, the cost of group insurance, retirement benefits, workers' compensation coverage, and other benefits for such employees as may be customary in the newspaper industry from time to time.

B.1.4. Accrued vacation or severance pay for Review-Journal's non-news and non-editorial employees.

B.1.5. Costs for supplies, postage, private couriers, freight, Sunday comics and supplements, film, photo paper and chemicals, ink, newsprint, plates, cuts and mats and contract trucking, and similar costs for all Review-Journal newspaper departments, other than news and editorial.

B.1.6. Expenses for travel, auto allowances, mileage reimbursement, employee relations, recruiting, and attendance at seminars and conventions for Review-Journal's non-news and non-editorial employees.

B.1.7. Sales and use taxes on equipment and personal property purchased for use by Review-Journal or otherwise applied to Agency operations under this Agreement to the extent that such taxes are not capitalized for purposes of depreciation or amortization.

B.1.8. Taxes, license or permit fees paid by Review-Journal with respect to or resulting from the conduct of business under this Agreement or with respect to property used by Review-Journal in the operations under this Agreement, except federal, state or local taxes, if any, measured by net income.

B.1.9. The cost of membership for Review-Journal and Sun and their non-news and non-editorial employees in the Better Business Bureau, Las Vegas Chamber of Commerce, and other business-oriented

memberships which shall be determined by Review-Journal to be in the best interests of the Agency.

B.1.10. The cost of Review-Journal and Sun membership in the Newspaper Advertising Bureau, American Newspaper Publishers Association, and other similar newspaper organizations.

B.1.11. The cost of public liability insurance, insurance against interruption or suspension of publication of the newspapers, carrier insurance, and libel, invasion of privacy and related insurance covering advertising printed in the newspapers. Insurance costs relating to the news or editorial activities of the Review-Journal or the Sun shall not be considered Agency Expense and such costs shall be borne separately by the parties; provided, that each party shall attempt to add the other as an additional named insured under such insurance, but Review-Journal may procure libel, invasion of privacy and related insurance to cover any otherwise inadequately insured exposure it may have as a republisher of Sun news, editorial or advertising copy, and the cost of such additional insurance shall be an Agency Expense.

B.1.12. The cost of fire and casualty insurance on buildings, equipment, and other property utilized by Review-Journal in the performance of the Agreement.

B.1.13. The cost of all utilities related to the Review-Journal's performance of the Agreement.

B.1.14. Costs and expenses incurred in connection with hazardous waste materials.

B.1.15. Costs and expenses incurred by Review-Journal in obtaining legal and other professional services which it deems necessary in performing its obligations under this Agreement, including but not limited to the costs and fees related to any defense against third party claims, charges, complaints and related matters asserted against the Review-Journal related to the Agreement or Review-Journal's performance of the Agreement; provided, that such costs and fees related to news and editorial liabilities as defined in Section 8.1.2 shall not be Agency Expense, except insofar as such liabilities are asserted against Review-Journal solely due to its republication of Sun news, editorial or feature material or advertising copy.

B.1.16. A monthly charge of Five Hundred Fifty Thousand Dollars ($550,000) for the rental value of all Review-Journal real property, plant and equipment (including the value of Sun office space provided by Review-Journal under Section 5.4 of the Agreement), except that devoted to non-agency activities such as the Review-Journal's news and editorial operations. The rental charge would be adjusted each five (5)

years on the basis of the change in the CPI for the Las Vegas, Nevada, market.

B.1.17. A monthly charge equal to one and one-half percent (1-1/2%) of the cost of all equipment acquired, expansion or remodeling of buildings, or other capital expenditures, in connection with Agency activities, subsequent to the date of the Agreement. The monthly charge would be subject to adjustment at any time on the basis of increases in the prime interest rate at First Interstate Bank, Las Vegas, Nevada. The Review-Journal shall have sole discretion regarding the purchase of equipment or other necessary capital expenditures for the performance of the Agreement.

B.1.18. A monthly charge for general management services equal to three and one-half percent (3-1/2%) of Agency Revenues.

B.2. All costs and expenses in connection with the news content, composition, production, distribution and advertising sales in connection with Showbiz Magazine shall be included in Agency Expense for the period Showbiz Magazine is governed by the terms of this Agreement, pursuant to Section 4.5.

B.3. Changes or additions in the Sun's newsroom equipment which may be required after the Effective Date to interface with Review-Journal production facilities shall be purchased or paid for by Review-Journal and a monthly charge equal to one and one-half percent (1-1/2%) of the cost thereof shall be

included in Agency Expense. This monthly charge would be subject to adjustment at any time on the basis of increases in the prime interest rate at First Interstate Bank, Las Vegas, Nevada.

APPENDIX C

AGENCY REVENUES

C.1. Except as otherwise expressly provided in this Agreement, the term "Agency Revenues" shall mean and include:

C.1.1. All advertising and circulation revenues of the newspapers, subject to the provisions of Section 7.1 of this Agreement with respect to accounts receivable outstanding on the Effective Date.

C.1.2. All revenues from sales incidental to the publication of the newspapers or involving either the facilities used to produce the newspapers or personnel whose compensation is included in Agency Expense, such as sales of commercial printing, waste paper, press plates, and other production materials.

APPENDIX D

Operating profit under the Agreement shall mean the excess of Agency Revenues over Agency Expense, and shall be distributed as follows:

For each fiscal year during the term of the Agreement the operating profit shall be distributed ninety percent (90%) to the Review-Journal and ten percent (10%) to the Sun, with payment to be made to the Sun pursuant to the provisions of Section 6.4 of the Agreement.

J. RANDALL JONES, ESQ. (#1927)
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Attorneys for Defendants and Counterclaimants
News+Media Capital Group LLC &
Las Vegas Review-Journal, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada corporation,

Plaintiff,

vs.

NEWS+MEDIA CAPITAL GROUP LLC, a Delaware limited liability company; LAS VEGAS REVIEW-JOURNAL, INC., a Delaware corporation; and DOES, I-X, inclusive,

Defendants.

Case No. A-18-772591-B

DEPT.: XVI

FIRST AMENDED ANSWER TO COMPLAINT AND COUNTERCLAIMS

LAS VEGAS REVIEW-JOURNAL, INC., a Delaware corporation,

Counterclaimant,

vs.

LAS VEGAS SUN, INC., a Nevada corporation,

Counterclaim-Defendant.

FIRST AMENDED ANSWER TO COMPLAINT

1. Answering Paragraph "1" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

2. Answering Paragraph "2" of the Plaintiff's Complaint, the allegations contained in said paragraph are legal conclusions, and as such, require no response. To the extent that a response is required, the Defendants deny said allegations.

3. Answering Paragraph "3" of the Plaintiff's Complaint, the Defendants deny the allegations purporting to represent factual matters. The remaining allegations are legal conclusions, and require no response. To the extent that a response is required, the Defendants deny said allegations.

4. Answering Paragraph "4" of the Plaintiff's Complaint, the allegations contained in said paragraph are legal conclusions, and as such, require no response. To the extent that a response is required, the Defendants deny said allegations.

5. Answering Paragraph "5" of the Plaintiff's Complaint, the allegations contained in said paragraph are legal conclusions, and as such, require no response. To the extent that a response is required, the Defendants deny said allegations.

6. Answering Paragraph "6" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

7. Answering Paragraph "7" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

8. Answering Paragraph "8" of the Plaintiff's Complaint, Defendants admit that Defendant LAS VEGAS REVIEW-JOURNAL, INC. is a Delaware corporation doing business in the State of Nevada, which operates and publishes the Las Vegas Review-Journal.

9. Answering Paragraph "9" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

10. Answering Paragraph "10" of the Plaintiff's Complaint, the Defendants admit that the Plaintiff owns and operates the Las Vegas Sun ("the Sun"), the Defendants operate and publish the Las Vegas Review-Journal, and both the Sun and Las Vegas Review-Journal are daily newspapers of general circulation in Las Vegas, Nevada. The Defendants deny the remaining

allegations in said paragraph.

11. Answering Paragraph "11" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

12. Answering Paragraph "12" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

13. Answering Paragraph "13" of the Plaintiff's Complaint, Defendants admit that the Sun and Donrey of Nevada, Inc. entered into a joint operating agreement, the 1989 JOA. As to the remaining allegations as to the reasons for the agreement and/or its compliance with the Newspaper Preservation Act of 1970, the Defendants are without sufficient knowledge or information upon which to base a response to said allegations, and therefore deny said allegations.

14. Answering Paragraph "14" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

15. Answering Paragraph "15" of the Plaintiff's Complaint, the 1989 JOA speaks for itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

16. Answering Paragraph "16" of the Plaintiff's Complaint, the 1989 JOA speaks for itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

17. Answering Paragraph "17" of the Plaintiff's Complaint, the 1989 JOA speaks for itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

18. Answering Paragraph "18" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

19. Answering Paragraph "19" of the Plaintiff's Complaint, the 1989 JOA speaks for itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

20. Answering Paragraph "20" of the Plaintiff's Complaint, the Defendants admit that

the 1989 JOA contains the quoted language, but the Defendants are without sufficient knowledge or information upon which to base a response to the remaining allegations and characterizations contained in said paragraph, and therefore deny the remaining allegations and characterizations in said paragraph.

21. Answering Paragraph "21" of the Plaintiff's Complaint, the 1989 JOA speaks for itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

22. Answering Paragraph "22" of the Plaintiff's Complaint, the Defendants admit that the 1989 JOA contains the quoted language, but the Defendants are without sufficient knowledge or information upon which to base a response to the remaining allegations and characterizations contained in said paragraph, and therefore deny the remaining allegations and characterizations in said paragraph.

23. Answering Paragraph "23" of the Plaintiff's Complaint, the 1989 JOA speaks for itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

24. Answering Paragraph "24" of the Plaintiff's Complaint, the 1989 JOA speaks for itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

25. Answering Paragraph "25" of the Plaintiff's Complaint, the 1989 JOA speaks for itself and Defendants deny the unnecessary characterizations of its provisions, as worded.

26. Answering Paragraph "26" of the Plaintiff's Complaint, the Defendants admit that the 1989 JOA did not provide for any alternative dispute resolution procedure. The Defendants are without sufficient information upon which to form a belief as to the truth of the remaining allegations and characterizations contained in said paragraph and therefore, deny said allegations and characterizations.

27. Answering Paragraph "27" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

28. Answering Paragraph "28" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

29. Answering Paragraph "29" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

30. Answering Paragraph "30" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

31. Answering Paragraph "31" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

32. Answering Paragraph "32" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

33. Answering Paragraph "33" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

34. Answering Paragraph "34" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

35. Answering Paragraph "35" of the Plaintiff's Complaint, the Defendants admit that the 2005 JOA contains the quoted language, but the Defendants are without sufficient knowledge or information upon which to base a response to the remaining allegations and characterizations contained in such paragraph, and therefore deny the remaining allegations and characterizations in said paragraph. The 2005 JOA speaks for itself.

36. Answering Paragraph "36" of the Plaintiff's Complaint, the Defendants admit that the quoted language does not appear in Section 5.2 of the 2005 JOA. As to the remaining allegations and characterizations in said paragraph, the Defendants are without sufficient knowledge or information upon which to base a response to said allegations, and therefore deny said allegations. The 2005 JOA speaks for itself.

37. Answering Paragraph "37" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

38. Answering Paragraph "38" of the Plaintiff's Complaint, the Defendants are without

sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

39. Answering Paragraph "39" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

40. Answering Paragraph "40" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

41. Answering Paragraph "41" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

42. Answering Paragraph "42" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations and conjecture of its provisions, as worded.

43. Answering Paragraph "43" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

44. Answering Paragraph "44" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

45. Answering Paragraph "45" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

46. Answering Paragraph "46" of the Plaintiff's Complaint, the 1989 JOA and the 2005 JOA speak for themselves and the Defendants deny the unnecessary characterizations of their provisions, as worded.

47. Answering Paragraph "47" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

48. Answering Paragraph "48" of the Plaintiff's Complaint, the Defendants admit that the language quoted in said paragraph is contained in Section 5.1.4 of the JOA. The Defendants deny remaining allegations in said paragraph.

49. Answering Paragraph "49" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

50. Answering Paragraph "50" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

51. Answering Paragraph "51" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

52. Answering Paragraph "52" of the Plaintiff's Complaint, the Defendants admit that the quoted language contained in said paragraph is contained in the 2005 JOA, but the Defendants are without sufficient knowledge or information upon which to base a response to the remaining allegations and characterizations in said paragraph, and therefore deny the allegations in said paragraph.

53. Answering Paragraph "53" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

54. Answering Paragraph "54" of the Plaintiff's Complaint, the Defendants admit and affirmatively state that Section 5.1, and Appendices A and B set forth specifications that apply to the Sun's pages and its "noticeable mention" on the front page of the Las Vegas Review-Journal. The Defendants deny the remaining allegations in said paragraph, as worded.

55. Answering Paragraph "55" of the Plaintiff's Complaint, the Defendants admit that the quoted language is contained in Appendix A to the 2005 JOA, but deny the remaining allegations and characterizations contained in said paragraph.

56. Answering Paragraph "56" of the Plaintiff's Complaint, the 2005 JOA, including Appendix B, speaks for itself, and Defendants deny the unnecessary allegations and characterizations contained in said paragraph.

57. Answering Paragraph "57" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

58. Answering Paragraph "58" of the Plaintiff's Complaint, the Defendants deny the allegations (as worded) contained in said paragraph.

59. Answering Paragraph "59" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

60. Answering Paragraph "60" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

61. Answering Paragraph "61" of the Plaintiff's Complaint, the 1989 JOA and the 2005 JOA speak for themselves and the Defendants deny the unnecessary characterizations of their provisions, as worded.

62. Answering Paragraph "62" of the Plaintiff's Complaint, the Defendants admit that the quoted language in said paragraph is contained in the 2005 JOA.

63. Answering Paragraph "63" of the Plaintiff's Complaint, the Defendants admit that the quoted language in said paragraph is contained in the 2005 JOA.

64. Answering Paragraph "64" of the Plaintiff's Complaint, the Defendants admit that the language quoted is contained in Section 10.8 of the 2005 JOA, but Defendants are without sufficient knowledge or information upon which to base a response to the remaining allegations and characterizations, and therefore deny the remaining allegations and characterization in said paragraph.

65. Answering Paragraph "65" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

66. Answering Paragraph "66" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

67. Answering Paragraph "67" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

68. Answering Paragraph "68" of the Plaintiff's Complaint, the Defendants admit that the litigation mentioned in said paragraph was in fact initiated. The Defendants deny the remaining allegations and characterizations contained in said paragraph.

69. Answering Paragraph "69" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

70. Answering Paragraph "70" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

71. Answering Paragraph "71" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

72. Answering Paragraph "72" of the Plaintiff's Complaint, the Defendants admit that the language quoted in said paragraph is contained in the Order entered by the Nevada Supreme Court in Las Vegas Sun, Inc. v. D.R. Partners d/b/a Stephens Media Group, Appeal No. 68700. The Defendants deny the remaining characterizations and allegations in said paragraph.

73. Answering Paragraph "73" of the Plaintiff's Complaint, the Defendants admit that the language quoted in said paragraph is contained in the Order entered by the Nevada Supreme Court in Las Vegas Sun, Inc. v. D.R. Partners d/b/a Stephens Media Group, Appeal No. 68700. The Defendants deny the remaining characterizations and allegations in said paragraph.

74. Answering Paragraph "74" of the Plaintiff's Complaint, the Defendants admit that the language quoted in said paragraph is contained in the Order entered by the Nevada Supreme Court in Las Vegas Sun, Inc. v. D.R. Partners d/b/a Stephens Media Group, Appeal No. 68700. The Defendants deny the remaining characterizations and allegations in said paragraph.

75. Answering Paragraph "75" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

76. Answering Paragraph "76" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

77. Answering Paragraph "77" of the Plaintiff's Complaint, the Defendants admit that the dispute settled and deny the remainder of the allegations contained in said paragraph.

78. Answering Paragraph "78" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

79. Answering Paragraph "79" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

80. Answering Paragraph "80" of the Plaintiff's Complaint, the Defendants admit that

they became aware of the pending legal proceedings when they succeeded in ownership.

81. Answering Paragraph "81" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

82. Answering Paragraph "82" of the Plaintiff's Complaint, the Defendants admit that early in 2018 they were provided with a copy of the settlement agreement reached in the Sun's litigation with DR Partners and Stephens Media, subject to protective, use and confidentiality stipulations.

83. Answering Paragraph "83" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

84. Answering Paragraph "84" of the Plaintiff's Complaint, the Defendants admit that their accounting practices did not change as a result of the Sun's litigation with DR Partners and Stephens Media. The Defendants deny all other allegations, and characterizations in said paragraph.

85. Answering Paragraph "85" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

86. Answering Paragraph "86" of the Plaintiff's Complaint, the Defendants admit that the Plaintiff and Defendants disagree as to meaning and interpretation of certain provisions of the 2005 JOA regarding editorial costs, and certain of those disagreements are the same or similar to those between the Sun and the prior owners of the Las Vegas Review-Journal. The Defendants deny the remaining allegations and characterizations in said paragraph.

87. Answering Paragraph "87" of the Plaintiff's Complaint, the Defendants admit that for the fiscal year ending March 31, 2017, the Las Vegas Review-Journal recorded a negative EBITDA in the approximate amount of $2.25 million. The Defendants are without sufficient knowledge or information to form a response to the remaining characterizations and allegations in said paragraph, and deny such characterizations and allegations.

88. Answering Paragraph "88" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and

therefore deny the allegations in said paragraph.

89. Answering Paragraph "89" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

90. Answering Paragraph "90" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

91. Answering Paragraph "91" of the Plaintiff's Complaint, the Defendants affirmatively state that after the Defendants' purchase of the Las Vegas Review-Journal, Jason Taylor served as manager, from December 2015 until March 2016. The Defendants deny the remaining allegations and characterizations in said paragraph.

92. Answering Paragraph "92" of the Plaintiff's Complaint, the Defendants affirmatively state that Jason Taylor created an unreasonable assessment of the anticipated advertising revenues for the Las Vegas Review-Journal. The Defendants deny the remaining allegations and characterizations contained in said paragraph.

93. Answering Paragraph "93" of the Plaintiff's Complaint, the Defendants affirmatively state that Jason Taylor created an unreasonable assessment of the anticipated advertising revenues for the Las Vegas Review-Journal. The Defendants deny the remaining allegations and characterizations contained in said paragraph.

94. Answering Paragraph "94" of the Plaintiff's Complaint, the Defendants affirmatively state that Jason Taylor left employment with the Defendants in March of 2016, and that he was replaced with a new manager. New management advised the Plaintiff's management that the rate of decline in print advertising revenues would negatively impact the profitability of the Las Vegas Review-Journal. The Defendants deny the remaining allegations and characterizations contained in said paragraph, as worded.

95. Answering Paragraph "95" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

96. Answering Paragraph "96" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

97. Answering Paragraph "97" of the Plaintiff's Complaint, the Plaintiff's allegations are vaguely worded with respect to time, and specifically what activity is the subject of its allegation. Consequently, the Defendants are without sufficient knowledge or information upon which to form a response, and therefore deny the allegations and characterizations contained in said paragraph.

98. Answering Paragraph "98" of the Plaintiff's Complaint, the 2005 JOA speaks for itself. The Defendants deny the characterizations and allegations contained in said paragraph.

99. Answering Paragraph "99" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

100. Answering Paragraph "100" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

101. Answering Paragraph "101" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

102. Answering Paragraph "102" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

103. Answering Paragraph "103" of the Plaintiff's Complaint, the Plaintiff's allegations are vaguely worded with respect to time, specifically what activity is the subject of its allegation. Consequently, the Defendants are without sufficient knowledge or information upon which to form a response, and therefore deny the allegations and characterizations contained in said paragraph.

104. Answering Paragraph "104" of the Plaintiff's Complaint, the 2005 JOA, including Appendix B, speaks for itself, and Defendants deny the unnecessary allegations and characterizations contained in said paragraph.

105. Answering Paragraph "105" of the Plaintiff's Complaint, the Plaintiff's allegations are vaguely worded with respect to time, specifically what activity is the subject of its allegation. Consequently, the Defendants are without sufficient knowledge or information upon which to form a response, and therefore deny the allegations and characterizations contained in said

paragraph.

106. Answering Paragraph "106" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

107. Answering Paragraph "107" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

108. Answering Paragraph "108" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

109. Answering Paragraph "109" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

110. Answering Paragraph "110" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

111. Answering Paragraph "111" of the Plaintiff's Complaint, the Defendants admit that they informed the Plaintiff in March 2017 that they would be publishing the Las Vegas Review-Journal with a redesigned front page commencing with the beginning of April 2017. Defendants further affirmatively state that the redesigned front page was and is in full compliance with the provisions of the 2005 JOA. The Defendants deny the remaining allegations and characterizations in said paragraph.

112. Answering Paragraph "112" of the Plaintiff's Complaint, the Defendants admit that the Las Vegas Review-Journal was published with the aforementioned redesigned front page at the beginning of April. Defendants further affirmatively state that the redesigned front page was and is in compliance with the provisions with the 2005 JOA. The Defendants deny the remaining allegations and characterizations in said paragraph.

113. Answering Paragraph "113" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

114. Answering Paragraph "114" of the Plaintiff's Complaint, the Defendants admit that the redesigned front page of the Las Vegas Review-Journal has been published from April 2017 to the present. The Defendants deny the remaining allegations and characterizations in said paragraph.

115. Answering Paragraph "115" of the Plaintiff's Complaint, the Defendants admit that the Plaintiff, through its lawyers, sent to the Defendants a letter on or about May 12, 2016, purporting to be its 30 day notice of intent to examine and audit the Las Vegas Review- Journal's books and records. The Defendants deny the remaining allegations and characterizations contained in said paragraph.

116. Answering Paragraph "116" of the Plaintiff's Complaint, the Defendants admit that the Plaintiff stated that its "audit request" was made pursuant to Appendix D of the 2005 JOA. The Defendants deny any remaining allegations or characterizations in said paragraph.

117. Answering Paragraph "117" of the Plaintiff's Complaint, the Defendants admit that they received a list of the documentation which the Plaintiff was requesting.

118. Answering Paragraph "118" of the Plaintiff's Complaint, the Defendants admit and affirmatively state that the Defendants responded in July 2016 to the Sun's "request" by way of a letter from its counsel objecting to the Sun's request as being outside the scope of the Sun's rights under the 2005 JOA. The Defendants deny the remaining allegations and characterizations in said paragraph.

119. Answering Paragraph "119" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

120. Answering Paragraph "120" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

121. Answering Paragraph "121" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

122. Answering Paragraph "122" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph, as worded.

123. Answering Paragraph "123" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

124. Answering Paragraph "124" of the Plaintiff's Complaint, the Defendants admit that the Sun's representatives met with the management of the Las Vegas Review-Journal and explained its rationale for requesting the information it did. The Defendants deny the remaining

allegations and characterizations contained in said paragraph.

125. Answering Paragraph "125" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

126. Answering Paragraph "126" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

127. Answering Paragraph "127" of the Plaintiff's Complaint, the Defendants admit that the anticipated provision of documents and information to the Sun did not occur within the first two weeks of January 2018, due to logistical considerations.

128. Answering Paragraph "128" of the Plaintiff's Complaint, the Defendants admit that the Plaintiff advised them on or about January 15, 2018 that it wanted immediate compliance with its audit request, and would otherwise include a claim concerning the audit in its anticipated arbitration demand. Defendants further admit that it subsequently agreed to share with the Sun additional records and information (beyond that to which the Sun was actually entitled), and made arrangements to begin the Sun's audit on January 23, 2018. The Defendants deny the remaining allegations and characterizations contained in said paragraph.

129. Answering Paragraph "129" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

130. Answering Paragraph "130" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

131. Answering Paragraph "131" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

132. Answering Paragraph "132" of the Plaintiff's Complaint, the Defendants affirmatively state that they were prepared to commence the audit in January 2018, as agreed, but objected to the Certified Public Accountant designated by the Plaintiff to examine the materials to be provided. The 2005 JOA required that a law firm or a Certified Public Accounting Firm be the entity conducting the audit. Upon learning of the Defendants' objection, instead of redesignating a person/or entity qualified under the 2005 JOA, the Plaintiff abandoned its audit efforts, and commenced an arbitration proceeding with the American Arbitration Association. The Defendants

deny the remaining allegations and characterizations in said paragraph, as worded.

133. Answering Paragraph "133" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

134. Answering Paragraph "134" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

135. Answering Paragraph "135" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

136. Answering Paragraph "136" of the Plaintiff's Complaint, the Defendants admit that an Administrative Call was conducted with the AAA on February 23, 2018, and that scheduling, qualifications of the arbitrator, procedures, and potential discovery issues were discussed. The official records of the AAA regarding the results and subject matter of the call speak for themselves, and the Defendants consequently deny the remaining characterizations and allegations in said paragraph.

137. Answering Paragraph "137" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

138. Answering Paragraph "138" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

139. Answering Paragraph "139" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

140. Answering Paragraph "140" of the Plaintiff's Complaint, the Defendants admit that on March 22, 2018 they advised the Sun and the AAA that they contested and objected to the AAA's jurisdiction to resolve the four (4) claims set forth in the Sun's Arbitration Demand. The Defendants deny the remaining allegations and characterizations contained in said paragraph.

141. Answering Paragraph "141" of the Plaintiff's Complaint, the Defendants admit that on or about March 22nd, they proposed to discuss a three person arbitration panel as a compromise solution for resolving the parties' dispute, a settlement framework to which the

Plaintiff was not receptive. The Defendants deny the remaining characterizations and allegations contained in said paragraph, as worded.

142. Answering Paragraph "142" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

143. Answering Paragraph "143" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

FIRST CLAIM FOR RELIEF
(Declaratory Relief)

144. Answering Paragraph "144" of the Plaintiff's Complaint, the Defendants hereby reallege and incorporate by reference as through fully set forth herein, the responses contained in the paragraphs above.

145. Answering Paragraph "145" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

146. Answering Paragraph "146" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

147. Answering Paragraph "147" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

148. Answering Paragraph "148" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

149. Answering Paragraph "149" of the Plaintiff's Complaint, the Defendants admit the allegations contained in said paragraph.

150. Answering Paragraph "150" of the Plaintiff's Complaint, the language of said

paragraph sets forth legal conclusions, alleged statements of law, and a description of the relief sought by the Plaintiff, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations contained in said paragraph, and deny that the Plaintiff is entitled to any of the relief it seeks.

151. Answering Paragraph "151" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

152. Answering Paragraph "152" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

SECOND CLAIM FOR RELIEF
(Breach of Contract – Arbitration Provision)

153. Answering Paragraph "153" of the Plaintiff's Complaint, the Defendants hereby reallege and incorporate by reference as through fully set forth herein, the responses contained in the paragraphs above.

154. Answering Paragraph "154" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

155. Answering Paragraph "155" of the Plaintiff's Complaint, the 2005 JOA speaks for itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

156. Answering Paragraph "156" of the Plaintiff's Complaint, the language of said paragraph purports to set forth the ruling of the Nevada Supreme Court, and contains a legal conclusion and purported interpretation of that conclusion. The referenced Order of the Nevada Supreme Court speaks for itself. The Defendants deny the allegations and unnecessary characterizations contained in said paragraphs.

157. Answering Paragraph "157" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

158. Answering Paragraph "158" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and

therefore deny the allegations in said paragraph.

159. Answering Paragraph "159" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

160. Answering Paragraph "160" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

161. Answering Paragraph "161" of the Plaintiff's Complaint, the Defendants admit that the 2005 JOA contains provisions pertinent to editorial costs. As to the remaining characterizations and allegations, such characterizations and allegations are legal conclusions, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the remaining allegations in said paragraph.

162. Answering Paragraph "162" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

163. Answering Paragraph "163" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

164. Answering Paragraph "164" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

165. Answering Paragraph "165" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

THIRD CLAIM FOR RELIEF
(Breach of Contract – Editorial Costs: Section 4.2 and Related Provisions)

166. Answering Paragraph "166" of the Plaintiff's Complaint, the Defendants hereby reallege and incorporate by reference as through fully set forth herein, the responses contained in the paragraphs above.

167. Answering Paragraph "167" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

168. Answering Paragraph "168" of the Plaintiff's Complaint, the 2005 JOA speaks for

itself and the Defendants deny the unnecessary characterizations of its provisions, as worded.

169. Answering Paragraph "169" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

170. Answering Paragraph "170" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

171. Answering Paragraph "171" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

172. Answering Paragraph "172" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

173. Answering Paragraph "173" of the Plaintiff's Complaint, the Defendants admit that the 2005 JOA contains provisions pertinent to editorial costs. As to the remaining characterizations and allegations, such characterizations and allegations are legal conclusions, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the remaining allegations in said paragraph.

174. Answering Paragraph "174" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

175. Answering Paragraph "175" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

176. Answering Paragraph "176" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

177. Answering Paragraph "177" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

FOURTH CLAIM FOR RELIEF
(Breach of Contract – the Review-Journal's Independent Promotional Activities and Expenses: Section 5.1.4)

178. Answering Paragraph "178" of the Plaintiff's Complaint, the Defendants hereby reallege and incorporate by reference as through fully set forth herein, the responses contained in the paragraphs above.

179. Answering Paragraph "179" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

180. Answering Paragraph "180" of the Plaintiff's Complaint, Section 5.1.4 of the 2005 JOA speaks for itself and the Defendants deny the characterizing of said provision, as worded.

181. Answering Paragraph "181" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

182. Answering Paragraph "182" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

183. Answering Paragraph "183" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

184. Answering Paragraph "184" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

185. Answering Paragraph "185" of the Plaintiff's Complaint, the Defendants admit that the 2005 JOA includes a Section 5.1.4 and Appendices A and B. As to the remaining characterizations and allegations, such characterizations and allegations are legal conclusions, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the remaining allegations in said paragraph.

186. Answering Paragraph "186" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

187. Answering Paragraph "187" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

188. Answering Paragraph "188" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

189. Answering Paragraph "189" of the Plaintiff's Complaint, the Defendants deny the

allegations contained in said paragraph.

FIFTH CLAIM FOR RELIEF
(Breach of Contract – The Front Page Format: Section 5.1, and Appendices A and B)

190. Answering Paragraph "190" of the Plaintiff's Complaint, the Defendants hereby reallege and incorporate by reference as through fully set forth herein, the responses contained in the paragraphs above.

191. Answering Paragraph "191" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

192. Answering Paragraph "192" of the Plaintiff's Complaint, the Defendants admit and affirmatively state that Section 5.1, and Appendices A and B set forth specifications which apply to the Sun's pages and its "noticeable mention" on the front page of the Las Vegas Review-Journal. The Defendants deny the remaining allegations in said paragraph, as worded.

193. Answering Paragraph "193" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

194. Answering Paragraph "194" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

195. Answering Paragraph "195" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

196. Answering Paragraph "196" of the Plaintiff's Complaint, the Defendants admit that the 2005 JOA includes a Section 5.1 and Appendices A and B. As to the remaining characterizations and allegations, such characterizations and allegations are legal conclusions, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the remaining allegations in said paragraph.

197. Answering Paragraph "197" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

198. Answering Paragraph "198" of the Plaintiff's Complaint, the Defendants deny the

allegations contained in said paragraph.

199. Answering Paragraph "199" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

200. Answering Paragraph "200" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

SIXTH CLAIM FOR RELIEF
(Breach of Contract – Audit)

201. Answering Paragraph "201" of the Plaintiff's Complaint, the Defendants hereby reallege and incorporate by reference as through fully set forth herein, the responses contained in the paragraphs above.

202. Answering Paragraph "202" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

203. Answering Paragraph "203" of the Plaintiff's Complaint, the Defendants admit that the quoted language in said paragraph appears in Appendix D to the JOA. As to the remaining characterizations and allegations, such characterizations and allegations are legal conclusions, to which no responsive pleading is required. To the extent any response is required the Defendants deny the remaining allegations in said paragraph.

204. Answering Paragraph "204" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

205. Answering Paragraph "205" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

206. Answering Paragraph "206" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

207. Answering Paragraph "207" of the Plaintiff's Complaint, the Defendants admit that Appendix D to the 2005 JOA contains an audit provision. As to the Plaintiff's characterization of that provision, such characterization is a legal conclusion, to which no responsive pleading is

required. To the extent a response is required, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and therefore deny the allegations in said paragraph.

208. Answering Paragraph "208" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

209. Answering Paragraph "209" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

210. Answering Paragraph "210" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

211. Answering Paragraph "211" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

SEVENTH CLAIM FOR RELIEF
(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)

212. Answering Paragraph "212" of the Plaintiff's Complaint, the Defendants the Defendants hereby reallege and incorporate by reference as through fully set forth herein, the responses contained in the paragraphs above.

213. Answering Paragraph "213" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

214. Answering Paragraph "214" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

215. Answering Paragraph "215" of the Plaintiff's Complaint, the allegations in such paragraph are legal conclusions, alleged statements of law and alleged interpretations of statutory language, to which no responsive pleading is required. To the extent any response is required, the Defendants deny the allegations in said paragraph.

216. Answering Paragraph "216" of the Plaintiff's Complaint, the Defendants are without sufficient knowledge or information upon which to base a response to said paragraph, and

therefore deny the allegations in said paragraph.

217. Answering Paragraph "217" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

218. Answering Paragraph "218" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

219. Answering Paragraph "219" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

220. Answering Paragraph "220" of the Plaintiff's Complaint, the Defendants deny the allegations contained in said paragraph.

PRAYER FOR RELIEF

221. Answering the provisions of the Plaintiff's Complaint designated as its "Prayer for Relief", the statements contained therein constitute descriptions of the remedies sought by the Plaintiff and require no response. To the extent the Plaintiff's Prayer for Relief requires a response, the Defendants deny that the Plaintiff is entitled to any of the relief it seeks from the Court.

***

Defendants deny any allegation not specifically admitted.

Defendants deny all argument made in the headings of the Sun's complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of setoff.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of recoupment.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Statute of Frauds.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by a failure of a condition.

TENTH AFFIRMATIVE DEFENSE

The Defendants obligations were excused by Plaintiff's conduct.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims fail for the want of any controversy as Plaintiff already settled its claims with Las Vegas Review-Journal.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

THIRTEENTH AFFIRMATIVE DEFENSE

The Defendants did not have confidential relationship with the Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or part, by the Parol Evidence Rule.

FIFTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrines of acquiescence, unclean hands, unjust enrichment and/or ratification, as well as other applicable equitable doctrines.

SIXTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, because the Defendants at all times acted in good faith and did not directly or indirectly induce any act or acts constituting a cause of action arising under any law.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or part, by release, compromise and settlement.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or part, by payment.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or part, by mistake.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or part, by ratification.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or part, by acquiescence.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the Court lacks jurisdiction over them.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims for punitive damages are barred because none of the alleged acts or omissions was or is malicious, willful, wanton, reckless, or grossly negligent.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Any alleged damages allegedly incurred by Plaintiff are the result of acts and omissions of persons other than Defendants and therefore any alleged acts or omissions of the Defendants did not proximately cause Plaintiff's alleged damages.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate its alleged damages.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Defendants' performance is excused by the doctrines of commercial frustration and/or frustration of purpose.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendants' performance is excused under section 8.2 of the parties' agreement because of events substantially beyond their control.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Pursuant to Nevada Rule of Civil Procedure 11, at the time of the filing of this Answer, all possible affirmative defenses may not have been alleged inasmuch as sufficient facts and other relevant information may not have been available after reasonable inquiry, and therefore, the Defendants reserve their right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants the same.

PRAYER FOR RELIEF

WHEREFORE, the Defendants pray for relief as follows:

1. Dismissal of Plaintiff's Complaint with prejudice;
2. An award of reasonable attorney's fees and costs to the Defendants for their defense of this matter; and
3. For such other relief as the Court deems just and proper.

DATED this 30th day of September, 2019.

KEMP, JONES & COULTHARD, LLP

By: */s/ Michael Gayan*
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LAS VEGAS REVIEW-JOURNAL INC.'S COUNTERCLAIM

NATURE OF THE ACTION

1. The Las Vegas Review-Journal was forced to file these counterclaims because the Las Vegas Sun, its business partner under the parties' 2005 joint operating arrangement ("2005 JOA"), has consistently failed to cooperate and to take all necessary steps in producing a successful joint media product, the printed Review-Journal/Sun newspaper.[1] If not for the fact that the Review-Journal is carrying the Sun financially and literally (as a daily insert to the Review-Journal newspaper)—including printing and distributing the Sun newspaper, subsidizing the Sun's newsroom, running its business operations, and providing the Sun with free exposure to the Review-Journal's exponentially larger readership—the print edition of Sun newspaper would have gone out of business years ago.

2. The 2005 JOA contractually requires the Sun to cooperate "in every reasonable way" that will promote the creation of a successful joint product, and to preserve high standards of newspaper quality. However, the Sun is not only flouting these contractual obligations, it is actively working to *sabotage* the joint product. The Sun has intentionally allowed the printed Sun newspaper to deteriorate. And it has been using the Review-Journal's financial resources, and its free access to Review-Journal readers, to advertise *against* the joint Review-Journal/Sun print product. A column on the front page of the Sun newspaper insert urged readers not to subscribe to the Review-Journal newspaper and told readers that all the best content is on the LasVegasSun.com website—a separate product outside of the 2005 JOA that is operated by the Sun's parent company, Greenspun Media Group.

3. Although the Sun publicly complains about the 2005 JOA, the reality is that the two newspapers enjoyed a profitable business partnership for many years. When the Sun's daily edition was converted to a Sun-branded insert in the Review-Journal, it was a lucrative deal for the Sun—the Sun's circulation increased by 700 percent, exposing multitudes of new readers to its

[1] Las Vegas Review-Journal, Inc. is the owner and publisher of the Las Vegas Review-Journal newspaper. Las Vegas Sun, Inc. is the owner and publisher of the Las Vegas Sun newspaper. Except where otherwise specified, references to the "Review-Journal" and the "Sun" refer to each newspaper's publisher.

content and significantly increasing its brand awareness. In 2009, the Sun won a Pulitzer Prize. However, it is not a secret that the print newspaper industry has faced many challenges in recent years, due in large part to the smartphone-fueled rise of online news and social media, and the corresponding exponential growth of digital advertising. Despite the changing times and onslaught of new competition, the Review-Journal has done all that it can to continue producing a high-quality printed paper for the Las Vegas community.

4. The Sun should have cooperated with the Review-Journal and taken all necessary steps to help improve their joint product and meet these challenges. Instead, the Sun decided to throw in the towel, and it is actively undermining the joint media product it is contractually obligated to help create and support. To drive subscribers away from the printed Review-Journal/Sun and divert them to LasVegasSun.com, the Sun has largely ceased running high-quality, breaking local news content in its printed pages. Instead, the printed Sun is now filled with recycled national wire-service stories, providing virtually no valuable breaking local news to readers. To be clear, the Sun is still *producing* original local news content—in a newsroom subsidized by the Review-Journal—but recently, its original local news content has run primarily on the separately-owned LasVegasSun.com, at times behind an $8.99 paywall. It would cost the Sun nothing to also publish this valuable content in the printed Sun. But it won't, because doing that would not help the Sun siphon readers from the printed Sun to LasVegasSun.com.

5. The Sun has even stooped to publishing advertisements in the Review-Journal/Sun telling readers ***not to subscribe*** to the Review-Journal/Sun printed newspaper. For example, when LasVegasSun.com put up its paywall, the Sun newspaper insert ran a message on the front page – above the fold –telling readers to subscribe to LasVegasSun.com instead of buying a print subscription because *"**purchasing a print subscription to the Sun and R-J doesn't benefit the Sun.**"* [2] The Sun newspaper has also been running a permanent advertisement admitting that the Sun's best content is on LasVegasSun.com, not in the printed Sun newspaper, and directing readers (as recently as August 28, 2019) to go online "TO FIND EVERYTHING WE'VE GOT."

[2] https://m.lasvegassun.com/news/2018/jan/11/a-note-from-the-sun/, last visited August 21, 2019 (emphasis added).

6. The Sun has blamed the Review-Journal for the declining quality of its printed newspaper insert, when the evidence clearly shows the Sun is the master of its own decline. The Sun falsely claims to be the victim of a plot to starve it of funds and drive it out of the market—but the Sun clearly has the ability to produce timely, original local news content, as it is publishing that content on LasVegasSun.com and has charged subscribers for it.

7. The Sun plainly does not want a successful business relationship with the Review-Journal. And the Review-Journal should not be yoked to a business partner who is actively trying to sabotage their joint product. Under the 2005 JOA, each party has the right to terminate the agreement in the event of the other party's material breach. Moreover, it seems obvious that the time has come for the parties to go their separate ways. Accordingly, these counterclaims seek damages and a declaration from the Court terminating the 2005 JOA due to the Sun's material breaches.

PARTIES, JURISDICTION, AND VENUE

8. Counterclaimant Las Vegas Review-Journal, Inc. is a Delaware corporation with its principal place of business in Las Vegas, Nevada. It is the owner and publisher of the print and online Las Vegas-Review-Journal newspaper, which serves the metropolitan Las Vegas area. It is, and has been since on or about December 10, 2015, the ultimate successor in interest of DR Partners.

9. Counterclaim-Defendant Las Vegas Sun, Inc. is a Nevada corporation with its principal place of business in Henderson, Nevada. It is the owner and publisher of the print and online Las Vegas Sun newspaper, which also serves metropolitan Las Vegas.

10. Jurisdiction and venue are proper in this Court because these counterclaims arise out of events that occurred in Clark County, Nevada, and both parties' principal place of business is in Clark County, Nevada.

GENERAL ALLEGATIONS

A. The Review-Journal and the Sun Enter a Joint Operating Agreement To Rescue The Failing Sun.

11. The Sun newspaper was first published in 1950 and has a long history of publishing original local news stories of interest to the community. On its website, the Sun boasts of its longstanding reputation for "in-depth reporting," and the "dozens of journalism awards" it has won.[3] Notwithstanding these claims, the Sun struggled to turn a profit. By the 1980s, the Sun was operating at a substantial loss and on the verge of financial collapse.

12. In June 1989, Donrey of Nevada, Inc., then owner of the Review-Journal newspaper, entered into a joint operating arrangement ("the 1989 JOA") with the Sun pursuant to the Newspaper Preservation Act, 15 U.S.C. §1801, et seq. (the "NPA"). That Act allows financially troubled newspapers to partner with their competitors. Its goal is to prevent communities with struggling papers from losing editorial diversity. As a result of the JOA, the Sun became profitable.

13. In 2005, DR Partners, the then-successor in interest to Donrey of Nevada, Inc., and Las Vegas Sun, Inc. amended and restated their JOA in a document entitled "Amended and Restated Agreement." Under the 2005 JOA, as under the prior agreement, the Review-Journal is responsible for handling and paying the costs of all business functions of the Sun—including production, distribution, and advertising—thereby eliminating these significant expenses for the Sun. The Review-Journal and the Sun maintain separate and independent news and editorial operations.

14. The 2005 JOA also provides that, instead of being distributed as a separate afternoon newspaper, the Sun would be distributed mornings as a separately-branded newspaper insert within the Review-Journal. This arrangement was highly lucrative for the Sun—its circulation skyrocketed by 700 percent, exposing multitudes of new readers to its content, and significantly increasing its brand awareness. In 2009, the Sun won a Pulitzer Prize for a year-long series of original investigative reports, including 53 stories and 21 editorials, on construction deaths in Las Vegas. Its website catalogues numerous other journalism awards received in this time period, including awards for investigative reporting, writing, editing, art, design, and photography.

[3] https://lasvegassun.com/about/, last visited August 21, 2019.

B. <u>The 2005 JOA Requires the Sun to Take All Action Necessary to Carry Out The JOA, and to Maintain High Quality Standards.</u>

15. The purpose of the 2005 JOA was, among other things, to provide the Las Vegas metropolitan area with a high-quality joint media product and create a joint product that is successful.

16. Consistent with that purpose, the 2005 JOA requires the parties to work together to make the joint product successful.

17. This requirement is made explicit in Section 5.3 of the JOA. In that section, both parties agreed "to take ***all corporate action necessary*** to carry out and effectuate the intent, purposes and provisions of this Restated Agreement." 2005 JOA, § 5.3 (emphasis added). They also agreed to "***cooperate with the other party in every reasonable way that will promote successful and lawful operation under this Restated Agreement for both parties***." *Id*. (emphasis added).

18. The JOA also required the parties to maintain the quality of their respective newspapers. Section 5.2 states that each party "***agrees to preserve high standards of newspaper quality throughout the term of this Restated Agreement consistent with United States metropolitan daily newspapers***." 2005 JOA, §5.2 (emphasis added).

C. <u>The Sun Sabotages The Joint Review-Journal/Sun Newspaper and Diverts Readers to a Separate Online News Product Outside of the JOA.</u>

19. It is well-known that this is a challenging time for the print newspaper industry. Smartphones have given nearly every adult in America 24-7 internet access, fueling rapid, exponential growth in online news and social media. Many advertisers have fled to the vast array of digital advertising platforms to reach customers and get their messages out. These radical changes have broken down barriers and led to hyper-competition in the news industry—giving Las Vegas citizens access to more competing voices and options than anyone could ever have imagined, and at the same time depriving print newspapers of the revenue upon which they have depended. This substantial threat to the print newspaper business was unforeseeable when the parties executed the JOA 2005—after all, in 2005, there were no iPhones or Androids, and the mass exodus from print to digital advertising had not occurred. Notwithstanding these game-

changing new developments, the Review-Journal has worked tirelessly to continue providing the Las Vegas community with a quality printed newspaper.

20. In the face of these challenges, the Sun should have worked with the Review-Journal to make the Review-Journal/Sun newspaper as successful as it could be. In fact, it was contractually obligated to do so.

21. Instead, the Sun essentially abandoned the joint product and its obligations under the business arrangement that had kept the Sun afloat for the last thirty years. And the Sun started actively undermining the joint product it is contractually obligated to help create and support. Rather than help make the Review-Journal/Sun stronger, the Sun has been aggressively working to undermine and subvert it by diverting readers away from the joint printed newspaper to the Sun's separately-owned online site, LasVegasSun.com.

22. LasVegasSun.com is outside of the JOA, meaning that it exclusively belongs to the Sun's parent company, Greenspun Media Group, and the Review-Journal receives no revenue from it.

23. Although the Review-Journal receives nothing from LasVegasSun.com, it is involuntarily subsidizing it. Greenspun Media Group's owner has publicly admitted that he uses the profit payments from the Review-Journal to fund the operations of LasVegasSun.com, and other magazines and websites owned by the Greenspun Media Group.

24. To drive readers away from the Review-Journal/Sun newspaper and to LasVegasSun.com, the Sun has largely ceased publishing original and/or breaking local news stories in the printed Sun. Instead, the Sun hoards the breaking local news stories generated by its newsroom for LasVegasSun.com and, on information and belief, other Greenspun Media Group publications.

25. For example, the Sun won first place for Best Breaking News Reporting in the 2018 Nevada Press Association Better Newspaper Contest for its coverage of the October 1, 2017, mass shooting on the Las Vegas Strip.[4] The award-winning story appeared only on LasVegasSun.com, never in print. In the following days, the printed Sun contained woefully little original coverage of

[4] https://nevadapress.com/wabuskamangler/2018-contest-winners-for-urban-dailies/.

the biggest breaking news story in Las Vegas history. On information and belief, the Sun instead used its newsroom to produce content for a story about the shooting that ran in another Greenspun Media publication outside of the JOA.

26. Other award-winning stories that ran on LasVegasSun.com but not in the Sun newspaper include *Children on the Cusp: The Transition from Foster Care to Adulthood is Leaving Some Behind*, an in-depth look at Clark County youths who had aged out of the foster-care system, published on LasVegasSun.com on March 13, 2017, and *Celebrating the Las Vegas Showgirl*, published on LasVegasSun.com on June 13, 2016.

27. More recent examples abound. On August 22, 2019, LasVegasSun.com provided live coverage of a heated meeting of Clark County School District Board, which is facing a threatened teachers' strike. The story was not published in the printed Sun. On August 20, 2019, LasVegasSun.com ran an original story reporting on a poll showing Joe Biden leading Elizabeth Warren and Bernie Sanders in Nevada; the story likewise never appeared in the printed Sun.

28. Instead of original content, the Sun now fills its printed pages with national syndicated and wire service content that is readily available from other sources and often days old by the time it appears in the Sun. When the printed Sun does run local stories, they are often stories that had already appeared earlier in other Greenspun Media Group publications. For example, on August 15, 2019, LasVegasSun.com ran an article about a petition filed the day before (August 14) by the Center for Biological Diversity that had the potential to derail a controversial proposal put forth by Clark County to open protected lands to development. The story did not appear in the printed Sun until over a week later, on August 22, 2019. Similarly, an article about the impact the reorganization of the Bureau of Land Management would have on Nevadans appeared on LasVegasSun.com on August 14, 2019, but did not appear in the printed Sun until August 21, 2019.

29. This means that instead of a co-branded newspaper with original reporting and in-depth news stories from diverse perspectives, the Review-Journal/Sun newspaper has been reduced to a single newspaper (the Review-Journal) with a slapped together insert containing recycled content

(the Sun). As a result, the printed Review-Journal/Sun newspaper is less attractive to readers and subscribers, and in turn to advertisers, than it could be otherwise.

30. The Sun could easily run its original news stories in the printed Sun, in addition to LasVegasSun.com, at no extra cost. The same newsroom—which the Review-Journal is subsidizing—generates content for both the printed Sun and LasVegasSun.com. And because the Review-Journal is carrying the costs of publishing and distributing the printed Sun, the cost to the Sun is the same (i.e., zero dollars) whether its pages contain original news or days-old reprints.

31. In early 2018, Greenspun Media Group moved LasVegasSun.com behind a paywall.

32. For more than 30 days beginning on January 11, 2018, the Sun published a message to its readers on the first page of its printed insert to the Review-Journal. It was called "A Note from the Sun" (the "Note").

33. In the Note, the Sun urged readers to "subscribe to the Las Vegas Sun online" and promised that by doing so readers would be "doing your part in providing fact-based, quality journalism to readers across the valley who depend on that information for their daily family, business and political decisionmaking."[5]

34. The Note did not explain why the "fact based, quality journalism" readers could access on LasVegasSun.com was not appearing in the printed Sun. The Review-Journal, by contrast, also has an online version (ReviewJournal.com) that is outside the parties JOA —but the most important original, breaking news stories that appear in the online Review-Journal are also published in the print newspaper.

35. The Note made clear that LasVegasSun.com was intended to be direct competition for the Review-Journal/Sun newspaper. By subscribing to LasVegasSun.com, the Note told readers, "you will ensure that Nevada has multiple, vibrant viewpoints on the news and competing opinions about what the news means to each of us."[6] This, of course, was the entire point of the

[5] https://m.lasvegassun.com/news/2018/jan/11/a-note-from-the-sun/, last visited August 21, 2019.
[6] *Id.*

JOA, under which the Review-Journal has been carrying the production, distribution, and business costs of the Sun to ensure that Nevada readers have access to diverse news and editorial content.[7]

36. The Note attacked the Review-Journal's management—the Sun's JOA business partner—and blamed it for ongoing revenue and circulation decline.

37. The Note expressly told readers ***not*** to subscribe to the printed Review-Journal/Sun, advising them that "***no, purchasing a print subscription to the Sun and R-J doesn't benefit the Sun in this current scenario.***"[8]

38. The Sun has continued to use the free printing and distribution being provided by the Review-Journal to advertise ***against*** the Review-Journal. For example, every printed Sun now carries an advertisement admitting that the best content is on LasVegasSun.com, not in the printed paper, and directing readers to LasVegasSun.com "TO FIND EVERYTHING WE'VE GOT":

39. To put it mildly, the Sun is not taking all actions necessary or cooperating with the Review-Journal to successfully carry out the intent and purpose of the JOA. It is doing the exact opposite. Instead of helping to make the Review-Journal/Sun newspaper a success, the Sun is deliberately subverting it—starving the Sun's pages of original content, loading them with syndicated filler, and using its access to the Review-Journal's large readership to try to convince those readers to drop the printed newspaper in favor of LasVegasSun.com.

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[7] *See, e.g.*, 1989 JOA, Preliminary Statement ("It is the firm belief of the parties that the continued publication of at least two newspapers of general circulation, editorially and reportorially separate and independent, is of paramount importance to the citizens of Las Vegas and its environs.").

[8] https://m.lasvegassun.com/news/2018/jan/11/a-note-from-the-sun/, last visited August 21, 2019.

FIRST CAUSE OF ACTION—BREACH OF CONTRACT

40. The Review-Journal realleges paragraphs 1 through 39 of this complaint as if fully set forth herein.

41. The 2005 JOA requires the parties to "take all corporate action necessary to carry out and effectuate the intent, purposes, and provisions of this Restated Agreement." 2005 JOA, § 5.3.

42. The 2005 JOA also requires each party "to cooperate with the other party in every reasonable way that will promote successful and lawful operation under this Restated Agreement for both parties." 2005 JOA, § 5.3.

43. The 2005 JOA additionally requires the parties to "preserve high standards of newspaper quality throughout the term of this Restated Agreement consistent with United States metropolitan daily newspapers." 2005 JOA, § 5.2.

44. The Sun has breached Section 5.3 by engaging in a course of conduct that includes, among other things: intentionally withholding original and/or breaking local news content from the printed Sun newspaper; filling the printed Sun newspaper with dated, recycled content such as days-old wire-service articles and stories that had already appeared days earlier on LasVegasSun.com instead of original content; taking these and other actions to undermine the quality of the printed product for the purpose of diverting readers from the printed Review-Journal/Sun newspaper to LasVegasSun.com, which is outside of the JOA; and telling readers not to subscribe to the Review-Journal/Sun.

45. The Sun has likewise breached Section 5.2 by failing to preserve high standards of newspaper quality consistent with United States metropolitan newspapers and instead relying primarily on recycled content to fill the Sun's printed pages. By any objective measure, the printed Sun of today is a far cry from the high standards of newspaper quality required by the 2005 JOA.

46. The Sun's breaches have damaged the Review-Journal. Among other things, the Sun's conduct has diverted revenues and made the printed Review–Journal/Sun newspaper less attractive to readers, subscribers, and advertisers, causing a loss of revenue and profits to the JOA and Review–Journal. If not for the Sun's breaches, the printed Review-Journal/Sun would have experienced higher circulation and greater profits. Furthermore, by undermining the quality of the

printed Review-Journal/Sun newspaper while simultaneously using the printed Sun to advertise for and promote other business ventures with which Greenspun Media is affiliated and which are outside the JOA, the Sun has improperly diverted sales and profits from the JOA and the Review–Journal to those other business ventures and thereby has been unjustly enriched.

SECOND CAUSE OF ACTION—BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

47. The Review-Journal realleges paragraphs 1 through 46 of this complaint as if fully set forth herein.

48. An implied covenant of good faith and fair dealing is recognized in every contract under Nevada law. Accordingly, in the 2005 JOA there was an implied covenant of good faith and fair dealing between the Review-Journal and the Sun whereby each party covenanted not to do anything to destroy or injure the rights of the other to receive the benefits of the agreement.

49. The Sun breached the covenant of good faith and fair dealing by, among other things, intentionally causing the printed Sun to deteriorate and using the Review-Journal's resources and the joint media product created under the JOA to advertise against the Review-Journal/Sun newspaper and urge readers to instead subscribe to its owner's online product outside of the JOA.

50. The Sun's breaches of the covenant have damaged the Review-Journal. Among other things, the Sun's disloyalty and subversion of the JOA have diverted revenues and made the printed Review-Journal/Sun newspaper less attractive to readers, subscribers, and advertisers, causing a loss of revenue and profits to the JOA and Review–Journal. If not for the Sun's conduct, the printed Review-Journal/Sun would have experienced higher circulation and greater profits. Furthermore, by undermining the quality of the printed Review-Journal/Sun newspaper while simultaneously using the printed Sun to advertise for and promote other business ventures with which Greenspun Media is affiliated, the Sun has improperly diverted sales and profits from the JOA and the Review–Journal to those other business ventures and thereby has been unjustly enriched.

THIRD CAUSE OF ACTION—DECLARATORY RELIEF (TERMINATION FOR MATERIAL BREACH)

51. The Review-Journal realleges paragraphs 1 through 50 of this complaint as if fully set forth herein.

52. The 2005 JOA allows a party to terminate the agreement in the event of a material breach by the other party. Specifically, Section 9.1.2 provides, in relevant part: "[I]f either party defaults in the performance of any of its material obligations hereunder and does not cure such default within sixty (60) days after receiving written notice thereof from the other party, then such other party may, at its election, and in addition to all other remedies available to it at law or in equity, terminate this restated Agreement."

53. The Sun's conduct, as alleged herein, was disloyal and a breach of trust. It went to the essence of the agreement, as the entire purpose of the 2005 JOA was to create a high quality, joint media product that would contain a daily Sun newspaper within a daily Review-Journal newspaper. The Sun's conduct, as alleged herein, was designed to subvert these efforts by sabotaging the printed Sun and diverting readers to LasVegasSun.com, a product outside of the JOA. By engaging in this conduct, the Sun has already irreparably damaged reader goodwill, irreparably harmed the Review-Journal, and has destroyed the mutual trust essential to the parties' continued business relationship. Accordingly, the Sun's breaches are incurable, such that any alleged legal obligation on the part of the Review-Journal to give notice or wait out a cure period before seeking relief from this Court was excused.

54. A justiciable controversy exists between the Review-Journal and the Sun, insofar as the Review-Journal contends that the Sun is in material breach of the 2005 JOA such that the Review-Journal is entitled to terminate the agreement, and, on information and belief, the Sun contends there has been no such breach. The Review-Journal, as a party to the 2005 JOA, has a legally protected interest in the controversy, and the issue is ripe for judicial determination.

55. The Review-Journal is entitled to a judicial declaration that the Sun is in material breach of Sections 5.3 and 5.2 of the 2005 JOA, and the implied covenant of good faith and fair dealing, and that the 2005 JOA is therefore terminated.

FOURTH CAUSE OF ACTION—DECLARATORY RELIEF (TERMINATION FOR FRUSTRATION OF PURPOSE)

56. The Review-Journal realleges paragraphs 1 through 55 of this complaint as if fully set forth herein.

57. The Review-Journal is entitled to a judicial declaration that its obligation to continue performance under the JOA is excused pursuant to the doctrine of frustration of purpose. The proliferation of smartphones and mobile devices that made internet access ubiquitous, and the exponential growth of online advertising, was not foreseeable when the JOA was executed in 2005. Nor was it foreseeable that in the face of this existential threat to the print newspaper industry, the Sun would essentially abandon the JOA and divert readers to its separate online product, LasVegasSun.com. These events have destroyed the value of the JOA and rendered it unenforceable due to the commercial frustration of its intended purpose.

58. There has been another frustration of purpose, as well. Both the original JOA agreement and the 2005 Amendment were made under the NPA. The purpose of the NPA is to preserve editorial voices that otherwise might be lost by permitting a failing newspaper and another newspaper to combine their business operations, and thus achieve profitability for the business as a whole. But the NPA was never intended to cause the risk of loss of editorial voices by requiring the JOA as a whole to lose money. As a result of the Sun's conduct, the Sun has become an albatross around the neck of the Review-Journal with no associated benefits, in an increasingly challenging business environment for print newspapers. The continuation of the JOA would frustrate the purpose of the statute under which it was formed, and the basis of the parties' bargain.

59. A justiciable controversy exists between the Review-Journal and the Sun, insofar as the Review-Journal contends that its performance under the 2005 JOA is excused and, on information and belief, the Sun contends that the Review-Journal's performance is not excused. The Review-Journal, as a party to the 2005 JOA, has a legally protected interest in the controversy, and the issue is ripe for judicial determination.

/ / /

PRAYER FOR RELIEF

The Review-Journal respectfully requests the following relief:

1. A judgment in its favor on all claims herein.
2. Damages in an amount to be proven at trial. The Review-Journal's damages are substantial and well above $15,000.
3. A judicial declaration that the Sun is in material breach of the 2005 JOA.
4. A judicial declaration that the 2005 JOA is terminated and has no further effect.
5. Costs, as allowable by law.
6. Such other relief as the Court deems just and proper.

DATED this 30th day of September, 2019.

KEMP, JONES & COULTHARD, LLP

By: */s/ Michael Gayan*

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2019, I served a true and correct copy of the foregoing **FIRST AMENDED ANSWER TO COMPLAINT AND COUNTERCLAIMS** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

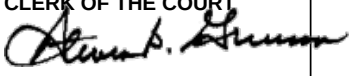
/s/ Pam Montgomery
An Employee of Kemp, Jones & Coulthard, LLP

Defendants' Opposition to Plaintiff's Motion to Confirm Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in Part and Conditional Countermotion to Confirm Arbitration Award, in Part, and to Vacate the Award, in Part
(Excluding Exhibits) [Filed Under Seal]
[Page Nos. 335-359]

Defendants' Opposition to Plaintiff's Motion to Confirm Arbitration Award, in Part, and to Vacate or, Alternatively, Modify or Correct the Award, in Part and Conditional Countermotion to Confirm Arbitration Award, in Part, and to Vacate the Award, in Part
(Excluding Exhibits) [Filed Under Seal]
[Page Nos. 335-359]

Plaintiff's Opposition to Defendants' Motion to Vacate Arbitration Award
(Including Exhibits) [Filed Under Seal/Portions Redacted]
[Page Nos. 360-405]

Plaintiff's Opposition to Defendants' Motion to Vacate Arbitration Award
(Including Exhibits) [Filed Under Seal/Portions Redacted]
[Page Nos. 360-405]



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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS SUN, INC., a Nevada corporation, Plaintiff, v. NEWS+MEDIA CAPITAL GROUP LLC, a Delaware limited liability company; and LAS VEGAS REVIEW-JOURNAL, INC., a Delaware limited liability company;, Defendants.	**CASE NO.: A-18-772591-B** **DEPT.: 16** **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO VACATE ARBITRATION AWARD** **(REDACTED)**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In their Motion to Vacate the Arbitration Award, the RJ[1] disturbingly misstates and apparently misunderstands the history of both joint operating agreements between the parties, the RJ's corresponding operational and accounting obligation under these agreements, and the record before and evidence heard by the Arbitrator. The RJ is either confused or is attempting to deliberately misdirect this Court. Under either scenario, the RJ's logic is legally and factually flawed and should be rejected for the second time, but now by this Court.

The Arbitrator made no mistake in finding that the RJ cannot charge its editorial costs and independent promotional costs against the joint operation. The original joint operating agreement (the "1989 JOA") allowed two newspapers, the Las Vegas Review-Journal ("Review-Journal") and the Las Vegas Sun ("Sun") to combine all non-editorial functions. The 1989 JOA required the Review-Journal's owners to form an Agency, essentially a third-party with fiduciary responsibilities to both parties that would handle all of the non-editorial functions of the combined operations such as accounting, record-keeping, and circulation. The Review-Journal, however, never created the Agency, and instead assumed all responsibilities required of the Agency, including its fiduciary obligations to the Sun.

The 1989 JOA prescribed certain accounting processes. The Review-Journal and the Sun shared in the profits of the combined operation under a formula that was, in essence, "Agency Revenues" less "Agency Expenses." The 1989 JOA referred to expenses that were allowable deductions as "Agency Expenses," and similarly referred to the combined revenues from the joint operation as "Agency Revenues." Agency Expenses included both parties' separate *allocations* for their respective editorial and promotional expenses, but excluded the parties' *actual* editorial and promotional expenses incurred *in excess* of those deductible allocations.

In 2005, the 1989 JOA was renegotiated (the "2005 JOA"), resulting in several significant changes. As part of the restructuring of the 1989 JOA, the parties agreed that the contractual

[1] Defendants News+Media Capital Group LLC and Las Vegas Review-Journal, Inc., are together referred to as the "RJ."

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Agency-based concept in the 1989 JOA for determining allowable expenses and revenues of the joint operation, including both newspapers' allocations for editorial and promotional expenses, as well as the parties' respective share of profits, would be eliminated. All references to editorial costs as being valid expenses of the joint operation were removed. The parties' editorial cost allocations (*i.e.*, part of the previously allowable deductions as an Agency Expense described in Section A.1 of the 1989 JOA) were eliminated. Instead, each party is to "bear their own respective editorial costs." For the parties' promotional cost allocations (*i.e.*, also part of the previously allowable Agency Expenses), those too were eliminated. In their place, the Review-Journal was tasked with the obligation to promote both newspapers. This was because when the 2005 JOA took effect the Sun ceased being a standalone afternoon newspaper and instead began to be published and distributed in a single-packaged, joint product with the Review-Journal in the morning. Since the 2005 JOA, any promotional activities of the Review-Journal that do not feature the Sun in equal prominence cannot be charged to the joint operation, for those are to be at the Review-Journal's "own expense." Joint promotions including the Sun in equal prominence are allowable expenses of the 2005 JOA. *Id.*

The profit split between the parties had to be readdressed in the 2005 JOA as a result of these changes. The parties decided the Sun would initially receive a $12 million "Annual Profits Payment" the first year, *i.e.*, the base-line year, and that amount would fluctuate in direct correlation with the joint operation profits (EBITDA) calculated annually. In order to determine this "delta," the parties had to establish a method for the 1989 JOA-based financials to be used in the 2005 JOA era. This way the percentage-based Agency Allocations, Agency Expenses, and other synthetic expenses that were specifically defined in the 1989 JOA could be used in the post-2005 (no-Agency) era that did not permit such expenses or allocations. To that end, the parties included a detailed description in the 2005 JOA to demonstrate how to convert pre-2005 financials to establish the apples-to-apples, base-line year to calculate variations going forward. This description is found in the "Second Paragraph" of Appendix D to the JOA. The Second Paragraph of Appendix D makes clear that both the RJ's and the Sun's editorial costs, and other disallowed expenses, would receive

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mutual/identical treatment under the 2005 JOA and could not be included in the base-line year calculation of EBITDA. Despite this paragraph and unequivocal provisions in the 2005 JOA expressly mandating that the Review-Journal bear those expenses independent of the joint operation, the Review-Journal continued to charge its editorial expenses and later its individual promotional expenses to the joint operation.

The Arbitrator, a dually-licensed lawyer and certified public accountant, received testimony and evidence during the eight-day hearing related to the 1989 JOA and the 2005 JOA, the parties' intentions behind the agreements, the RJ's accounting practices, and the conduct of the parties. Based on the substantial evidence presented, the Arbitrator agreed with the Sun and held that the RJ is prohibited under the 2005 JOA from charging its editorial costs and independent promotional expenses to the joint operation. The timeframe for the disputes arbitrated was from December 10, 2015 (the date when Defendant News+Media Capital Group LLC purchased the Review-Journal) through March 31, 2018, the fiscal-year ending before the Sun initiated this action.

Nevertheless, the RJ has asked this Court to ignore and disregard these findings and the overwhelming evidence supporting them, and to become a de novo fact-finder. The RJ does so by framing its challenge as a mere "plain language" interpretation, in an attempt to corral this Court away from the evidence and into adopting the RJ's absurd view that *its interpretation* of one sentence in the 2005 JOA, the "Retention Sentence," overrides all of the other JOA provisions. In short, the RJ asks this Court to find that the *Review-Journal's* pre-2005 financial statements (that weren't even attached to the 2005 JOA) govern and that various provisions contained in the 2005 JOA should be ignored and rendered null.

The Arbitrator, well-versed in accounting principles, already heard this argument from the RJ ad nauseum, and properly rejected it. The plain language of the 2005 JOA, the parties' intentions, and the additional evidence submitted during the hearing that contravened the RJ's interpretation—including from the RJ's own witnesses—demonstrates the Arbitrator made no reversible error. To date, the RJ cannot explain away the meaning and mechanics of the Second Paragraph of Appendix D, or contravene the plain language of the specific provisions of Sections

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4.2 and 5.1.4, which state in no uncertain terms that the RJ must bear those certain expenses individually and apart from the joint operation. The RJ either does not understand that the 1989 JOA, Agency-based accounting went away, as well as the many other structural differences between the 1989 JOA and the 2005 JOA provisions that govern today—or it is attempting to misinform the Court. Regardless of the RJ's motives, the arguments presented in its Motion are completely untenable, as the Arbitrator properly found based on the plethora of evidence presented. No basis exists to vacate the Arbitrator's award as requested by the RJ. An order denying the RJ's Motion and confirming the award as described below is required.[2]

II. THE RJ'S STATEMENT OF FACTS ARE ERRONEOUS AND MISLEADING

The RJ misstates the facts and the record. The Sun corrects the following inaccurate statements.

A. The 1989 JOA Required the Review-Journal's Owner to Establish an Agency to Administer the Operations

The RJ asserts that under the 1989 JOA, the Sun "remained a separate and independent daily afternoon newspaper, but the Review-Journal handled for the Sun all of the Sun's non-editorial business needs." Mot. 8. This is wrong.

First, as part of the consideration in entering the 1989 JOA, the Sun was *required* to switch from a morning paper to an afternoon newspaper; the Review-Journal would become the sole morning paper. 7 PA 1287:14-1288:14.[3] Second, and most importantly, the 1989 JOA required the Review-Journal to establish a separate, independent entity, "the Agency," to handle the "management, administration, record keeping and tax administration under [the 1989 JOA]." *See* 2 PA 199. The "Agency"—not the Review-Journal—was required to handle "all duties and obligations" under the 1989 JOA, and it was not until 2014 that the Sun learned the Agency was

[2] The RJ does not address the Arbitrator's other findings, and the Sun therefore incorporates its arguments from its Motion to Confirm Arbitration Award, in part, and to Vacate or Alternatively, Modify or Correct the Award, in Part (Sept. 13, 2019) as those arguments pertain to these unaddressed Arbitrator findings.

[3] Citations refer to the Appendix of Exhibits submitted in support of the Sun's Motion to Confirm Arbitration Award, in part, and to Vacate or Alternatively, Modify or Correct the Award, in Part (Sept. 13, 2019), by volume number of the Plaintiff's Index, followed by page number.

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never actually established by the RJ.[4] 7 PA 1303:8-1304:20. Here, the RJ's failure to grasp this foundational concept confounds the purposes for entering into the 2005 JOA, which were, in part, (1) to eliminate the editorial cost allocations, and instead have each newspaper fund its editorial operations separate and apart from the joint operation; and (2) to eliminate the promotional cost allocations, and instead publish and circulate the two newspapers together, with all promotion of the Newspapers' joint editions to be paid by the Review-Journal.

B. After Multiple Disputes Involving the Review-Journal's Improper Accounting, the Parties Entered into the 2005 JOA

The RJ summarily suggests that the relationship between the Sun and the Review-Journal was "rocky" because the Sun "frequently complained that it was entitled to more money for editorial expenses than the Review-Journal was paying." Mot. 8. The RJ refuses to acknowledge the evidence presented to the Arbitrator concerning the accounting practices giving rise to the disputes between the parties, and constant audits resulting in the RJ paying the Sun for additional amounts owed, which the RJ had previously hidden.

Under the 1989 JOA, the Sun received 65 percent of the Review-Journal's allocation of news and editorial expenses, both of which were allowable deductions as "Agency Expense." *See* 2 PA 227. This allocation method created repeated disputes in large part because the RJ consistently hid and reclassified valid editorial costs to avoid paying the Sun its full editorial allocation payment. 7 PA 1306:12-1310:6. As a result, in 2002, [redacted]. 7 PA 1310:7-1313:23. Following the 2002 settlement, the parties began a years-long renegotiation of the 1989 JOA to eliminate these plaguing disputes and to specifically eliminate the friction related to constant editorial-cost disputes addressed in the 2002 settlement. 7 PA 13:10:9-1316:18. As part of

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[4] The RJ's own financial expert, Mr. Miller, admitted setting up the Agency was a requirement and the Review-Journal violated the 1989 JOA. 13 PA 2805:15-2806:2.

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their new agreement, the 2005 JOA, the parties changed Section 4.2, accordingly, as follows:

> News and Editorial Allocations. The Review-Journal and the Sun shall ~~establish, in accordance with the provisions of Appendix A attached hereto and made a part hereof by reference, the amounts to be allocated to Agency Expense, as hereinafter defined, for each for news and editorial expense.~~ each bear their own respective editorial costs and shall establish whatever budgets each deems appropriate.

Compare 2 PA 204 § 4.2 *with* 1 PA 2 § 4.2.

The only evidence before the Arbitrator regarding the intent of Section 4.2 came from the Sun: Mr. Greenspun (who negotiated the 2005 JOA on behalf of the Sun) testified the intent of Section 4.2 was for each paper to bear its own editorial costs separate from the JOA calculations. 7 PA 1324:5-1325:18. This was consistent with other JOAs throughout the country in that no other witness with any JOA experience had ever known or heard of a JOA where only one party's editorial costs could be charged to the JOA. *E.g.*, 13 PA 281:23-282:3

1. The Retention Sentence in Appendix D does Not Dictate Allowable Expenses in Calculating the 2005 JOA's Annual Profits Payments

The Sun does not dispute that the 2005 JOA describes how EBITDA was to be calculated, but the Sun absolutely disputes the EBITDA calculation is derived from one mere sentence in Appendix D. Indeed, the RJ relies on a *single sentence* in Appendix D as taking precedence over every other sentence in Appendix D, and the rest of the JOA. That single sentence relied on by the RJ, the Retention Sentence, reads: "The Parties intend that EBITDA be calculated in a manner consistent with the computation of 'Retention' as that line item appears on the profit and loss statement for Stephens Media Group for the period ended December 31, 2004."[5] 1 PA 22. While the RJ attaches a copy of that profit and loss statement in its Motion, Mot. 9, that profit and loss was **not** an attachment to the 2005 JOA. *See* 1 PA 1-25. The Arbitrator, based upon more than substantial evidence received during the arbitration hearing, rejected the RJ's argument as to the meaning of the Retention Sentence. *See, e.g.*, 2 PA 39-40.

[5] There is no dispute that Retention Sentence was added after the parties had determined the language of Section 4.2. *See* 7 PA 1476:4-1478:11; *see also id.* at 1334:22-1336:9.

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Preliminarily, the RJ's statement that "Retention" is a "newspaper term of art for earnings that is very similar to EBITDA," is inaccurate. Mot. 9. As the Arbitrator correctly qualified, "Retention" is a term of art "used" by the Review-Journal's prior owners. 2 PA 39. It is not a generally-accepted term of art in the industry as the RJ states. Because the RJ fails to comprehend the Agency structure and accounting concepts set forth in the 1989 JOA, the RJ's reliance on the Retention Sentence as being synonymous with the joint operation EBITDA under the 2005 JOA results in a completely erroneous representation as to how the EBITDA calculation actually works.

The Annual Profits Payment is a formula derived from what was *supposed* to be the Agency's financial statements, *i.e.*, the financial statements of the joint operation, and *not* the Review-Journal's own financial statements that disregarded the 1989 JOA's allowable deductions as Agency Expense. *See* 1 PA 21-22. The Agency concept and all of the Agency terminology was eliminated from the 2005 JOA, and along with those items were the editorial allocations to the Review-Journal and the Sun as Agency Expenses. In short, the 2005 JOA provided the necessary base-line year EBITDA calculation to convert 1989 JOA Agency financial statements to conform with the new 2005 JOA requirements.

More specifically, the 2005 JOA's new method for payments to the Sun was calculated on the year-over-year change in EBITDA which required establishing an accurate baseline year at the start of the 2005 JOA that would be consistent with the terms of the 2005 JOA. However, there was a mismatch between expenses allowed under the 1989 JOA and expenses allowed under the 2005 JOA. Consequently, the 2005 JOA needed to include explicit instructions on what 1989 JOA-era expenses must be *removed from the EBITDA calculation* for the first base-line year. In so doing, the baseline calculation expressed in faithful terms the intentions of both parties with respect to allowable expenses going forward.

This base-line year conversion is found in the Second Paragraph of Appendix D. The Second Paragraph demands that when establishing the base year for the joint operation EBITDA, both newspapers' previously-allowed editorial expenses under the intentionally omitted Section A.1 of the 1989 JOA were to be excluded. *See* 1 PA 19. This is in harmony with Section 4.2's clear

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requirement that "[t]he Review-Journal and the Sun shall each bear their own respective editorial costs." 1 PA 2. In short, the December 2004 profit and loss statement containing the Review-Journal's *actual* expenses and *Agency* Expenses could never provide the accounting basis going forward. After hearing all the evidence, the Arbitrator disagreed with the RJ and found that all provisions of the 2005 JOA (not one sentence) provide the bases for the Sun's Annual Profit Payments, including Section 4.2 and *all of* Appendix D.[6]

2. The 2005 JOA Required Each Party to Bear its Own Editorial Expenses

The RJ states that the "Review-Journal had paid the editorial expenses of both the Review-Journal and the Sun according to an allocation formula" and that with the 2005 JOA the only change was the "Sun now became responsible for its own editorial expenses." Mot. 10. The RJ then asserts that "Section 4.2 does not state that editorial expenses paid by the Review-Journal are to be excluded from the EBITDA calculation." *Id.* These statements are inaccurate, unsupported by the record, and were rejected by the Arbitrator in the Arbitration Award.

Again, the 1989 JOA established the mechanism to provide the allocations to the Review-Journal and the Sun for their editorial expenses: The Review-Journal was not paying the Sun's editorial expenses. Accordingly, the shift from the 1989 JOA's allowable editorial cost allocations as Agency Expense to the 2005 JOA's requirement that both parties were to bear their own editorial expense under Section 4.2 was dramatic and, in fact, "new" to the 2005 JOA as found by the Arbitrator. 2 PA 39.

3. The RJ's Separate Promotional Expenses under the 2005 JOA Cannot be Charged to the Joint Operation

The RJ's assertion that "Section 5.1.4 does ***not*** state that if promotional activities do not include the Sun in equal prominence then they must be excluded from the EBITDA calculation" is inaccurate. *See* Mot. 11. Section 5.1.4's language speaks for itself: "Either the Review-Journal or

[6] The Sun also disagrees with the RJ's contention that if an expense were to be *excluded* from the joint operation EBITDA calculation it has to be mentioned in Appendix D. *E.g.*, Mot. 11. The specific, express provisions that occur throughout the entire 2005 JOA demonstrate the falsity of the RJ's contention. The RJ's absurd interpretation of the 2005 JOA that all disallowed expenses had to be reiterated in Appendix D was rejected by the Arbitrator after his review of all of the evidence. *See, e.g.*, 2 PA 39-40.

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Sun may undertake additional promotional activities for their respective newspapers *at their own expense.*" The Arbitrator found that Section 5.1.4 does not need to include the word EBITDA to ascertain what is an allowable expense. The RJ's argument also ignores basic accounting principles. Indeed, the "E" in EBITDA stands for earnings, which is calculated by subtracting allowed operating expenses from revenues.[7]

The RJ also claims "[t]o the extent that the parties wanted to exclude certain expenses from the EBITDA calculation, they expressly identified those excluded expenses in the 2005 JOA," but then only cites to one page of Appendix D to the 2005 JOA. Mot. 10. According to the RJ, if the parties wanted to exclude expenses from the EBITDA calculation, they should have done so expressly in Appendix D. However, as found by the Arbitrator, the 2005 JOA contains specific provisions throughout the body of the document that identifies allowable and disallowable expenses. *See, e.g.*, 1 PA 1-25 §§ 4.2, 8.1.2, 8.1.3.

C. The Arbitration and Award

The RJ misstates what caused the Sun to initiate arbitration. The RJ argues as fact that the Sun "accepted" the Review-Journal's calculations for years, while failing to identify all the testimony and evidence presented to the Arbitrator about how the Sun discovered the RJ's illegal accounting practices. The Arbitrator made specific findings on the RJ's defense in this regard. 2 PA 39-40.

The Arbitrator heard and accepted several witnesses' testimony concerning the Sun's discovery that the RJ was charging its editorial costs in violation of the 2005 JOA in July 2014, 15 PA 3542:2-3543:11, when the Sun engaged an industry consultant after Mr. Brian Greenspun obtained sole ownership of the Sun. *Id.* at 3542:2-3547:4; 7 PA 1341:17-1350:2, 1362:7-1365:5. Upon discovery of the RJ's illegal charges, the Sun took immediate action, resulting in not one, but *two* lawsuits. 16 PA 3544:4-3547:4. This discovery and the prior litigation concerning Section 4.2 occurred before and was pending during the RJ's purchase of the newspaper on December 10, 2015. 11 PA 2411:25-2413:2; 14 PA 3274:4-22; *see also DR Partners v. Las Vegas Sun, Inc.*, No. 68700,

[7] *See, e.g.*, Business News Daily, What is EBITDA?, https://www.businessnewsdaily.com/4461-ebitda-formula-definition.html (last visited Sept. 28, 2019).

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2016 WL 2957115 (Nev. May 19, 2016). The RJ admits that the prior litigation was expressly disclosed to the RJ prior to its purchase and the RJ took ownership of the RJ ***subject to the Sun's claims***. 11 PA 2411:25-2413:2; 14 PA 3150:23-3151:2, 3130:25-3131:3, 3152:24-3153:11. Thus, the RJ's statement that the Sun accepted the Review-Journal's calculations or that the Sun did not bring these claims in good faith is not founded in fact.

Additionally, the RJ claims that the EBITDA calculation had always included the RJ's "separate promotional expenses" in the past. Mot. 11. This is not true. The Review-Journal, under its new owners, the Adelson family, has dramatically diverged from its prior practices vis-à-vis promotional expenses. In the past, the Review-Journal had only minor issues not promoting the Sun in equal prominence, which were usually promptly addressed. 16 PA 3599:8-3600:8, 3607:5-7, 3615:19-3620:8, 3622:7-3623:2. Since the RJ succeeded in ownership to the Review-Journal, the RJ has systematically and nearly uniformly refused to promote the Sun at all, and has illegally charged its unilateral and independent promotional costs against the JOA. *Id.* Thus, the RJ's conclusory and self-serving statement that the Sun had "accepted" promotional deductions before, when promotional misconduct was not an issue with the prior owners, is wrong.

1. The Arbitrator's Ruling on Editorial Expenses

The RJ misrepresents the Arbitrator's acknowledgement that editorial expenses can be deducted. Mot. 11. To be clear, the Arbitrator's finding was in reference to the 1989 JOA: [redacted] 2 PA 39 (emphasis added). Thus, the Arbitrator was referring to the financial statements conducted under the prior Agency structure of the 1989 JOA—not in the post-2005 JOA era. The Arbitrator did not find that the RJ's editorial expenses were allowable expenses under the 2005 JOA; rather, the Arbitrator concluded the opposite.

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2. The Arbitrator's Ruling on Promotional Expenses

The RJ contends that Section 5.1.4 does not mention EBITDA and thus complains about the Arbitrator's ruling that the RJ cannot deduct "expenses for promotional activities that do not include the Sun in equal prominence when calculating the [2005 JOA] EBITDA." Mot. 13. The RJ also takes aim at the Arbitrator's finding that the RJ is required to add revenues of its promotions into the joint operations, but not include the RJ-only expenses, claiming this is a "windfall to the Sun." *Id.* This is inaccurate.

In making these statements, and throughout its Motion, the RJ keeps referring to the JOA EBITDA as the "Review-Journal's EBITDA" or stating that the Sun will receive a portion of the "Review-Journal's profits." *See*, *e.g.,* Mot. 4, 13, 18, 21. Under the express terms of the 2005 JOA, the EBITDA "shall include the earnings of ***the Newspapers***" (defined as *both* the RJ and the Sun). It is the *joint operation's* EBITDA, not the Review-Journal's. *See* 1 PA 18. All of the RJ's statements predicated on this factual fallacy fail as a result.

Moreover, fundamentally, Section 5.1.4 does not mention EBITDA because it already describes what expenses are allowable under the 2005 JOA. *See* 1 PA 4. Consistent with the 2005 JOA, the Arbitrator found that the RJ was *charging* expenses it should not have, and these must be removed from the joint operation:

[redacted]

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2 PA 39-40 (last emphasis added). This is not a windfall to the Sun. The RJ, in the Arbitrator's example, would be using JOA assets, and thus the revenue must be booked to the JOA. But because the Sun was not mentioned in equal prominence, the RJ must pay for these expenses.

III. LEGAL ARGUMENT

A. The Applicable Standard of Review does Not Support Vacating the Arbitration Award as Requested by the RJ

In determining whether to vacate an arbitration award, courts apply a clear and convincing evidence standard. *Health Plan of Nev., Inc. v. Rainbow Med., LLC*, 120 Nev. 689, 696, 100 P.3d 172, 176 (2004). Two common-law grounds exist where a court may vacate an arbitration award: "(1) whether the award is arbitrary, capricious, or unsupported by the agreement; and (2) whether the arbitrator manifestly disregarded the law." *Clark Cnty. Educ. Ass'n v. Clark Cnty. Sch. Dist.*, 122 Nev. 337, 341, 131 P.3d 5, 8 (2006). A court may "vacate an arbitration award when an arbitrator manifestly disregards the law. The law in regard to interpretation of contracts . . . is clear. ***[Courts] should not interpret the contract so as to render its provisions meaningless***. If at all possible, [courts] should give effect to every word in the contract." *Coblentz v. Hotel Employees & Rest. Employees Union Welfare Fund*, 112 Nev. 1161, 1169, 925 P.2d 496, 501 (1996) (emphasis added) (internal quotation marks and citations omitted).

For the reasons explained herein, the RJ cannot demonstrate that the Arbitrator manifestly disregarded the law. If the RJ's arguments are accepted, other provisions of the 2005 JOA would be rendered meaningless.

B. The Arbitrator's Ruling on Editorial Expenses Should be Confirmed

1. The Arbitrator Endorsed the 2005 JOA's Plain Language, Taking into Account All Provisions of the Parties' Contract

Relying on one sentence in the entire 2005 JOA, the RJ argues that the Arbitrator's ruling on editorial expenses must be vacated because it ignores the "express language of the parties' agreement." Mot. 13. The Arbitrator did not ignore the express language of the 2005 JOA—the plain language supports the Sun's interpretation.

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Nevada employs "[t]raditional rules of contract interpretation" and "initially determines whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written." *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (Nev. 2015) (en banc) (citations and quotation marks omitted); *see also Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487-88, 117 P.3d 219, 223-24 (2005). The objective of interpreting contracts "is to discern the intent of the contracting parties." *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012). Courts first look to the plain language of the agreement, affording its terms their common and ordinary meanings, *Soro*, 131 Nev. at 742, 359 P.3d at 108, and reading the contract as a whole. *Nat'l Union Fire Ins. Co. of State of Pa., Inc. v. Reno's Exec. Air, Inc.*, 682 P.2d 1380, 1383, 100 Nev. 360, 364 (1984).

Applying these governing contract interpretation principles, Section 4.2 of the 2005 JOA specifically governs and directly speaks to the parties' news and editorial costs. 1 PA 2. Its mandate is clear: "The Review-Journal and the Sun shall each bear their own respective editorial costs and shall establish whatever budgets each deems appropriate." *Id.* (emphasis added). This language is not capable of any other reasonable interpretation, and multiple witnesses testified to the same; that is, the RJ and the Sun are obligated to ***bear*** their own editorial expenses, and neither newspaper can charge the other or seek reimbursement or subsidy from the joint operation for those costs.[8] *E.g.*, **Ex. 1** at 112:15-113:13, 275:3-23 (Dep. Tr. of RJ's former controller, J. Perdigao); 7 PA 1276:13-1277:16. Section A.1—which had defined which editorial expenses could be included in the JOA profits calculation under the 1989 JOA—was "intentionally omitted" in the 2005 JOA because editorial expenses were no longer allowable expenses of the joint operation.[9]

Other provisions in the JOA support the Sun's reading of Section 4.2. The Second Paragraph of Appendix D is one such provision, and one which the RJ has categorically failed to explain, or

[8] Any other interpretation would raise antitrust concerns.

[9] The RJ has consistently argued that the term to "bear" as used in Section 4.2 means to "pay" in support of its assertion that this provision only requires the RJ to write the check for its editorial expenses, but does not prohibit the RJ from charging those expenses against the joint operation EBITDA, while simultaneously prohibiting the Sun from charging its expenses. *See, e.g.*, Mot. 5. This argument is nonsensical—both parties have always "paid" for their own editorial costs even when the allocations were deemed an Agency Expense. *See infra* § III(B)(3).

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harmonize with its reading of the Retention Sentence. The Second Paragraph provides, in relevant part, "In calculating the EBITDA (i) for any period that includes earnings prior to April 1, 2005, such earnings shall not be reduced by any amounts that during such period may have been otherwise been deducted from earnings under section A.1 of Appendix A or section B.1.16, B.1.17, B.1.18, or B.3 of Appendix B of the 1989 Agreement." 1 PA 18 (emphasis added). The Second Paragraph of Appendix D, and the 1989 JOA provisions referenced therein, parallels the parties' editorial-cost obligations stated in Section 4.2. *See* 7 PA 1496:5-1502:20. The base-year EBITDA calculation depicted in the Second Paragraph categorically precludes both parties from reducing the joint base-year EBITDA with their editorial cost allocations. *See id.* at 1502:21-1506:23 (describing that Section A.1 of Appendix A of the 1989 JOA was the provision defining the parties' editorial cost allocations, defining those allocations as Agency Expense (*i.e.*, an allowable deduction from the joint operating profit), and explaining the omission).

The Second Paragraph's purpose is both obvious and crucial to the JOA. It provides the base-year computation, an essential component considering that the Sun's Annual Profits Payment is derived from the yearly percentage change in the JOA EBITDA. The base-year calculation is imperative for getting an "apples-to-apples" comparison when calculating the delta going forward. Thus, excluding both parties' editorial costs from the base year and then including only the RJ's editorial costs going forward, as the RJ argues, would not be an "apples to apples" comparison. *See* 7 PA 1510:8-1511:7.

Testimony offered by the Sun regarding the meaning and mechanics of the Second Paragraph of Appendix D remained, and continues to remain, uncontroverted by the RJ. The RJ could not provide any explanation as to how the Second Paragraph could ever operate under the RJ's interpretation which allows the RJ to charge its editorial costs to the joint EBITDA. Notably, the RJ's financial expert agreed that the base-year calculation was necessary for consistency going forward from the base year to calculate the EBITDA percentage change, but could not explain how the Second Paragraph would (or even could) function under the RJ's practice of including its editorial costs. *See* 12 PA 2694:7-2695:17; 13 PA 2808:15-2821:20. Additionally, when describing

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the Second Paragraph's instruction, the RJ's Chief Financial Officer admitted that the calculation was to exclude both papers' editorial costs:

11 PA 2388:10-2394:10. The Second Paragraph unequivocally supplements Section 4.2's demand that both parties bear their own editorial expenses. Further, there is no dispute that Retention Sentence was added after the parties had determined the language of Section 4.2. *See* 7 PA 1476:4-1478:11; *see also id.* 1334:22-1336:9.

Simply stated, the RJ cannot and does not explain how it can resurrect 1989 JOA-era financial statements in the 2005 JOA-era. This zombie accounting is simply improper. Moreover, the RJ cannot reconcile its interpretation of the Retention Sentence with the Second Paragraph, indeed ignoring it again in its Motion. Not a single RJ witness was able to harmonize the Second Paragraph's base-year EBITDA calculation with its Retention Sentence argument. *E.g.*, 7 PA 1279:21-1301:5. All RJ witnesses were quick to discuss the Retention Sentence and ignore the Second Paragraph entirely. 11 PA 2400:19-2402:5; 13 PA 2808:15-2812:25. But, in the end, the RJ's financial expert agreed that consistency was necessary going forward from the base year to properly calculate the percentage change in EBITDA, 2 PA 2694:7-2695:17; 13 PA 2808:15-2810:6, and the RJ's Chief Financial Officer admitted that the base-year calculation was to exclude both papers' editorial costs. 11 PA 2388:10-2394:10. By virtue of establishing the base-year

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calculation, the Second Paragraph is a pure expression of the intentions of the JOA (particulalry coupled with 4.2's requirement that neither party may charge their editorial expenses to the JOA).[10]

The RJ's proffered interpretation, that the Retention Sentence and its vague language controls over every other specific and instructive provision in the JOA, renders multiple sections of the 2005 JOA meaningless, including the governing Section 4.2 and the Second Paragraph of Appendix D. *See Coblentz*, 112 Nev. at, 1169, 925 P.2d at 501. An interpretation that renders the 2005 JOA's provisions superfluous is disallowed as a matter of law. *See Pauma Band of Luiseno Mission Indians of Pauma & Yuima Reservation v. California*, 813 F.3d 1155 (9th Cir. 2015). The Arbitrator did not ignore the plain language of the 2005 JOA. The Arbitrator did not manifestly disregard the law, and the Arbitrator's finding should be confirmed.

2. The Arbitrator Followed Basic Principles of Contract Law

The RJ complains that the Arbitrator "violate[d] multiple basic contract law principles" by (1) interpreting EBITDA to mean something different than how it was defined, (2) adding a term to the 2005 JOA that the RJ must exclude its editorial expenses from its EBITDA calculation, and (3) rendering EBITDA's definition meaningless. Mot. 16-17. The RJ's claims are meritless for the reasons explained above, and further discussed below.

At the risk of belaboring the point, the RJ's focus on the Retention Sentence as the end-all-be-all definition for EBITDA disregards the 2005 JOA's plain language and governing provisions. Indeed, Appendix D mentions "EBITDA" in excess of 10 times, but the RJ ignores all of this except for the Retention Sentence. The Second Paragraph of Appendix D specifically describes how to calculate EBITDA for the 1989 JOA financial statements, and *excludes* the editorial expense allocations, which were *previously* allowed joint operation expenses. If the 2005 JOA EBITDA could somehow be calculated in the way the RJ claims, there would have been **no reason** to include the entire Second Paragraph of Appendix D.

[10] Other provisions in the JOA support the Sun's argument as well. For example, Section 8.1.3 states, "For the purpose of this Article 8, each party shall separately maintain and pay for, as an item of news and editorial expense, insurance to the extent reasonably available protecting against losses." 1 PA 6. The plain language of Section 8.1.3 demands that insurance be paid for separately by each party as an editorial expense. *Id.*. The RJ's argument that it can charge its editorial expenses, including insurance costs, to the joint EBITDA renders Section 8.1.3 nugatory as well.

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Moreover, the Sun offered testimony during the arbitration that explained why the Retention Sentence was included in the first place. The purpose and intent of the Retention Sentence was to address the Sun's concerns over the RJ's potential purchase of a printing press. 7 PA 1476:4-1478:11. It "[redacted]" *Id.* The placement of the Retention Line after the sentences concerning equipment are also indicative of its purpose, along with the other sentences specifically designed to prevent the RJ from including other expense items, including capital leases. *See* 1 PA 19. And again, Section 4.2 had already been long agreed to while negotiations were continuing on other topics, including Appendix D. *See* 7 PA 1476:4-1478:11; *id.* at 1334:22-1336:9.

The RJ provided no evidence that the Retention Sentence was added to permit it to charge its editorial costs to the joint operation, rendering Section 4.2 of the 2005 JOA without meaning. In fact, Mr. Greenspun's testimony about the purpose and intent of the Retention Sentence and Section 4.2 went unchallenged by the RJ. The Arbitrator was correct to rely on this testimony in finding against the RJ.

In addition, the RJ's interpretation of the Retention Sentence, when examined in detail, directs an absurd and impractical result. The RJ, more specifically, [redacted]

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[redacted]. *Id.*; *cf.* 7 PA 1505:24-1509:15. The basis for the RJ's interpretation of the Retention Sentence is absurdly impractical and unworkable. The joint operation earnings have never been synonymous with or equal to Review-Journal earnings. The RJ's interpretation of the "Retention" line item seeks to render them one in the same, which is completely improper.

Finally, the RJ's interpretation conflicts with public policy. The RJ's reading that it may charge its editorial costs to the joint operation while the Sun cannot results in a JOA that conflicts with the Newspaper Preservation Act, which renders the JOA unlawful. 15 U.S.C. § 1801. The JOA is permissible purely by virtue of the Act. *See id.* The Department of Justice's ("DOJ") approval was required. *See* 28 C.F.R. § 48.16; 7 PA 1336:11-21. A JOA allowing the dominant paper to charge its editorial costs to the joint EBITDA while precluding the weaker positioned paper from doing the same, would effectively allow the former to force the latter out of business. This is a monopolistic practice that is illegal under antitrust laws, and flies in the face of the Act. *See Comm. for an Indep. P-I v. Hearst Corp.*, 704 F.2d 467, 470 (9th Cir. 1983) (for approval from the Attorney General, a JOA "must 'effectuate the policy and purpose' of the Act") (quoting 15 U.S.C. § 1803(b)); 7 PA 1472:23-1474:12. The DOJ would have never approved such a reading.

The RJ's position that it may unilaterally decide to charge its own editorial costs to the joint operation is anomalistic and unreasonable. It threatens the Sun's financial solvency and continued publication, and, therefore, contravenes Congressional policy and the recognized public interest. The Arbitrator heard the testimony and evidence on these points, in accordance with principles of contract interpretation, and properly concluded that the 2005 JOA prohibits the RJ from charging its editorial costs against the joint operation EBITDA.

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3. The Arbitrator's Interpretation of Section 4.2 is in Accord with Rules of Contract Interpretation

The RJ argues the Arbitrator "essentially admit[ed] that the 2005 JOA required editorial expenses to be deducted." Mot. 17. The Arbitrator did no such thing—Hard stop. And the RJ's suggestion of the same is misleading and improper.

The Arbitrator merely noted in the Award that the [redacted] 2 PA 39. The Arbitrator was **not** discussing the 2005 JOA EBITDA calculation, and for the RJ to suggest as much is fiction. Not only did the Arbitrator not say what the RJ contends, the pre-2005 computation dealt with the 1989 JOA accounting and editorial allocations, which was under the prior Agency and separate allocation system that was jettisoned in the 2005 JOA.

As described above, Section 4.2 was rewritten in the 2005 JOA. *See* § II(B) *supra*. This language was settled on *before* the Retention Sentence was ever considered. It is not accurate, as the RJ contends, that Section 4.2 "trumped" the EBITDA formula. *See* Mot. 17. What is accurate is that the entire agreement conflicts with the RJ's reliance on and interpretation of the Retention Sentence as the sole authority governing the EBITDA computation. Throughout the 2005 JOA, all elements that had previously suggested editorial expenses would be permitted were removed. The RJ essentially asks for its interpretation of the Retention Sentence to trump the rest of the agreement. This is an absurd result because it would suggest that a 2004 financial statement—not attached to the agreement at all—was of such supremacy and importance that the actual, unambiguous language of the 2005 JOA itself is not relevant at all.

The RJ further argues that the only thing new to editorial costs in the 2005 JOA was that Section 4.2 "made the Sun responsible for its own editorial expenses." Mot. 17. Again, this is not so. The Sun had always been responsible for its own editorial expenses; it paid these from an allocation made by the Agency, *i.e.*, the joint operation, under the 1989 JOA. Similarly, under the 1989 JOA language, the Review-Journal received an allocation from the joint operation to fund its own editorial expenses. The parties were treated the same with respect to their editorial cost allocations, and how those allocations could be treated under for profits calculations. *See* 2 PA 227.

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The RJ's reference to the 2004 profit and loss statement wrongly confuses the historical agreement between the parties. This financial statement was created under the 1989 JOA, that required the Agency to allocate editorial expenses. As described in Appendix D, to derive the percentage change of EBITDA going forward, it would have to *remove* the Agency-related expenses in the 1989 JOA accounting to get an apples-to-apples comparison. *See* 1 PA 21. The RJ's statements otherwise are misleading and simply untrue.

The RJ then goes on to complain again that (1) 4.2 is not part of the EBITDA calculation, (2) the EBITDA language in Appendix D was new and more specific, and (3) editorial expenses could have been listed in Appendix D as a separate exclusion. Mot. 18. As described above, Section 4.2 did not need to mention the word "EBITDA" for it to describe whether editorial expenses are chargeable expenses to the EBITDA calculation. Section 4.2 in the 1989 JOA **authorizes** the application of editorial expenses to be deducted from EBITDA. Section 4.2 in the 2005 JOA **revokes** that authorization (as does the rest of the contract).

The RJ offers a self-serving reading of Appendix D—it wants it to be authoritative, and yet does not want the entirety of Appendix D read or considered. Including "editorial expenses" again in Appendix D would have been unnecessary surplus, particularly given that the Second Paragraph expressly makes clear that editorial expenses must be deducted for the base-year EBITDA calculation. Moreover, there are other expenses **not listed in Appendix D**, but listed elsewhere in the 2005 JOA, that cannot be deducted from the EBITDA calculation. *E.g.*, 1 PA 1-25 §§ 5.1.4, 8.1.2, 8.1.3.

The RJ's next argument that the "Review-Journal has always borne its own editorial expense, i.e. paid the costs of its newsroom" and the "only change made by Section 4.2 was that the Sun would not have to bear its own editorial expenses, unlike before" is again incorrect. *See* Mot. 18. Both parties had always "borne" their own editorial costs, and under the 1989 JOA the Agency provided allocations for each party to do so. Thus, the RJ's argument that the "only change" the 2005 JOA made with respect to editorial costs was that the Sun was now having to pay its own costs is preposterous. The RJ's tortured reading of the unambiguous language of 4.2 is telling: Had

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the parties intended for the Sun only to bear its own editorial expenses, they would have written it as such. But, they did not: the language of Section 4.2 is mutual and applies to both parties.

The RJ then complains that "[b]ecause Section 4.2 and Appendix D are harmonious on their face, the Arbitrator should not have read them as contradictory." Mot. 19. This assertion, like the others, is absurd. As explained above, Appendix D includes the Second Paragraph base-year calculation, which under the RJ's Retention Sentence interpretation would be inharmonious. The only way to read Section 4.2 and Appendix D in harmony is the way the Arbitrator found. Both 4.2 and the explicit instructions of the second paragraph of Appendix D forbid the charging of editorial expenses against the joint operation EBITDA. Indeed, no single RJ witness could describe how to reconcile the Second Paragraph with the Retention Sentence interpretation. *See supra* § III(B)(1).

Finally, the RJ's claim that the ruling creates an absurd result can only be viewed with irony for two reasons. First, the Sun reiterates an important factual correction—the RJ states the "purpose of the EBITDA calculation is to determine the Sun's share of the Review-Journal's profits." Mot. 19. The profits are a result of the *combined* newspaper revenues from the publication of the two newspapers together; hence, the Sun does not share in the RJ's-sole profits. *See* 1 PA 18. Second, while the RJ complains that having to exclude its editorial expenses means "there could be years where the Review-Journal is operating at a loss but could have substantial fictional 'earnings' for the purpose of calculating the Sun's Annual Profit Payments," Mot. 19, the mathematical reality is [redacted]. *See, e.g.*, 16 PA 3611:21-3612:5. If the RJ includes its editorial expenses in the EBITDA calculation, this means the Sun is bearing a burden of the RJ's editorial expense before it receives its Annual Profits Payment. The Sun bearing any of the RJ's editorial expenses directly conflicts with Section 4.2. To use the RJ's language, "[t]his was, to say the least, never intended by the parties." Mot. 19.

In sum, it is the RJ's interpretation that is contrary to the plain language of the contract, is absurd, and would render other provisions of the contract meaningless. The Arbitrator's finding is in line with every contract interpretation tenet and the evidence. Thus, no reason exists to vacate

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the Arbitrator's conclusion, and this Court should confirm the Arbitrator's finding regarding editorial expenses.

C. The Arbitrator's Ruling on Promotional Expenses Should be Confirmed

The RJ makes similar arguments regarding the Arbitrator's ruling with respect to promotional expenses. The RJ again argues that the 2004 profit and loss statement somehow guides the EBITDA calculation, that Section 5.1.4 does not mention EBITDA, and that it would be impossible for the RJ to keep a separate accounting of its own promotional activities. Mot. 19-22. These arguments are without merit, and were properly rejected by the Arbitrator.

First, as stated before and for the same reasons, the RJ's reliance on the outdated 1989 JOA Agency-era accounting statements is unreasonable and impractical. The 2005 JOA *eliminated* the Agency concepts and terminology, including Agency Expenses. The parties' promotional allocations that were listed in the 1989 JOA-era financial statements were one such Agency Expense. However, like the 2005 JOA's treatment for editorial costs, Appendix A.3 to the 1989 JOA—which established the Sun's 40 percent promotional allocation and identified it as an Agency Expense—was intentionally omitted in the 2005 JOA. *Compare* 2 PA 228 App'x A *with* 1 PA 13-15 App'x A. Throughout both the 1989 JOA and 2005 JOA, multiple clauses authorize allowable expenses and their attendant conditions. And, again, the 2005 JOA Appendix D prescribed how to calculate EBITDA going forward by describing the calculation for the base-year apples-to-apples comparison. *See* 1 PA 18. Thus, the RJ's assertion that the "parties agreed-to method for calculating EBITDA—the December 2004 profit and loss statement—deducts the Review-Journal's promotional expenses from earnings" is a delusion. Mot. 20. Such a misconception cannot be reconciled with the requirements contained in the rest of the 2005 JOA.

The RJ's argument also cannot be reconciled with the new Section 5.1.4 language that requires the RJ to promote *both* newspapers. Under the 1989 JOA, the Sun received its own promotional cost allocation, which was delineated on accounting statements in the 1989 JOA-era. With the 2005 JOA, however, the Sun's promotional allocation was eliminated (as was the standalone Sun publication), and the RJ was tasked with promoting both newspapers together. In

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other words, the Sun is reliant on the RJ for all promotional activity, naturally, since the Sun is published and distributed as a newspaper inside the Review-Journal under the 2005 JOA. Therefore, for the RJ to permissibly deduct promotional activities from the joint EBITDA as an allowable expense, it follows that the RJ must include equal mention for the Sun—an express requirement under Section 5.1.4 of the 2005 JOA. Simply put, the equal mention of the Sun is a prerequisite before any promotional expense may be charged to the joint operation. The RJ cannot skirt its obligation to promote the Sun and have carte blanche to charge all of its separate, independent promotional activities to the joint operation.

Second, like other provisions of the 2005 JOA, Section 5.1.4 did not need to mention the word "EBITDA" for the parties to understand whether an expense was allowed under the joint operation. Section 5.1.4 provides, in clear terms, that the

> Review-Journal shall use commercially reasonable efforts to promote the Newspapers. Any promotion of the Review-Journal as an advertising medium or to advance circulation shall include mention of equal prominence for the Sun. Either the Review-Journal or Sun may undertake additional promotional activities for their respective newspaper at their own expense.

1 PA 4 (emphases added). This language is unambiguous. Section 5.1.4 requires the RJ to promote both the Sun and the Review-Journal, and any independent promotions or promotions that do not feature the Sun in equal prominence must be paid for separately by the RJ. There was no need to include the language elsewhere.

Finally, the RJ's protest to the Arbitrator's findings on the basis that the RJ would have to "keep separate books, and calculate a separate EBITDA" is unavailing. Mot. 20. [redacted] 10 PA 2031:4-2033:3. In other words, [redacted],[11] an entity [redacted]

[11] While it is true that the RJ expenses some costs separately to its Digital company, it systematically charges many costs to the JOA EBITDA that it should not. The Arbitrator's findings about these practices support the many reasons for why the Review-Journal must submit to an audit. *See* 2 PA 42-44.

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[redacted]. In fact, it was the RJ's own former Controller, Mr. Perdigao, who testified about how the RJ should have set up its books with accounts for the RJ to pay separately for RJ-only promotions.[12] **Ex. 1** at 268:9-269:6 (J. Perdigao Dep. Tr.).

Overall, the RJ has not demonstrated that the Arbitrator manifestly disregarded the law. All of his findings regarding the proper accounting for promotional expenses incurred by the RJ that do not mention the Sun are supported in the record. This Court should confirm these described rulings regarding promotional expenses.

D. The Arbitrator's Ruling was Not Arbitrary and Capricious

The RJ claims the "Arbitrator's rulings were not supported by any evidence whatsoever." Mot. 22. At the outset, it is unclear if this relates to the entire Arbitration Award or just the RJ's complaint about the ruling on editorial and promotional expenses. Either way, the RJ misses the mark.

The RJ claims that the award was not "supported by any evidence whatsoever." *Id.* The Sun, in its separate motion regarding the Arbitration Award, submitted volumes of testimony and evidence that was before the Arbitrator. *See, e.g.*, 2 PA 47-131; 6 PA 1218-17 PA 3970. The RJ's claim that the Award is "at odds with the express contract language and which are unsupported by any evidence" is wildly inaccurate. The Arbitrator's findings on these discrete issues were related to contract interpretation. The Arbitrator's articulation of the plain language of the 2005 JOA is all that is necessary for declaratory relief. What is more, the evidence (such as the parties' intent, taking the contract as a whole, and the public policy) all supports the RJ's complained-of findings.

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[12] The matching principle, as proffered by the RJ, is inaccurate. *See* Mot. 21. While there may be separate line items on the books for RJ-only, JOA, or RJ digital, there would not be a "mismatch" as the RJ argues. For example, if the RJ entered into a trade with a third-party customer for its digital account using the JOA resources to give away advertising (in the Newspapers), and the reviewjournal.com received promotions or tickets to an event, the revenues would be JOA-earned revenues, and the off-setting expenses are digital expenses. When the RJ's books are consolidated at the higher "parent" level, the revenue and expense items offset and do match.

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E. The Arbitrator's Ruling is the RJ Must Submit to an Audit Should be Confirmed

The RJ complains that the Arbitrator exceeded his authority by "lament[ing] that the audit provision in the 2005 JOA is not more clear and specific, and lays down rules for how the audit must conducted." Mot. 22. The RJ asks that these rules "exceed the Arbitrator's powers." *Id.*

Crucially, the RJ does not disagree that the Sun is entitled to an audit—and thus, this order must be confirmed. Here, the Arbitrator merely provided an example of what an audit should look like, especially given the breadth of the RJ's improperly charged expenses to the JOA. *See* 2 PA 43-44 (an auditor should [redacted]) (emphases added). The Arbitrator's rules are not even at issue considering the RJ has to this day refused the Sun's audit requests. Importantly, the Arbitrator nevertheless reiterated that the Sun is entitled to an audit regarding anything that affects amounts that is owed to the Sun, which the RJ does not dispute. This ruling should be confirmed.

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IV. CONCLUSION

The RJ has failed to demonstrate why any of the particular rulings challenged in its Motion should be vacated. As such, this Court confirm the Arbitration Award as it relates to the Arbitrator's findings that both the RJ's editorial expenses and separate promotional expenses cannot be deducted from the JOA EBITDA.

DATED this 30th day of September, 2019.

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By: */s/ E. Leif Reid*

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DECLARATION OF KRISTEN L. MARTINI IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO VACATE ARBITRATION AWARD

I, KRISTEN L. MARTINI, declare under penalty of perjury and based on personal knowledge that:

1. I am an attorney at Lewis Roca Rothgerber Christie LLP, and am counsel of record for Plaintiff Las Vegas Sun, Inc. (the "Sun"). This Declaration is filed in support of the Sun's Opposition to Defendants' Motion to Vacate Arbitration Award ("Opposition"). I have personal knowledge of the matters discussed herein and if called upon to do so, I am able to competently testify as to all of these matters.

2. In support of the Sun's Opposition, the Sun contemporaneously filed two exhibits, Exhibits 1 and 2, as authenticated below.

3. The document identified as **Exhibit 1** to the Sun's Opposition is a true and correct copy of excerpts from the February 28, 2019, deposition transcript testimony of John Perdigao in the American Arbitration Association Case No. 01-18-0000-7567 (hereinafter "AAA Case").

4. The document identified as **Exhibit 2** to the Sun's Opposition is a true and correct copy of Exhibit C291 to the AAA Case.

Executed this 30th day of September, 2019.

/s/ Kristen L. Martini
KRISTEN L. MARTINI

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I certify that I am an employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP, and that on this date, I caused the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO VACATE ARBITRATION AWARD** to be served by electronically filing the foregoing with the Odyssey electronic filing system, which will send notice of electronic filing to the following:

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EXHIBIT LIST

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES
1	Excerpts from February 28, 2019, Deposition Transcript Testimony of John Perdigao	9
2	Exhibit C291 from American Arbitration Association Case No. 01-18-0000-7561	7

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Plaintiff's Opposition to Defendants' Motion to Vacate Arbitration Award and Declaration of Kristen Martini in support, **Exhibits 1-2**
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Plaintiff's Opposition to Defendants' Motion to Vacate Arbitration Award and Declaration of Kristen Martini in support, **Exhibits 1-2**
[Filed Under Seal]
[Page Nos. 390-405]