

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DAVID J. MITCHELL; ET AL.;

Appellants,

vs.

RUSSELL L. NYPE; REVENUE  
PLUS, LLC; AND SHELLEY D.  
KROHN,

Respondents.

Supreme Court Case No. 80693

District Court No. A-16-740689-B

Electronically Filed  
Mar 19 2021 09:22 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**APPELLANTS' APPENDIX – VOLUME XV OF XXIX**

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Aquarius Owner, LLC, LVLP Holdings,  
LLC, and Live Works Tic Successor, LLC*

**CHRONOLOGICAL TABLE OF CONTENTS TO**  
**APPELLANTS' APPENDIX**

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
7/26/16	Complaint (Original)	I	AA 1-19
2/27/17	Proofs of Service	I	AA 20-48
3/23/17	Defendants' Motion to Strike Plaintiffs' Jury Demand	I	AA 49-59
4/6/17	Defendants' Motion to Dismiss Plaintiffs' Complaint	I	AA 60-88
4/17/17	Plaintiffs' Opposition to Defendants' Motion to Strike Jury Demand; Counter-Motion for Advisory Jury	I	AA 89-151
4/25/17	Defendants' Reply to Motion to Strike; Opposition to Counter-Motion for Advisory Jury	I	AA 152-162
5/24/17	NEO re: Defendants' Motion to Strike and Counter-Motion for Advisory Jury	I	AA 163-169
6/14/17	Plaintiffs' Opposition to Defendants' Motion to Dismiss	II	AA 170-268
7/6/17	Defendants' Reply to Motion to Dismiss	II	AA 269-292
7/18/17	Business Court Order	II	AA 293-297
8/9/17	NEO re: Defendants' Motion to Dismiss	II	AA 298-306
8/21/17	Amended Complaint	II	AA 307-340
9/5/17	Answer to Amended Complaint	II	AA 341-351

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
9/8/17	Answer to Amended Complaint [Lieberman and 305 Las Vegas]	II	AA 352-361
10/24/17	Joint Case Conference Report [Partial Document Only]	III	AA 362-470
2/15/18	NEO re: Continue Discovery [First]	III	AA 471-478
2/20/18	Business Court Order [Amended]	III	AA 479-481
2/21/18	NEO re: Stipulated Protective Order	III	AA 482-489
4/19/18	Mitchell Defendants' Motion to Compel Discovery	IV	AA 490-725
4/26/18	Joinder to Mitchell Defendants' Motion to Compel Discovery [Lieberman and 305 Las Vegas]	IV	AA 726-728
5/11/18	Plaintiffs' Opposition to Mitchell Defendants' Motion to Compel Discovery; Counter-Motion for Disclosure of Un-Redacted Emails [Partial Document Only]	V	AA 729-795
5/30/18	Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 796-828
5/30/18	Joinder to Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 829-831
6/5/18	Plaintiffs' Supplement to Opposition to Mitchell Defendants' Motion to Compel Discovery and Counter-Motion for Disclosure of Un-Redacted Emails	V	AA 832-861

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
6/19/18	NEO re: Mitchell Defendants' Motion to Compel Discovery and Plaintiffs' Counter-Motion	V	AA 862-868
7/3/18	NEO re: Plaintiffs' Ex Parte Application for OSC	V	AA 869-878
7/17/18	Amended Business Court Order	V	AA 879-882
7/30/18	Second Amended Business Court Order	V	AA 883-885
11/7/18	Court Minutes - November 7, 2018	V	AA 886-887
11/20/18	NEO re: Continue Discovery (Second)	V	AA 888-894
11/30/18	NEO re: Dismissal of Defendant, Liberman Holdings	V	AA 895-902
5/30/19	NEO re: Plaintiffs' Motion to Compel Discovery	V	AA 903-914
8/23/19	Defendant's, 305 Las Vegas, Motion for Summary Judgment	V	AA 915-936
8/28/19	Notice of Filing Bankruptcy	V	AA 937-939
9/23/19	NEO re: Discovery Sanctions	V	AA 940-952
10/7/19	Plaintiffs' Opposition to Defendant's, 305 Las Vegas, Motion for Summary Judgment	VI	AA 953-980
10/17/19	Defendant's, 305 Las Vegas, Reply to Motion for Summary Judgment	VI	AA 981-991
11/12/19	Receipt of Copy	VI	AA 992-993



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
11/12/19	Motion to Intervene	VI	AA 994-1036
11/16/19	Mitchell Defendants' Opposition to Motion to Intervene	VI	AA 1037-1045
11/18/19	NEO re: Motion to Intervene	VI	AA 1046-1051
11/18/19	Complaint in Intervention	VI	AA 1052-1082
11/19/19	Errata to Complaint in Intervention	VI	AA 1083-1088
11/21/19	NEO re: Redactions and Sealing	VI	AA 1089-1094
11/21/19	Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1095-1123
12/9/19	Answer to Complaint in Intervention [305 Las Vegas]	VI	AA 1124-1133
12/12/19	Plaintiffs' Opposition to Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1134-1155
12/19/19	Answer to Complaint in Intervention [Mitchell Defendants]	VI	AA 1156-1160
12/19/19	Mitchell Defendants' Reply to Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1161-1170
12/23/19	Answer to Complaint in Intervention [Lieberman and Casino Coolidge]	VI	AA 1171-1179
12/26/19	Satisfaction of Judgment	VI	AA 1180-1182

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
12/27/19	Joint Pre-Trial Memorandum [Partial Document Only]	VI	AA 1183-1202
1/16/20	NOE Findings of Fact, Conclusions of Law and Judgment [Original]	VII	AA 1203-1220
1/17/19	NOE Findings of Fact, Conclusions of Law and Judgment [Amended]	VII	AA 1221-1238
2/6/20	Plaintiffs' Motion for Attorney's Fees	VII	AA 1239-1289
2/13/20	Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VII	AA 1290-1324
2/14/20	Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1325-1352
2/14/20	Plaintiffs' Opposition to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1353-1370
2/14/20	Mitchell Defendants' Motion to Alter/Amend Judgment	VII	AA 1371-1391
2/20/20	Joinder to Mitchell Defendants' Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1392-1394
2/20/20	Reply to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1395-1401
2/20/20	Mitchell Defendants' Opposition to Plaintiffs' Motion for Attorney's Fees	VII	AA 1402-1408

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
2/20/20	Plaintiffs' Opposition to Motions to Alter/Amend Judgment [All Parties]	VII	AA 1409-1434
2/24/20	NEO re: Directed Verdict and Judgment for Defendant, 305 Las Vegas	VII	AA 1435-1439
2/25/20	Notice of Appeal [Lieberman and Casino Coolidge]	VII	AA 1440-1442
2/26/20	Notice of Appeal [Mitchell Defendants]	VIII	AA 1443-1460
2/27/20	Mitchell Defendants' Opposition to Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1461-1467
3/6/20	Plaintiffs' Reply to Motion for Attorney's Fees	VIII	AA 1468-1475
3/13/20	Plaintiffs' Reply to Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1476-1482
3/30/20	NEO re: Motion to Alter/Amend Judgment [Casino Coolidge]	VIII	AA 1483-1488
3/30/20	NEO re: Motion to Alter/Amend Judgment [Mitchell Defendants]	VIII	AA 1489-1494
3/30/20	NEO re: Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VIII	AA 1492-1500

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
5/13/20	NEO re: Plaintiffs' Motion for Attorney's Fees	VIII	AA 1501-1510
5/13/20	NEO re: Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1511-1517
5/14/20	NEO re: Motion to Retax and Settle Costs	VIII	AA 1518-1524
<b><u>TRANSCRIPTS</u></b>			
11/18/19	Court Transcript - November 18, 2019 [Motion to Intervene]	VIII	AA 1525-1532
12/30/19	<b>Trial Transcript - Day 1</b> [December 30, 2019]	IX	AA 1533-1697
12/31/19	<b>Trial Transcript - Day 2</b> [December 31, 2019]	X	AA 1698-1785
1/2/20	<b>Trial Transcript - Day 3</b> [January 2, 2020]	XI	AA 1786-1987
1/3/20	<b>Trial Transcript - Day 4</b> [January 3, 2020]	XII	AA 1988-2163
1/6/20	<b>Trial Transcript - Day 5</b> [January 6, 2020]	XIII	AA 2164-2303
1/7/20	<b>Trial Transcript - Day 6</b> [January 7, 2020]	XIV	AA 2304-2421
2/4/20	Court Transcript - February 4, 2020 [Motions to Alter/Amend]	XV	AA 2422-2456

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
<b><u>TRIAL EXHIBITS</u></b>			
Undated	Plaintiffs' <b>Trial Exhibit 1</b> [Ownerships Interests]	XV	AA 2457
Undated	Plaintiffs' <b>Trial Exhibit 3</b> [LVLP Organization Documents]	XV	AA 2458-2502
Undated	Plaintiffs' <b>Trial Exhibit 9</b> [Live Work, LLC - Nevada SOS]	XV	AA 2503-2505
Undated	Plaintiffs' <b>Trial Exhibit 10</b> [Live Work Organization Documents]	XV	AA 2506-2558
Undated	Plaintiffs' <b>Trial Exhibit 12</b> [Term Restructure - Forest City]	XV	AA 2559-2563
Undated	Plaintiffs' <b>Trial Exhibit 17</b> [305 Las Vegas Entity Details]	XV	AA 2564-2566
Undated	Plaintiffs' <b>Trial Exhibit 18</b> [305 Las Vegas Organization Documents]	XV	AA 2567-2570
Undated	Plaintiffs' <b>Trial Exhibit 19</b> [305 Second Avenue Associates - Entity Details]	XV	AA 2571-2572
Undated	Plaintiffs' <b>Trial Exhibit 20</b> [305 Las Vegas - Certificate of Formation]	XV	AA 2573-2574
Undated	Plaintiff's <b>Trial Exhibit 21</b> [305 Las Vegas - Operating Agreement]	XV	AA 2575-2597

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 23</b> [List Managers - 305 Las Vegas]	XV	AA 2598
Undated	Plaintiffs' <b>Trial Exhibit 30</b> [Casino Coolidge - Articles of Organization]	XV	AA 2599-2603
Undated	Plaintiffs' <b>Trial Exhibit 34</b> [Live Work - Organization Documents]	XV	AA 2604-2657
Undated	Plaintiffs' <b>Trial Exhibit 38</b> [Wink One - Organization Documents]	XV	AA 2658-2660
Undated	Plaintiffs' <b>Trial Exhibit 43</b> [L/W TIC Successor - Operating Agreement]	XVI	AA 2661-2672
Undated	Plaintiffs' <b>Trial Exhibit 44</b> [Meyer Property - Operating Agreement]	XVI	AA 2673-2677
Undated	Plaintiffs' <b>Trial Exhibit 45</b> [Leah Property - Consents]	XVI	AA 2678-2693
Undated	Plaintiffs' <b>Trial Exhibit 40001</b> [Settlement Statement - Casino Coolidge]	XVI	AA 2694
Undated	Plaintiffs' <b>Trial Exhibit 40002</b> [Aquarius Settlement Statement]	XVI	AA 2695-2702
Undated	Plaintiffs' <b>Trial Exhibit 40006</b> [Live Work Settlement Statement]	XVI	AA 2703-2704
Undated	Plaintiffs' <b>Trial Exhibit 40007</b> [Final Settlement Statement - Forest City]	XVI	AA 2705-2707

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 40040</b> [Deed - Casino Coolidge]	XVI	AA 2708-2709
Undated	Plaintiffs' <b>Trial Exhibit 40041</b> [Deeds - Casino Coolidge]	XVI	AA 2710-2714
Undated	Plaintiffs' <b>Trial Exhibit 40042</b> [Deeds - Casino Coolidge]	XVI	AA 2715-2730
Undated	Plaintiffs' <b>Trial Exhibit 40046</b> [Personal Guaranty - Lease]	XVI	AA 2731-2739
Undated	Plaintiffs' <b>Trial Exhibit 40047</b> [Personal Guaranty - Lease]	XVI	AA 2740-2747
Undated	Plaintiffs' <b>Trial Exhibit 50001</b> [Underlying Complaint: A-07-551073]	XVI	AA 2748-2752
Undated	Plaintiffs' <b>Trial Exhibit 50002</b> [Underlying First Amended Complaint and Counter-Claim: A-07-551073]	XVI	AA 2753-2766
Undated	Plaintiffs' <b>Trial Exhibit 50006</b> [Underlying Action: FFCL]	XVI	AA 2767-2791
Undated	Plaintiffs' <b>Trial Exhibit 50007</b> [Underlying Judgment: A-07-551073]	XVI	AA 2792-2794
Undated	Plaintiffs' <b>Trial Exhibit 50008</b> [Underlying Amended Judgment]	XVI	AA 2795-2797
Undated	Plaintiffs' <b>Trial Exhibit 50037</b> [Rich Supplemental Expert Report]	XVI	AA 2798-2825
Undated	Plaintiffs' <b>Trial Exhibit 50040</b> [Settlement Agreement - Heartland]	XVI	AA 2826-2878

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 50042</b> [Mitchell Response - Bar Fee Dispute]	XVI	AA 2879-2900
Undated	Plaintiffs' <b>Trial Exhibit 60002</b> [Emails]	XVI	AA 2901
Undated	Plaintiffs' <b>Trial Exhibit 60005</b> [Emails]	XVI	AA 2902-2904
Undated	Plaintiffs' <b>Trial Exhibit 70003</b> [Disregarded Entities]	XVI	AA 2905-2906
Undated	Plaintiffs' <b>Trial Exhibit 70023</b> [LVLP Holdings Entities]	XVI	AA 2907
Undated	Plaintiffs' <b>Trial Exhibit 70030</b> [Underlying Action - Discovery Request]	XVII	AA 2908-2917
Undated	Plaintiffs' <b>Trial Exhibit 70036</b> [Reisman Attorney's Fees]	XVII	AA 2918-2943
Undated	Plaintiffs' <b>Trial Exhibit 70037</b> [Reisman Attorney's Fees]	XVII	AA 2944-2950
Undated	Plaintiffs' <b>Trial Exhibit 70038</b> [Reisman Attorney's Fees]	XVII	AA 2951-2954
Undated	Plaintiffs' <b>Trial Exhibit 70042</b> [New Jersey Fees/Costs]	XVII	AA 2955-2968
Undated	Plaintiffs' <b>Trial Exhibit 70045</b> [Rich's Fees]	XVII	AA 2969-3033
Undated	Plaintiffs' <b>Trial Exhibit 70052</b> [Document List - LVLP]	XVII	AA 3034-3037



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 70053</b> [Rich's Fees]	XVII	AA 3038-3044
Undated	Plaintiffs' <b>Trial Exhibit 70054</b> [Rich's Fees]	XVII	AA 3045
Undated	Plaintiffs' <b>Trial Exhibit 70055</b> [Muije Attorney's Fees]	XVIII	AA 3046-3220
Undated	Plaintiffs' <b>Trial Exhibit 70056</b> [Muije Attorney's Fees]	XVIII	AA 3221-3228
Undated	Plaintiffs' <b>Trial Exhibit 70060</b> [Underlying Judgment & Interest]	XVIII	AA 3229-3230
Undated	Plaintiffs' <b>Trial Exhibit 70062</b> [Attorney's Fees/Costs]	XVIII	AA 3231
Undated	Plaintiffs' <b>Trial Exhibit 70063</b> [Rich's Fees]	XVIII	AA 3232-3237
Undated	Plaintiffs' <b>Trial Exhibit 70064</b> [Reisman Attorney's Fees]	XVIII	AA 3238-3240
Undated	Plaintiffs' <b>Trial Exhibit 70065</b> [Reisman Attorney's Fees]	XVIII	AA 3241-3243
Undated	Plaintiffs' <b>Trial Exhibit 70067</b> [Muije Attorney's Fees]	XVIII	AA 3244-3263
Undated	Plaintiffs' <b>Trial Exhibit 70075</b> [Attorney's Fees/Costs]	XIX	AA 3264-3359
Undated	Plaintiffs' <b>Trial Exhibit 70076</b> [Reisman Attorney's Fees]	XIX	AA 3360-3375
Undated	Plaintiffs' <b>Trial Exhibit 70077</b> [Reisman Attorney's Fees]	XIX	AA 3376

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 70078</b> [Rich's Fees]	XIX	AA 3377-3463
Undated	Plaintiffs' <b>Trial Exhibit 70079</b> [Muije Attorney's Fees]	XIX	AA 3464-3511
Undated	Mitchell's <b>Trial Exhibit 90054</b> [Surrender/Termination Agreement]	XX	AA 3512-3516
Undated	Mitchell's <b>Trial Exhibit 90069</b> [Release of Lease Guaranty]	XX	AA 3517-3521
Undated	Mitchell's <b>Trial Exhibit 90075</b> [FC/LW - Entity Details]	XX	AA 3522-3524
Undated	Mitchell's <b>Trial Exhibit 90079</b> [10th NRCP 16.1 Disclosures: Underlying Action]	XX	AA 3525-3543

## **CHRONOLOGICAL TABLE OF CONTENTS OF SEALED VOLUMES**

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
1/19/18	Plaintiffs' First Supplemental NRCP 16.1 Disclosure [ <b>Sealed</b> ]	XXI	SAA 1-72
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [ <b>Sealed</b> ]	XXII	SAA 73-323
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [Continued][ <b>Sealed</b> ]	XXIII	SAA 324-513
Undated	Plaintiffs' <b>Trial Exhibit 2</b> [Aquarius Owner/LVLP] [ <b>Sealed</b> ]	XXIII	SAA 514-547
Undated	Plaintiffs' <b>Trial Exhibit 27</b> [Meadows Bank Statement] [Partial Document Only] [ <b>Sealed</b> ]	XXIII	SAA 548
Undated	Plaintiffs' <b>Trial Exhibit 32</b> [Casino Coolidge Operating Agreement] [ <b>Sealed</b> ]	XXIV	SAA 549-578
Undated	Plaintiffs' <b>Trial Exhibit 35</b> [Live Work Manager Company Documents] [ <b>Sealed</b> ]	XXIV	SAA 579-582
Undated	Plaintiffs' <b>Trial Exhibit 40</b> [Wink One Company Documents] [ <b>Sealed</b> ]	XXIV	SAA 583-588
Undated	Plaintiffs' <b>Trial Exhibit 52</b> [FC Live Work Company Documents] [ <b>Sealed</b> ]	XXIV	SAA 589-659
Undated	Plaintiffs' <b>Trial Exhibit 10002</b> [LVLP Holdings 2007 Tax Return] [ <b>Sealed</b> ]	XXIV	SAA 660-677

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
Undated	Plaintiffs <b>Trial Exhibit 10003</b> [LVLP Holdings 2008 Tax Return] [Sealed]	XXIV	SAA 678-692
Undated	Plaintiffs' <b>Trial Exhibit 10004</b> [LVLP Holdings 2009 Tax Return] [Sealed]	XXIV	SAA 693-709
Undated	Plaintiffs' <b>Trial Exhibit 20024</b> [Signature Bank 2015-2016] [Sealed]	XXIV	SAA 710-742
Undated	Plaintiffs' <b>Trial Exhibit 20026</b> [Signature Bank April 2015] [Sealed]	XXIV	SAA 743
Undated	Plaintiffs' <b>Trial Exhibit 30002</b> [LVLP G/L 2007] [Sealed]	XXIV	SAA 744
Undated	Plaintiffs' <b>Trial Exhibit 30031</b> [LVLP G/L 2008] [Sealed]	XXIV	SAA 745-764
Undated	Plaintiffs' <b>Trial Exhibit 30062</b> [Mitchell Contributions] [Sealed]	XXIV	SAA 765-770
Undated	Plaintiffs' <b>Trial Exhibit 30063</b> [Capital Contributions] [Sealed]	XXIV	SAA 771-774
Undated	Plaintiffs' <b>Trial Exhibit 30066</b> [Unallocated Contributions] [Sealed]	XXIV	SAA 775
Undated	Plaintiffs' <b>Trial Exhibit 30067</b> [Mitchell Amounts Paid] [Sealed]	XXIV	SAA 776-780
Undated	Plaintiffs' <b>Trial Exhibit 30086</b> [Mitchell Loan Balances] [Sealed]	XXIV	SAA 781-783
Undated	Plaintiffs' <b>Trial Exhibit 30087</b> [Lieberman Loan Balances] [Sealed]	XXIV	SAA 784-786

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
Undated	Plaintiffs' <b>Trial Exhibit 40043</b> [Release of Lease Guaranty] <b>[Sealed]</b>	XXIV	SAA 787-789
Undated	Plaintiffs' <b>Trial Exhibit 50038</b> [Wall Street Settlement Agreement] <b>[Sealed]</b>	XXV	SAA 790-820
Undated	Plaintiffs' <b>Trial Exhibit 60001</b> [Wall Street Engagement Letter] <b>[Sealed]</b>	XXV	SAA 821-825
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] <b>[Sealed]</b>	XXV	SAA 826-1039
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] [Continued] <b>[Sealed]</b>	XXVI	SAA 1040-1289
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] [Continued] <b>[Sealed]</b>	XXVII	SAA 1290-1414
Undated	Plaintiffs' <b>Trial Exhibit 70009</b> [Lieberman Contributions] <b>[Sealed]</b>	XXVII	SAA 1415-1418
Undated	Plaintiffs' <b>Trial Exhibit 70015</b> [Mitchell Contributions] <b>[Sealed]</b>	XXVII	SAA 1419-1422
Undated	Plaintiffs' <b>Trial Exhibit 70021</b> [LVLP Balance Sheet - 2015] <b>[Sealed]</b>	XXVII	SAA 1423
Undated	Plaintiffs' <b>Trial Exhibit 70043</b> [Rich Initial Expert Report] <b>[Sealed]</b>	XXVIII	SAA 1424-1673
Undated	Plaintiffs' <b>Trial Exhibit 70043</b> [Rich Initial Expert Report] [Continued] <b>[Sealed]</b>	XXIX	SAA 1674-1704

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 70072</b> [LVLP G/L 2011] <b>[Sealed]</b>	XXIX	SAA 1705-1712
Undated	Plaintiffs' <b>Trial Exhibit 70074</b> [LVLP Adjusted Entries 2012] <b>[Sealed]</b>	XXIX	SAA 1713-1714
Undated	Mitchell's <b>Trial Exhibit 90001</b> [Forest City Agreement] <b>[Sealed]</b>	XXIX	SAA 1715-1807
Undated	Mitchell's <b>Trial Exhibit 90052</b> [Casino Coolidge Title Documents] <b>[Sealed]</b>	XXIX	SAA 1808-1820

## **ALPHABETICAL TABLE OF CONTENTS TO APPELLANTS' APPENDIX**

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
7/17/18	Amended Business Court Order	V	AA 879-882
8/21/17	Amended Complaint	II	AA 307-340
9/5/17	Answer to Amended Complaint	II	AA 341-351
9/8/17	Answer to Amended Complaint [Lieberman and 305 Las Vegas]	II	AA 352-361
12/9/19	Answer to Complaint in Intervention [305 Las Vegas]	VI	AA 1124-1133
12/19/19	Answer to Complaint in Intervention [Mitchell Defendants]	VI	AA 1156-1160
12/23/19	Answer to Complaint in Intervention [Lieberman and Casino Coolidge]	VI	AA 1171-1179
7/18/17	Business Court Order	II	AA 293-297
2/20/18	Business Court Order [Amended]	III	AA 479-481
7/26/16	Complaint (Original)	I	AA 1-19
11/18/19	Complaint in Intervention	VI	AA 1052-1082
11/7/18	Court Minutes - November 7, 2018	V	AA 886-887
2/4/20	Court Transcript - February 4, 2020 [Motions to Alter/Amend]	XV	AA 2422-2456
11/18/19	Court Transcript - November 18, 2019 [Motion to Intervene]	VIII	AA 1525-1532

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
8/23/19	Defendant's, 305 Las Vegas, Motion for Summary Judgment	V	AA 915-936
10/17/19	Defendant's, 305 Las Vegas, Reply to Motion for Summary Judgment	VI	AA 981-991
4/6/17	Defendants' Motion to Dismiss Plaintiffs' Complaint	I	AA 60-88
3/23/17	Defendants' Motion to Strike Plaintiffs' Jury Demand	I	AA 49-59
7/6/17	Defendants' Reply to Motion to Dismiss	II	AA 269-292
4/25/17	Defendants' Reply to Motion to Strike; Opposition to Counter-Motion for Advisory Jury	I	AA 152-162
11/19/19	Errata to Complaint in Intervention	VI	AA 1083-1088
2/20/20	Joinder to Mitchell Defendants' Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1392-1394
4/26/18	Joinder to Mitchell Defendants' Motion to Compel Discovery [Lieberman and 305 Las Vegas]	IV	AA 726-728
5/30/18	Joinder to Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 829-831
10/24/17	Joint Case Conference Report [Partial Document Only]	III	AA 362-470
12/27/19	Joint Pre-Trial Memorandum [Partial Document Only]	VI	AA 1183-1202



<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
2/14/20	Mitchell Defendants' Motion to Alter/Amend Judgment	VII	AA 1371-1391
4/19/18	Mitchell Defendants' Motion to Compel Discovery	IV	AA 490-725
11/21/19	Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1095-1123
11/16/19	Mitchell Defendants' Opposition to Motion to Intervene	VI	AA 1037-1045
2/20/20	Mitchell Defendants' Opposition to Plaintiffs' Motion for Attorney's Fees	VII	AA 1402-1408
2/27/20	Mitchell Defendants' Opposition to Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1461-1467
5/30/18	Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 796-828
12/19/19	Mitchell Defendants' Reply to Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1161-1170
Undated	Mitchell's <b>Trial Exhibit 90001</b> [Forest City Agreement] [Sealed]	XXIX	SAA 1715-1807
Undated	Mitchell's <b>Trial Exhibit 90052</b> [Casino Coolidge Title Documents] [Sealed]	XXIX	SAA 1808-1820
Undated	Mitchell's <b>Trial Exhibit 90054</b> [Surrender/Termination Agreement]	XX	AA 3512-3516

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Mitchell's <b>Trial Exhibit 90069</b> [Release of Lease Guaranty]	XX	AA 3517-3521
Undated	Mitchell's <b>Trial Exhibit 90075</b> [FC/LW - Entity Details]	XX	AA 3522-3524
Undated	Mitchell's <b>Trial Exhibit 90079</b> [10th NRCP 16.1 Disclosures: Underlying Action]	XX	AA 3525-3543
2/14/20	Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1325-1352
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [ <b>Sealed</b> ]	XXII	SAA 73-323
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [Continued][ <b>Sealed</b> ]	XXIII	SAA 324-513
11/12/19	Motion to Intervene	VI	AA 994-1036
11/20/18	NEO re: Continue Discovery (Second)	V	AA 888-894
2/15/18	NEO re: Continue Discovery [First]	III	AA 471-478
8/9/17	NEO re: Defendants' Motion to Dismiss	II	AA 298-306
5/24/17	NEO re: Defendants' Motion to Strike and Counter-Motion for Advisory Jury	I	AA 163-169
2/24/20	NEO re: Directed Verdict and Judgment for Defendant, 305 Las Vegas	VII	AA 1435-1439
9/23/19	NEO re: Discovery Sanctions	V	AA 940-952

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
11/30/18	NEO re: Dismissal of Defendant, Liberman Holdings	V	AA 895-902
6/19/18	NEO re: Mitchell Defendants' Motion to Compel Discovery and Plaintiffs' Counter-Motion	V	AA 862-868
3/30/20	NEO re: Motion to Alter/Amend Judgment [Casino Coolidge]	VIII	AA 1483-1488
3/30/20	NEO re: Motion to Alter/Amend Judgment [Mitchell Defendants]	VIII	AA 1489-1494
3/30/20	NEO re: Motion to Alter/Amend Judgment [Liberman and Casino Coolidge]	VIII	AA 1492-1500
11/18/19	NEO re: Motion to Intervene	VI	AA 1046-1051
5/14/20	NEO re: Motion to Retax and Settle Costs	VIII	AA 1518-1524
7/3/18	NEO re: Plaintiffs' Ex Parte Application for OSC	V	AA 869-878
5/13/20	NEO re: Plaintiffs' Motion for Attorney's Fees	VIII	AA 1501-1510
5/30/19	NEO re: Plaintiffs' Motion to Compel Discovery	V	AA 903-914
5/13/20	NEO re: Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1511-1517

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
11/21/19	NEO re: Redactions and Sealing	VI	AA 1089-1094
2/21/18	NEO re: Stipulated Protective Order	III	AA 482-489
1/16/20	NOE Findings of Fact, Conclusions of Law and Judgment [Original]	VII	AA 1203-1220
1/17/19	NOE Findings of Fact, Conclusions of Law and Judgment [Amended]	VII	AA 1221-1238
2/25/20	Notice of Appeal [Lieberman and Casino Coolidge]	VII	AA 1440-1442
2/26/20	Notice of Appeal [Mitchell Defendants]	VIII	AA 1443-1460
8/28/19	Notice of Filing Bankruptcy	V	AA 937-939
1/19/18	Plaintiffs' First Supplemental NRCP 16.1 Disclosure <b>[Sealed]</b>	XXI	SAA 1-72
2/6/20	Plaintiffs' Motion for Attorney's Fees	VII	AA 1239-1289
2/13/20	Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VII	AA 1290-1324
10/7/19	Plaintiffs' Opposition to Defendant's, 305 Las Vegas, Motion for Summary Judgment	VI	AA 953-980
6/14/17	Plaintiffs' Opposition to Defendants' Motion to Dismiss	II	AA 170-268

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
4/17/17	Plaintiffs' Opposition to Defendants' Motion to Strike Jury Demand; Counter-Motion for Advisory Jury	I	AA 89-151
5/11/18	Plaintiffs' Opposition to Mitchell Defendants' Motion to Compel Discovery; Counter-Motion for Disclosure of Un-Redacted Emails [Partial Document Only]	V	AA 729-795
12/12/19	Plaintiffs' Opposition to Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1134-1155
2/14/20	Plaintiffs' Opposition to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1353-1370
2/20/20	Plaintiffs' Opposition to Motions to Alter/Amend Judgment [All Parties]	VII	AA 1409-1434
3/6/20	Plaintiffs' Reply to Motion for Attorney's Fees	VIII	AA 1468-1475
3/13/20	Plaintiffs' Reply to Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1476-1482
6/5/18	Plaintiffs' Supplement to Opposition to Mitchell Defendants' Motion to Compel Discovery and Counter-Motion for Disclosure of Un-Redacted Emails	V	AA 832-861
Undated	Plaintiffs' <b>Trial Exhibit 1</b> [Ownerships Interests]	XV	AA 2457

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 2</b> [Aquarius Owner/LVLP] [Sealed]	XXIII	SAA 514-547
Undated	Plaintiffs' <b>Trial Exhibit 3</b> [LVLP Organization Documents]	XV	AA 2458-2502
Undated	Plaintiffs' <b>Trial Exhibit 9</b> [Live Work, LLC - Nevada SOS]	XV	AA 2503-2505
Undated	Plaintiffs' <b>Trial Exhibit 10</b> [Live Work Organization Documents]	XV	AA 2506-2558
Undated	Plaintiffs' <b>Trial Exhibit 12</b> [Term Restructure - Forest City]	XV	AA 2559-2563
Undated	Plaintiffs' <b>Trial Exhibit 17</b> [305 Las Vegas Entity Details]	XV	AA 2564-2566
Undated	Plaintiffs' <b>Trial Exhibit 18</b> [305 Las Vegas Organization Documents]	XV	AA 2567-2570
Undated	Plaintiffs' <b>Trial Exhibit 19</b> [305 Second Avenue Associates - Entity Details]	XV	AA 2571-2572
Undated	Plaintiffs' <b>Trial Exhibit 20</b> [305 Las Vegas - Certificate of Formation]	XV	AA 2573-2574
Undated	Plaintiffs' <b>Trial Exhibit 21</b> [305 Las Vegas - Operating Agreement]	XV	AA 2575-2597
Undated	Plaintiffs' <b>Trial Exhibit 23</b> [List Managers - 305 Las Vegas]	XV	AA 2598

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 27</b> [Meadows Bank Statement] [Partial Document Only] [ <b>Sealed</b> ]	XXIII	SAA 548
Undated	Plaintiffs' <b>Trial Exhibit 30</b> [Casino Coolidge - Articles of Organization]	XV	AA 2599-2603
Undated	Plaintiffs' <b>Trial Exhibit 32</b> [Casino Coolidge Operating Agreement] [ <b>Sealed</b> ]	XXIV	SAA 549-578
Undated	Plaintiffs' <b>Trial Exhibit 34</b> [Live Work - Organization Documents]	XV	AA 2604-2657
Undated	Plaintiffs' <b>Trial Exhibit 35</b> [Live Work Manager Company Documents] [ <b>Sealed</b> ]	XXIV	SAA 579-582
Undated	Plaintiffs' <b>Trial Exhibit 38</b> [Wink One - Organization Documents]	XV	AA 2658-2660
Undated	Plaintiffs' <b>Trial Exhibit 40</b> [Wink One Company Documents] [ <b>Sealed</b> ]	XXIV	SAA 583-588
Undated	Plaintiffs' <b>Trial Exhibit 43</b> [L/W TIC Successor - Operating Agreement]	XVI	AA 2661-2672
Undated	Plaintiffs' <b>Trial Exhibit 44</b> [Meyer Property - Operating Agreement]	XVI	AA 2673-2677
Undated	Plaintiffs' <b>Trial Exhibit 45</b> [Leah Property - Consents]	XVI	AA 2678-2693

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 52</b> [FC Live Work Company Documents] [Sealed]	XXIV	SAA 589-659
Undated	Plaintiffs' <b>Trial Exhibit 10002</b> [LVLP Holdings 2007 Tax Return] [Sealed]	XXIV	SAA 660-677
Undated	Plaintiffs' <b>Trial Exhibit 10003</b> [LVLP Holdings 2008 Tax Return] [Sealed]	XXIV	SAA 678-692
Undated	Plaintiffs' <b>Trial Exhibit 10004</b> [LVLP Holdings 2009 Tax Return] [Sealed]	XXIV	SAA 693-709
Undated	Plaintiffs' <b>Trial Exhibit 20024</b> [Signature Bank 2015-2016] [Sealed]	XXIV	SAA 710-742
Undated	Plaintiffs' <b>Trial Exhibit 20026</b> [Signature Bank April 2015] [Sealed]	XXIV	SAA 743
Undated	Plaintiffs' <b>Trial Exhibit 30002</b> [LVLP G/L 2007] [Sealed]	XXIV	SAA 744
Undated	Plaintiffs' <b>Trial Exhibit 30031</b> [LVLP G/L 2008] [Sealed]	XXIV	SAA 745-764
Undated	Plaintiffs' <b>Trial Exhibit 30062</b> [Mitchell Contributions] [Sealed]	XXIV	SAA 765-770
Undated	Plaintiffs' <b>Trial Exhibit 30063</b> [Capital Contributions] [Sealed]	XXIV	SAA 771-774
Undated	Plaintiffs' <b>Trial Exhibit 30066</b> [Unallocated Contributions] [Sealed]	XXIV	SAA 775



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 30067</b> [Mitchell Amounts Paid] <b>[Sealed]</b>	XXIV	SAA 776-780
Undated	Plaintiffs' <b>Trial Exhibit 30086</b> [Mitchell Loan Balances] <b>[Sealed]</b>	XXIV	SAA 781-783
Undated	Plaintiffs' <b>Trial Exhibit 30087</b> [Lieberman Loan Balances] <b>[Sealed]</b>	XXIV	SAA 784-786
Undated	Plaintiffs' <b>Trial Exhibit 40001</b> [Settlement Statement - Casino Coolidge]	XVI	AA 2694
Undated	Plaintiffs' <b>Trial Exhibit 40002</b> [Aquarius Settlement Statement]	XVI	AA 2695-2702
Undated	Plaintiffs' <b>Trial Exhibit 40006</b> [Live Work Settlement Statement]	XVI	AA 2703-2704
Undated	Plaintiffs' <b>Trial Exhibit 40007</b> [Final Settlement Statement - Forest City]	XVI	AA 2705-2707
Undated	Plaintiffs' <b>Trial Exhibit 40040</b> [Deed - Casino Coolidge]	XVI	AA 2708-2709
Undated	Plaintiffs' <b>Trial Exhibit 40041</b> [Deeds - Casino Coolidge]	XVI	AA 2710-2714
Undated	Plaintiffs' <b>Trial Exhibit 40042</b> [Deeds - Casino Coolidge]	XVI	AA 2715-2730
Undated	Plaintiffs' <b>Trial Exhibit 40043</b> [Release of Lease Guaranty] <b>[Sealed]</b>	XXIV	SAA 787-789
Undated	Plaintiffs' <b>Trial Exhibit 40046</b> [Personal Guaranty - Lease]	XVI	AA 2731-2739

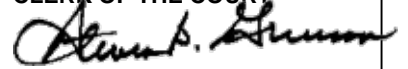
<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 40047</b> [Personal Guaranty - Lease]	XVI	AA 2740-2747
Undated	Plaintiffs' <b>Trial Exhibit 50001</b> [Underlying Complaint: A-07-551073]	XVI	AA 2748-2752
Undated	Plaintiffs' <b>Trial Exhibit 50002</b> [Underlying First Amended Complaint and Counter-Claim: A-07-551073]	XVI	AA 2753-2766
Undated	Plaintiffs' <b>Trial Exhibit 50006</b> [Underlying Action: FFCL]	XVI	AA 2767-2791
Undated	Plaintiffs' <b>Trial Exhibit 50007</b> [Underlying Judgment: A-07-551073]	XVI	AA 2792-2794
Undated	Plaintiffs' <b>Trial Exhibit 50008</b> [Underlying Amended Judgment]	XVI	AA 2795-2797
Undated	Plaintiffs' <b>Trial Exhibit 50037</b> [Rich Supplemental Expert Report]	XVI	AA 2798-2825
Undated	Plaintiffs' <b>Trial Exhibit 50038</b> [Wall Street Settlement Agreement] [Sealed]	XXV	SAA 790-820
Undated	Plaintiffs' <b>Trial Exhibit 50040</b> [Settlement Agreement - Heartland]	XVI	AA 2826-2878
Undated	Plaintiffs' <b>Trial Exhibit 50042</b> [Mitchell Response - Bar Fee Dispute]	XVI	AA 2879-2900
Undated	Plaintiffs' <b>Trial Exhibit 60001</b> [Wall Street Engagement Letter] [Sealed]	XXV	SAA 821-825

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 60002</b> [Emails]	XVI	AA 2901
Undated	Plaintiffs' <b>Trial Exhibit 60005</b> [Emails]	XVI	AA 2902-2904
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] [ <b>Sealed</b> ]	XXV	SAA 826-1039
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] [Continued][ <b>Sealed</b> ]	XXVI	SAA 1040-1289
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] [Continued][ <b>Sealed</b> ]	XXVII	SAA 1290-1414
Undated	Plaintiffs' <b>Trial Exhibit 70003</b> [Disregarded Entities]	XVI	AA 2905-2906
Undated	Plaintiffs' <b>Trial Exhibit 70009</b> [Lieberman Contributions] [ <b>Sealed</b> ]	XXVII	SAA 1415-1418
Undated	Plaintiffs' <b>Trial Exhibit 70015</b> [Mitchell Contributions] [ <b>Sealed</b> ]	XXVII	SAA 1419-1422
Undated	Plaintiffs' <b>Trial Exhibit 70021</b> [LVLP Balance Sheet - 2015] [ <b>Sealed</b> ]	XXVII	SAA 1423
Undated	Plaintiffs' <b>Trial Exhibit 70023</b> [LVLP Holdings Entities]	XVI	AA 2907
Undated	Plaintiffs' <b>Trial Exhibit 70030</b> [Underlying Action - Discovery Request]	XVII	AA 2908-2917

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 70036</b> [Reisman Attorney's Fees]	XVII	AA 2918-2943
Undated	Plaintiffs' <b>Trial Exhibit 70037</b> [Reisman Attorney's Fees]	XVII	AA 2944-2950
Undated	Plaintiffs' <b>Trial Exhibit 70038</b> [Reisman Attorney's Fees]	XVII	AA 2951-2954
Undated	Plaintiffs' <b>Trial Exhibit 70042</b> [New Jersey Fees/Costs]	XVII	AA 2955-2968
Undated	Plaintiffs' <b>Trial Exhibit 70043</b> [Rich Initial Expert Report] <b>[Sealed]</b>	XXVIII	SAA 1424-1673
Undated	Plaintiffs' <b>Trial Exhibit 70043</b> [Rich Initial Expert Report] [Continued] <b>[Sealed]</b>	XXIX	SAA 1674-1704
Undated	Plaintiffs' <b>Trial Exhibit 70045</b> [Rich's Fees]	XVII	AA 2969-3033
Undated	Plaintiffs' <b>Trial Exhibit 70052</b> [Document List - LVLP]	XVII	AA 3034-3037
Undated	Plaintiffs' <b>Trial Exhibit 70053</b> [Rich's Fees]	XVII	AA 3038-3044
Undated	Plaintiffs' <b>Trial Exhibit 70054</b> [Rich's Fees]	XVII	AA 3045
Undated	Plaintiffs' <b>Trial Exhibit 70055</b> [Muije Attorney's Fees]	XVIII	AA 3046-3220
Undated	Plaintiffs' <b>Trial Exhibit 70056</b> [Muije Attorney's Fees]	XVIII	AA 3221-3228

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 70060</b> [Underlying Judgment & Interest]	XVIII	AA 3229-3230
Undated	Plaintiffs' <b>Trial Exhibit 70062</b> [Attorney's Fees/Costs]	XVIII	AA 3231
Undated	Plaintiffs' <b>Trial Exhibit 70063</b> [Rich's Fees]	XVIII	AA 3232-3237
Undated	Plaintiffs' <b>Trial Exhibit 70064</b> [Reisman Attorney's Fees]	XVIII	AA 3238-3240
Undated	Plaintiffs' <b>Trial Exhibit 70065</b> [Reisman Attorney's Fees]	XVIII	AA 3241-3243
Undated	Plaintiffs' <b>Trial Exhibit 70067</b> [Muije Attorney's Fees]	XVIII	AA 3244-3263
Undated	Plaintiffs' <b>Trial Exhibit 70072</b> [LVLP G/L 2011] [Sealed]	XXIX	SAA 1705-1712
Undated	Plaintiffs' <b>Trial Exhibit 70074</b> [LVLP Adjusted Entries 2012] [Sealed]	XXIX	SAA 1713-1714
Undated	Plaintiffs' <b>Trial Exhibit 70075</b> [Attorney's Fees/Costs]	XIX	AA 3264-3359
Undated	Plaintiffs' <b>Trial Exhibit 70076</b> [Reisman Attorney's Fees]	XIX	AA 3360-3375
Undated	Plaintiffs' <b>Trial Exhibit 70077</b> [Reisman Attorney's Fees]	XIX	AA 3376
Undated	Plaintiffs' <b>Trial Exhibit 70078</b> [Rich's Fees]	XIX	AA 3377-3463

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
Undated	Plaintiffs' <b>Trial Exhibit 70079</b> [Muije Attorney's Fees]	XIX	AA 3464-3511
2/27/17	Proofs of Service	I	AA 20-48
11/12/19	Receipt of Copy	VI	AA 992-993
2/20/20	Reply to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1395-1401
12/26/19	Satisfaction of Judgment	VI	AA 1180-1182
7/30/18	Second Amended Business Court Order	V	AA 883-885
12/30/19	<b>Trial Transcript - Day 1</b> [December 30, 2019]	IX	AA 1533-1697
12/31/19	<b>Trial Transcript - Day 2</b> [December 31, 2019]	X	AA 1698-1785
1/2/20	<b>Trial Transcript - Day 3</b> [January 2, 2020]	XI	AA 1786-1987
1/3/20	<b>Trial Transcript - Day 4</b> [January 3, 2020]	XII	AA 1988-2163
1/6/20	<b>Trial Transcript - Day 5</b> [January 6, 2020]	XIII	AA 2164-2303
1/7/20	<b>Trial Transcript - Day 6</b> [January 7, 2020]	XIV	AA 2304-2421



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

RUSSELL L. NYPE, REVENUE PLUS, )	
LLC, )	CASE NO. A-16-740689-B
Plaintiffs, )	
vs. )	DEPT. NO. XI
DAVID MITCHELL, ET AL., )	<b>Transcript of Proceedings</b>
Defendants. )	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**ALL PENDING MOTIONS**

MONDAY, FEBRUARY 24, 2020

APPEARANCES:

For the Plaintiffs: JOHN W. MUIJE, ESQ.

For the Defendants: JAMES L. EDWARDS, ESQ.  
ELLIOT S. BLUT, ESQ.  
HAROLD STANLEY JOHNSON, ESQ.

RECORDED BY: JILL HAWKINS, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript  
produced by transcription service.

1 MONDAY, FEBRUARY 24, 2020 AT 9:18 A.M.

2

3 MR. MUIJE: Good morning, Your Honor. John Muije,  
4 appearing on behalf of plaintiffs, Russell Nype and Revenue  
5 Plus, LLC.

6 MR. JOHNSON: Good morning, Your Honor. Stan  
7 Johnson on behalf of the Mitchell defendants.

8 MR. EDWARDS: Jim Edwards on behalf of the  
9 Mitchell defendants.

10 MR. BLUT: Good morning, Your Honor. Elliot Blut  
11 for Barnet Liberman and Casino Coolidge, LLC.

12 THE COURT: Mr. Blut, I'd like to start with your  
13 Motion to Alter or Amend.

14 MR. BLUT: Thank you. Thank you, Your Honor.

15 So, just as to the Casino Coolidge entity, as we  
16 had pointed out, it was lumped in as the -- as a related  
17 entity, with other Las Vegas Land Partner and wholly owned  
18 entities. And, so, there's really two key pieces of  
19 evidence that demonstrate that because the clearly  
20 erroneous conclusion. One was Exhibit 7 from the trial,  
21 which was the list from the CPA of the disregarded  
22 entities, which is a list of the other, quote/unquote,  
23 related entities that were contained in the Las Vegas Land  
24 Partners tax return. Noticeably absent is Casino Coolidge  
25 and mainly because Casino Coolidge had not even been formed



1 at that time.

2           The second and most important one, before I go  
3 through some of the evidence, was Exhibit 50,028, page 124,  
4 which was the Mark Rich spreadsheet of what distributions  
5 were made on which the Court made its finding. And,  
6 noticeably absent --

7           THE COURT: Some of its findings.

8           MR. BLUT: I'm sorry?

9           THE COURT: Some of its findings.

10          MR. BLUT: Some of the findings. Yes.

11          That noticeably absent from this are any  
12 distributions after the proceeds from Leah, from the Casino  
13 Coolidge transaction, which are not distributions from  
14 Casino Coolidge. The reason that's important is that there  
15 was evidence at trial of checks going to Barnet Liberman  
16 from Casino Coolidge. But those are not included as being  
17 untoward transfers and distributions, per Mark Rich, nor  
18 did anybody else comment negatively on those transfers.

19          And, so, just looking at the various -- the  
20 various findings, just to go through the numbers just so  
21 the record's clear, 36 talks about they made the  
22 distributions of the 15 million. This does not include  
23 anything from Casino Coolidge. The related entities  
24 concealed, hid, diverted, converted assets, not as to  
25 Casino Coolidge. Casino Coolidge is there; that it was

1 wholly owned by Las Vegas Land Partners. It was zero  
2 percent owned by Las Vegas Land Partners. It was more  
3 similarly situated to that of 305, Your Honor, where Mr.  
4 Liberman was on both sides of the transaction in terms of  
5 entities that was involved with.

6 But, as with 305, who entered into a much more  
7 complicated transaction than this purchase of this, 305 was  
8 found to have not caused any damages because there was no  
9 evidence that it didn't pay fair market value and there was  
10 no evidence that these weren't legitimate and independent  
11 business decisions. Whereas, here, there was no evidence  
12 that the million dollars paid was not the fair equivalent  
13 value for that property at that time. And, in fact, the  
14 Court makes that finding.

15 Because, you know, Coolidge is similarly situated  
16 to the Mitchell Holdings Company, which was also found not  
17 to be the alter ego because there was not the same  
18 evidence, there's no doubt that the -- that the 14 findings  
19 that we had -- that we point to, and 12 of which apply to  
20 the related entities, that all those entities, correct, are  
21 the same. They are on the same general ledger. They use  
22 the same bank accounts. They are on the tax returns.

23 They stopped using bank accounts. That's another  
24 point is that a crucial thing was the Las Vegas Land  
25 Partners and the related entities stopped using bank

1 accounts at the time of the Judgment, whereas in evidence  
2 was current Casino Coolidge bank account statements showing  
3 that it is a liquid and ongoing entity.

4 I think it just -- so, if you take that out and,  
5 then, just breaking it down into the specific claims with  
6 the alter ego, there's no evidence of comingling with the  
7 other entities of -- and/or Barnet Liberman, no  
8 undercapitalization, no diversion of assets, no indication  
9 of Casino Coolidge that any personal expenses of Mr.  
10 Liberman were paid, and no failure to advert -- to observe  
11 the corporate formalities. There's separate books and  
12 records. There's a separate tax return entity that goes on  
13 Mr. Liberman's Schedule E.

14 With regard -- and, with regard to the fraudulent  
15 conveyance, I think I touched on it before, that the Court,  
16 as it points out, in Conclusion of Law 14 is that the --  
17 well, that -- actually, that's the conspiracy, which I'll  
18 talk about that. But on there is a conspiracy is the  
19 diversion of assets and the handling of the records. Mr.  
20 Liberman is not involved in the handling of the records.  
21 And, as the -- Mr. Rich's exhibit, there were no diversion  
22 of asserts for him.

23 And, for the fraudulent conveyance, there is no --  
24 nothing to tie Casino Coolidge to it. They were in a bona  
25 fide transaction. And the Court's specific finding is that

1 the problem with the transaction is that instead of Leah  
2 getting the money and, then, giving it to Las Vegas Land  
3 Partners, that the money went directly to Mr. Liberman and  
4 Mr. Mitchell, which the Court -- I don't know if we need  
5 evidence on this, but the buyer doesn't direct the seller's  
6 proceeds.

7           The Opposition cites a number of these trial  
8 exhibits. Not one of those -- I pointed out what every one  
9 they are, not one of those has anything to do that would  
10 have liability at any time for Casino Coolidge. And, so,  
11 we request that the Casino Coolidge be stricken and, I  
12 guess, that the Judgment be amended that Casino Coolidge is  
13 out as a related party, which would then flow down that  
14 Casino Coolidge would have a judgment in favor of itself  
15 and against the plaintiff on all the claims that are made.

16           THE COURT: Thank you.

17           MR. BLUT: Thank you.

18           THE COURT: Mr. Muije?

19           MR. MUIJE: Good morning, Your Honor.

20           As to Casino Coolidge, it was a way to a formed  
21 entity. So, to that extent, it didn't participate in the  
22 early misconduct. But -- and I think this is very  
23 important, alter ego requires unity of interest, the unity  
24 of ownership, and to recognize a corporate entity would  
25 operate -- would serve to operate as a fraud against a

1 third party, a creditor. And we have numerous examples of  
2 how that was implicated in Casino Coolidge. But I think  
3 one of the most telling -- and this came out after trial,  
4 Your Honor, I would -- the stay dissolved last week and  
5 Casino Coolidge just took out two new substantial  
6 encumbrances of its property in the last 30 days prior to  
7 trial. Literally, I found this Friday afternoon.

8           So, it's -- if we're talking about motivation, if  
9 we're talking about intent, etcetera, the fact that Casino  
10 Coolidge all of a sudden has a million dollars more in debt  
11 to two entities, not banks, not mortgage companies, two  
12 entities that are designated as LLCs that are not licensed  
13 or registered to do business.

14           I -- let me give a copy to each of the counsel  
15 and, then, I'd like to give it to the Court as well.

16           THE COURT: Well, give it to counsel first. And  
17 I'll see if there's an objection. And you can mark it as a  
18 Court's exhibit or as a -- no. Mark it as your exhibit,  
19 please. Dulce, welcome back.

20           MR. MUIJE: And the second one here, Your Honor.  
21 I need to make sure I have enough for --

22                           [Colloquy at the bench]

23           MR. MUIJE: If I might approach the Clerk, Your  
24 Honor?

25           THE COURT: You may. It is a plaintiffs' exhibit.

1           MR. MUIJE: Proposed 1 and Proposed 2. And I have  
2 courtesy copies for the Court.

3           THE COURT: Not so much. So, is there an  
4 objection to Plaintiffs' Proposed 1 and Plaintiffs'  
5 Proposed 2?

6           MR. BLUT: Yes. Hearsay on both, Your Honor.

7           THE COURT: So, Mr. Muije, can you tell me why I  
8 should look at these documents?

9           MR. MUIJE: Your Honor, they are regular,  
10 contemporaneous business records maintained on the County  
11 Recorder's website. That's Exhibit 1. Again, we just  
12 discovered this Friday afternoon. But they show --

13           THE COURT: Why do you think it's maintained on  
14 the County Recorder's website?

15           MR. MUIJE: Because it is a search. It's a  
16 printout of a search that was done for Casino Coolidge,  
17 LLC.

18           THE COURT: Okay. So, --

19           MR. MUIJE: All documents --

20           THE COURT: So, this is information you found out  
21 --

22           MR. MUIJE: This is information --

23           THE COURT: -- by doing a search?

24           MR. MUIJE: I have --

25           THE COURT: You can tell me about your search.

1 But I'm not going to look at the document.

2 MR. MUIJE: Okay. My search -- because, again,  
3 there was no stay in effect, and we had determined that  
4 there was substantial -- at pretrial, we had determined  
5 there was substantial equity in Casino Coolidge. My search  
6 was undertaken to identify -- make sure that there were not  
7 liens, that when we sold this at a sheriff's sale, that we  
8 would receive the proceeds. Well, lo and behold, on these  
9 -- I -- my search determined that on December 9<sup>th</sup>, three  
10 weeks before the start of our trial, --

11 MR. BLUT: Your Honor, we'd just object as to what  
12 the search determined. Because that would be --

13 THE COURT: He can tell me what he did.

14 MR. BLUT: Right. But he's about to say what the  
15 results of what the --

16 THE COURT: Well, he can tell me what he did.

17 MR. BLUT: Okay.

18 THE COURT: So, keep going.

19 MR. MUIJE: And that search determined that there  
20 was a new account --

21 MR. BLUT: Well, Your Honor, that now he's talking  
22 about the search. Did you --

23 THE COURT: Well, no. That's what he did. He did  
24 a search and he found something out and he's going to tell  
25 me what it is. I'm not admitting the document, though,

1 because it's hearsay.

2 MR. MUIJE: We found a new Deed of Trust recorded  
3 against the Casino Coolidge property. I can even give the  
4 instrument number in running in favor of a --

5 THE COURT: I don't need that. I just -- you  
6 know, tell me why it's an impact to this Motion to Alter or  
7 Amend that Casino Coolidge is not to have its corporate --  
8 or, LLC separate existence ignored and be found to be an  
9 alter ego, given the evidence at trial.

10 MR. MUIJE: Understood. This new Deed of Trust,  
11 December 9<sup>th</sup>, was in favor of Westridge Lending Fund, LLC.  
12 I did a Secretary of State search, which I've done hundreds  
13 of over the years, there is no Westridge Funding, LLC,  
14 registered in the state of Nevada.

15 Then, lo and behold, though --

16 THE COURT: There are other states to do LLCs, you  
17 know?

18 MR. MUIJE: I understand, Your Honor. But one  
19 would think that a legitimate financing transaction  
20 conducted in the state of Nevada, that you might want to  
21 actually qualify to do business here.

22 THE COURT: Might.

23 MR. MUIJE: Then, going through further on the  
24 Recorder's website, the very last day of trial, the very  
25 last day of trial, January 7<sup>th</sup>, 2020, another brand new Deed



1 of Trust against the Casino Coolidge parcel in favor --  
2 well, this one says Old Republic Title Company, which I  
3 believe is probably the trustee. I am -- also commissioned  
4 a property profile from Stewart Title and that identified  
5 that same instrument and indicated that it ran in favor of  
6 HTH Holdings, Inc., for \$306,000.

7           What we see here, Your Honor, and as we get to Mr.  
8 Liberman's Motion later, we're also going to see a brand  
9 new \$2.1 million Deed of Trust on his residence in New  
10 York, taken out one week before trial. These are all from  
11 searches we found on Friday and Saturday. We had Mr.  
12 Liberman furthering his conspiracy with Mr. Mitchell to  
13 hide assets, to hypothecate things. We're far from certain  
14 -- we're going to be issuing subpoenas on these entities,  
15 Your Honor, and on the title companies involved. We're far  
16 from certain they even reflect money actually transferred.

17           Having practiced in this area for years, I have  
18 seen numerous examples where a phantom Deed of Trust gets  
19 slapped on property in order to discourage creditors and  
20 drive them away. But it's, again, the -- it is  
21 circumstantial evidence showing that Mr. Liberman treats  
22 everything as one and the same. We've quoted it in our  
23 brief. He testified at his deposition, you know: Why  
24 maintain separate books and records? Why would we?

25           THE COURT: For the record, that came in a trial.

1 MR. MUIJE: That came in at trial.

2 THE COURT: It doesn't matter what happened in the  
3 deposition. But the fact that the deposition was part of  
4 the questioning at trial is --

5 MR. MUIJE: Correct.

6 THE COURT: -- relevant.

7 MR. MUIJE: They said: They are all derivative of  
8 one entity. All the money came in and all of the money  
9 went out. Did it matter that I took a cab from one  
10 piece of property to the other? No. I don't see why  
11 it matters. That's merely an accounting question.

12 And that's what we have here. It wasn't that it  
13 was created initially at the same time. But when they  
14 needed to pull some money out personally, they got together  
15 on both sides of the transaction. Leah is Mr. Mitchell and  
16 Mr. Liberman sitting on one side at a table. They get up.  
17 Mr. Liberman walks to the other side of the table. They  
18 sign escrow instructions. It's not a buyer distributing  
19 the money from escrow or the seller distributing his  
20 proceeds, it's all parties to the transaction, being Mr.  
21 Liberman and Mr. Liberman, directing the title company  
22 where to send those proceeds.

23 So, we have the same two buddies that have been in  
24 this for an extended period of time. They effectively  
25 operate and control both sides of this transaction. And

1 they, in accordance with the pattern they've established on  
2 all of these entities, they -- they're not too worried  
3 about which check is being written to whom, from where, or  
4 to ultimate destination as long as it's to their personal  
5 benefit, and as long as it's not something that Mr. Nype is  
6 going to be able, or any other creditor, is going to be  
7 able to get access to it.

8           So, certainly, under fraudulent conveyance aspect,  
9 if the Court were somehow to decide that alter ego did not  
10 apply, the fraudulent conveyance is still there. The  
11 *Magliarditi* case tells us that, that, you know, the related  
12 entities transacting between themselves. And the  
13 fraudulent conveyance was not the sale of the property per  
14 se. The fraudulent conveyance was making sure that the  
15 money went into Mr. Mitchell and Mr. Liberman's pocket.

16           But, again, the fundamental test, granted that  
17 some of the flack, some of the indicia of whether a --

18           THE COURT: So, you know you're using all your  
19 time for all the motions here. Right?

20           MR. MUIJE: Okay. Let me -- let me cut to the  
21 chase, Your Honor.

22           THE COURT: Because you're down to five minutes.

23           MR. MUIJE: Some if the indicia of the alter ego  
24 may not be present but the overriding ones are. They --  
25 Mr. Liberman effectively controlled both sides of the

1 transaction. There was a unity of interest. The  
2 transaction ran exactly the way Mr. Mitchell and Mr.  
3 Liberman wanted to. And it worked. And to recognize the  
4 separate identity of Casino Coolidge would operate as a  
5 fraud and an injustice to Mr. Nype.

6           So, we would urge that the Court sustain the  
7 numerous findings and remember the evidence that we  
8 presented, including evidence of checks from Casino  
9 Coolidge to Mr. Marquis that were for other purposes, other  
10 entities. That's Exhibit 80004. And, then, their own bank  
11 records show money regularly coming in and out, to and from  
12 Mr. Liberman. I believe that was Exhibit 27. But it's  
13 very close to that number.

14           THE COURT: Thank you.

15           MR. MUIJE: Anyway, thank you, Your Honor.

16           THE COURT: Anything else, Mr. Blut?

17           MR. BLUT: Briefly, Your Honor.

18           THE COURT: And I don't really care today that  
19 there were subsequent transactions --

20           MR. BLUT: Oh, yeah.

21           THE COURT: -- because that doesn't impact today's  
22 Motion.

23           MR. BLUT: Sure.

24           THE COURT: It might impact the stay issues that  
25 Mr. Edwards and Mr. Johnson are going to talk about, even

1    though it's a piece of property.

2               MR. BLUT:   Sure.  And, also, just the whole  
3   argument on that is that the property was free and clear.  
4   That's just a false statement to the Court since the  
5   closing statement shows that Mr. Liberman inherited a  
6   \$500,000 lien.  So, I'm just -- can all be taken with a  
7   grain of salt.

8               I think the key is, Your Honor, that plaintiffs  
9   can still not point to any evidence.  And that's the key.  
10   Any facts or evidence.  He can say there's all this fraud.  
11   That's not true that the buyer controls where the seller's  
12   proceeds go.  That's also false.

13              THE COURT:  Even when the buyer is the same as the  
14   seller?

15              MR. BLUT:  Well, not the -- not the Casino  
16   Coolidge.  But the key is that, Your Honor, is that the  
17   Court has found two things:  One, plaintiff has not  
18   established that, given market conditions at the time, that  
19   Mitchell and Liberman sold Leah Property without obtaining  
20   reasonable equivalent value of exchange.  So, they're out  
21   on that.  And the Court has specifically found the  
22   Conclusion of Law that the fraudulent -- Mr. Muije just  
23   admitted to it, is that the money by the individuals went  
24   out to the individuals and not to the company itself.

25              And the key is this was a property that was listed

1 by a broker. A broker received a fee for the transaction.  
2 The only testimony was that this was the highest and best  
3 price. And, I think, what it comes down to is Las Vegas  
4 Land Partners had nothing to do with Casino Coolidge.  
5 That's the fact. That's the bootstrap that plaintiff can't  
6 make. And we believe the Court should, in essence, drop  
7 Casino Coolidge from the Judgment in this action.

8 THE COURT: Thank you. There's substantial  
9 evidence that this is a related entity and there is a unity  
10 of interest with Mr. Barnet. Mr. Liberman were behind all  
11 of the related entities. For that reason, the Motion is  
12 denied.

13 If I could go to the Motion by Mr. Mike. I mean,  
14 sorry. Mr. Mitchell. Mr. Johnson, it's your Motion to  
15 Amend.

16 MR. JOHNSON: Yes.

17 THE COURT: I did not award any damages for mental  
18 anguish. So, anything in the briefs that people are making  
19 that assumption, there is no damages for mental anguish in  
20 there.

21 MR. JOHNSON: Yes.

22 THE COURT: There are damages related to attorney  
23 fees, expenses, costs, and litigation, but not mental  
24 anguish.

25 MR. JOHNSON: Yes.

1           Your Honor, the main thrust I'll spend a little  
2 bit of time on, I mean, we've gone through a lot of the  
3 factors in our Motion. But I want to focus in on the civil  
4 conspiracy issue in particular. And the case that we  
5 cited, *Eikelberger versus Tolotti*, 96 Nevada 525 1980, I  
6 think is a key case in this matter. In this case, there  
7 was an alleged conspiracy between Tolotti and his attorney,  
8 Richard Horton, and the jury found for Eikelberger. But  
9 the Court granted a Judgment NOV Motion despite that, based  
10 on a number of factors.

11           And when the Court granted it, the Court indicated  
12 that it was necessary -- in granting the Judgment NOV, it  
13 stated that:

14           It is necessary for the act in furtherance of a  
15 conspiracy to constitute an actionable tort.

16           And the Court further referred to the Jury  
17 Instructions and so did the Supreme Court. The Jury  
18 Instructions stated:

19           The cause of action is not created by the  
20 conspiracy but by the wrongful act done by the  
21 defendants.

22           And the Supreme Court specifically mentioned that  
23 this is in line with *Carlton versus Manuel*, which was the  
24 original 1949 case where kind of civil conspiracy was born.  
25 And the standard definition that we always use for defining

1 civil conspiracy came directly from that case. So, the  
2 Supreme Court is saying what the District Court did in  
3 granting the Motion is in line with the definition of what  
4 a civil conspiracy requires.

5           And this has been carried out in a number of other  
6 cases. *Eikelberger* has been cited at least 30 times for  
7 the premise in Federal Court, in the Ninth Circuit, in  
8 State Court, for the premise that the underlying act has to  
9 be a viable -- has to stay a viable cause of action for a  
10 tort or some other action. Ninety-nine percent of the  
11 time, it is a tort because that's always usually the basis  
12 for some sort of fraud, some sort of action that is meant  
13 to hurt the party, and that type of thing. But there has  
14 to be a viable underlying cause of action.

15           And we cited the Court's own conclusion. And this  
16 is Conclusion of Law Number 21:

17           Plaintiff has not established by a preponderance  
18 of the evidence the elements of civil conspiracy,  
19 separate and apart from the distribution and  
20 fabrication of evidence.

21           THE COURT: Yeah.

22           MR. JOHNSON: Correct. Now, what's important,  
23 though, --

24           THE COURT: But that was a pretty big one, Mr.  
25 Johnson.



1 MR. JOHNSON: It certainly is. But --

2 THE COURT: And it seemed to be hotly contested  
3 until post-trial.

4 MR. JOHNSON: Well, but, it's important -- well,  
5 *Eikelberger*, and it's right on point, is *Eikelberger* found  
6 that the action of the attorney, which was a false  
7 statement, --

8 THE COURT: This wasn't the action of the  
9 attorney, I sure hope.

10 MR. JOHNSON: Pardon?

11 THE COURT: These -- the evidence before me was  
12 not that this was the action of the attorneys.

13 MR. JOHNSON: No. And I -- obviously --

14 THE COURT: This was the plotting of the parties  
15 to further conceal and obfuscate.

16 MR. JOHNSON: Sure. And I'm not arguing that it  
17 was attorneys. Obviously, we --

18 THE COURT: I know you guys weren't involved.

19 MR. JOHNSON: No, no, no.

20 THE COURT: Okay.

21 MR. JOHNSON: But what the *Eikelberger* case is  
22 about, Your Honor, is the conspiracy. The conspiracy was  
23 supposedly based upon the false affidavit. And what the  
24 Court said is either submitting false evidence or perjury  
25 cannot be a civil action, can not be a civil cause of

1 action. There's not civil liability for that.

2 And there's a good public policy reason for that,  
3 Your Honor, because in every case that's tried, if one  
4 party or the other said there was some false testimony or  
5 there was a document that was wrong or fabricated, that  
6 would start a new lawsuit. Okay.

7 THE COURT: No, no. In Mr. Peek's world, it's  
8 called a discovery tort and you have a 12-day evidentiary  
9 hearing.

10 MR. JOHNSON: Well, and -- then that's where those  
11 types of things are dealt with, Your Honor. But they don't  
12 create a --

13 THE COURT: Well, we did deal with it partly in  
14 this case. But the truth didn't seem to come out until I  
15 got to trial.

16 MR. JOHNSON: And I understand the Court's  
17 thinking on that.

18 THE COURT: Yeah.

19 MR. JOHNSON: But, what I'm saying, though, and  
20 *Eikelberger* is very clear, is that that cannot form the  
21 underlying civil action that is the basis for civil  
22 conspiracy. That's exactly what *Eikelberger* holds. And  
23 it's been affirmed and cited numerous times.

24 And I'm sure Court's familiar with all of the  
25 homeowner cases where they allege fraud, and this, and

1 that, --

2 THE COURT: Robo-signing. Yes.

3 MR. JOHNSON: -- and civil conspiracy. And when  
4 the courts have ruled on those different causes of action,  
5 they said, okay, we've dismissed these causes of action,  
6 therefore, your civil conspiracy cause of action is also  
7 dismissed, because there must be a viable, underlying civil  
8 cause of action. And, based on *Eikelberger*, we don't have  
9 that. The -- well, whatever was done with the evidence  
10 does not constitute the underlying basis for civil action.  
11 Now, that leaves the distributions, which is what the Court  
12 indicated in its finding.

13 Now, we go -- when we look at the distributions,  
14 we're looking at the distributions that really occurred in  
15 2007 and 2008, which amounted to be over \$15 million in  
16 distributions. Now, again, what is the underlying cause of  
17 action for those distributions? Normally, it would be a  
18 fraudulent conveyance action. I don't know what else you  
19 can call it. If you do a -- if you do a civil -- I mean,  
20 if you do a distribution from an LLC to the members based  
21 upon the fact that there are excess assets, or excess cash,  
22 or excess distributions available, that by itself is not a  
23 cause of action. It would have to be based upon something  
24 related to that, which would, again, normally be a  
25 fraudulent conveyance. Nevada really doesn't have a common

1 law action for that -- for a distribution in that regard  
2 because it falls under fraudulent conveyances.

3 As the Court indicated, those early fraudulent  
4 conveyances were barred by the statute of limitations. So,  
5 therefore, the distributions that the Court's referring to,  
6 the 15 -- over \$15 million, --

7 THE COURT: Not barred by civil conspiracy.

8 MR. JOHNSON: Well, again, but that would have to  
9 be the underlying civil causes of action.

10 THE COURT: I understand.

11 MR. JOHNSON: And the underlying civil cause of  
12 action, I think, is barred by the statute of limitations,  
13 which the Court found. The Court found that those early  
14 conveyances were barred by the statute of limitations.

15 THE COURT: Because of the discovery of the  
16 underlying litigation.

17 MR. JOHNSON: Pardon?

18 THE COURT: Because of the discovery that occurred  
19 in the underlying litigation, before it came to me.

20 MR. JOHNSON: Correct.

21 THE COURT: Yeah.

22 MR. JOHNSON: Correct. Correct. And that's what

23 --

24 THE COURT: I got that part.

25 MR. JOHNSON: And that's what the Court found.

1 THE COURT: I understand your issue on that. I  
2 agreed with you on that.

3 MR. JOHNSON: Okay.

4 THE COURT: I just don't agree with you on the  
5 civil conspiracy. But that's okay. You can keep talking.

6 MR. JOHNSON: All right.

7 THE COURT: Because, in a minute, you guys are  
8 going to run out of time and I'm going to decide the rest  
9 of the motions without hearing from anyone else.

10 MR. JOHNSON: All right. Well, let me just --  
11 I'll quickly try to get to the point, then. The same  
12 thing, Your Honor --

13 THE COURT: You've got two minutes left --

14 MR. JOHNSON: How much?

15 THE COURT: -- for your side. Two minutes.

16 MR. JOHNSON: Two minutes?

17 THE COURT: You're down to two minutes.

18 MR. JOHNSON: Mr. Blut counts against us?

19 THE COURT: He does. Even though you withdrew  
20 your Joinder.

21 MR. JOHNSON: Okay. Well, let me just mention a  
22 couple of things, then, that probably are still important.

23 They relied heavily on the *Cadle versus Woods*  
24 *Erickson* case, Your Honor. And I think that was even your  
25 case.

1 THE COURT: Yes.

2 MR. JOHNSON: But that was a case about non-  
3 transferees. That does not stand for the proposition --

4 THE COURT: It was a very different case.

5 MR. JOHNSON: Yes. And it doesn't stand for the  
6 proposition, although they quote it for that, that that was  
7 a -- that was a -- that civil conspiracy is a separate  
8 cause of action. It has to be related to the underlying --

9 THE COURT: No. It's dicta.

10 MR. JOHNSON: Correct. Exactly. It has to be  
11 related to the underlying cause of action. And even the  
12 restatement of torts is clear. It says:

13 Proof of agreement alone is not a sufficient cause  
14 of action. However, it is essential that the conduct  
15 of each tortfeasor be in itself tortious.

16 So, that's what I'm really arguing here, Your  
17 Honor. Based upon the Court's findings that it was either  
18 the distribution or the wrongful introduction of evidence  
19 was the basis for the civil conspiracy. But, under  
20 *Eikelberger*, it can't be the introduction of the documents  
21 or whatever it was, the bad evidence, or -- and it can't be  
22 the distributions because of the statute of fraud. There's  
23 got to be an underlying civil action. I don't know what  
24 that is other than fraudulent conveyance, Your Honor.

25 THE COURT: All right.

1 MR. JOHNSON: So, that's the gist of the argument.

2 THE COURT: Thanks. Mr. Johnson. Mr. Muije, you  
3 have three minutes -- four minutes left.

4 MR. MUIJE: Very good, Your Honor. I don't think  
5 it will take that long.

6 First and foremost, the two subsequent motions  
7 sought to amend are untimely. It's a jurisdictional Rule  
8 52 and 59, provides for 28 days. The Court's Findings of  
9 Fact and Conclusions of Law and all the substantive matter  
10 underlying those was entered on January 16<sup>th</sup>. The deadline  
11 to file Motions to Alter or Amend was February -- January  
12 16<sup>th</sup>. I'm misspoke, Your Honor. The deadline was February  
13 13<sup>th</sup>. Both Mr. Liberman's Motion, as well as Mr. Mitchell's  
14 Motion, were not filed until the 14<sup>th</sup>, they're one day late.  
15 So, in reality, the case law -- and we've cited it in our  
16 brief, says you don't have jurisdiction to entertain those  
17 kind of motions. But, again, and if the Court were  
18 inclined to view this another way, I would point out that  
19 the only difference in the amended findings was a footnote  
20 dealing with the *Brunzell* factors.

21 But let's get to the meat of it. Mr. Johnson  
22 hammers it: Gee, it's got to be one or the other, this  
23 fabrication evidence, concealment of evidence. He forgets  
24 the long, tortured history behind the Motion to Compel.  
25 Part of the conspiracy was we're not going to produce

1 documents until we absolutely, positively have to. Exhibit  
2 50042 was a memo between Mitchell and his California  
3 attorneys saying, yeah, can -- let's keep delaying this,  
4 let's keep aggravating Nype, let's stretch it out and wear  
5 him down. If that doesn't show the state of mind to -- and  
6 I quote from -- and this is from the *Cadle* case: An  
7 unlawful objective. It does not necessarily have to be a  
8 tort. Their unlawful objective was let's make it  
9 expensive, let's make it time consuming, let's wear them  
10 out, let's not give them the discovery, which the Court  
11 rules require. So, that, in and of itself is ample basis  
12 for the civil conspiracy.

13 But the findings of -- the facts that the Court  
14 did find show numerous additional torts that did occur,  
15 resulting in Mr. Nype's damages. We have abuse of process.  
16 You know, falsifying records in litigation can constitute  
17 an abusive process. That's a tort. We have spoliation of  
18 evidence, which occurred in New Jersey, where it is a tort.  
19 We cited a New Jersey case law that spoliation of evidence  
20 is a tort.

21 And we also have breach of the implied covenant of  
22 good faith and fair dealing. There are numerous tort, as  
23 well as unlawful objectives, unlawful conduct, in  
24 furtherance of this conspiracy. The record -- Mr. Johnson  
25 wants to cherry pick one or two items, the record is



1 replete with the less than good intentions, the less than  
2 good conduct of both Mr. Mitchell and Mr. Liberman. We  
3 even see it now that Mr. Liberman's not running around  
4 encumbering all of his assets so that he can avoid the  
5 creditor. It's just part of the same --

6 THE COURT: I'm not considering that as part of  
7 the Motion to Alter or Amend.

8 MR. MUIJE: I understand.

9 THE COURT: That may be part of the bond if you  
10 have time left.

11 MR. MUIJE: Very good.

12 THE COURT: Keep going.

13 MR. MUIJE: In any event, Judge, the Court had  
14 seven days of trial, made substantial findings, they aptly  
15 support the rulings that the Court made, and we would urge  
16 that the Mitchell and Liberman Motions to Amend both be  
17 denied.

18 THE COURT: You're up.

19 MR. JOHNSON: We only have, what, two minutes?

20 THE COURT: Less than that. You're a minute  
21 something.

22 MR. JOHNSON: Okay.

23 THE COURT: I don't know how to work her calendar  
24 -- her timer. So, I'm just going to look on my timer here.

25 MR. JOHNSON: Okay.

1           THE COURT: When we get to 9:52 I'm telling you to  
2 sit down.

3           MR. JOHNSON: Okay. And one of the key things  
4 here is this is an action against a transferee. What the  
5 Court found would squarely fall under NRS 112.220, subpart  
6 2, which is the part of the statute that deals with actions  
7 against transferees. The -- because this isn't a finding  
8 against LVLP, this is a finding against the transferees.

9           And the other issue, Your Honor, is the damages.  
10 The damages should be limited to what the damage was  
11 incurred by Mr. Nype, which would be the amount of his  
12 Judgment. We think it is error for the Court to indicate  
13 that the amount of damages would be the \$15 million in  
14 distributions, plus the attorneys' fees that were awarded,  
15 which we have a separate argument for in our brief, and,  
16 then, of course, the fraudulent conveyance that the Court  
17 did find with Casino Coolidge.

18           But, Your Honor, the measure of damages should be  
19 the amount of the Judgment plus interest, and if the Court  
20 feels it has made the correct finding with the attorneys'  
21 fees, but is certainly the damages should not be the \$15  
22 million in distributions for two reasons: One, that's just  
23 the wrong measure of damages. Under 220, it has to be  
24 either the amount of the transferred property or the  
25 underlying claim. And that's the measure of damages, Your

1 Honor.

2 THE COURT: Thank you. The Motion -- do you have  
3 anything? I'll give you a minute.

4 MR. BLUT: One minute's plenty, Your Honor,  
5 because my Motion is very similar.

6 THE COURT: Yes.

7 MR. BLUT: I'll go fast.

8 THE COURT: Like, almost identical similar.

9 MR. BLUT: Well, sure. It's the same issues.  
10 Just to hit on a couple points, Your Honor, is  
11 that the conspiracy, if there's two parts, there's the  
12 evidence issue, and that, by the Court's findings is only  
13 as to Mr. Mitchell, not as to Mr. Liberman. The Court made  
14 specific findings. And, also, if the other is the  
15 distributions, Exhibit 90,000 -- 90079 at trial showed that  
16 Mr. Rich, plaintiffs' expert, was aware in August of 2011  
17 of the distributions that had been made. So, even under  
18 the four-year generous statute that's being asserted now,  
19 under NRS 11 for the civil conspiracy, the plaintiff was  
20 aware of those transfers more than five years prior to the  
21 case was filed. And, then, that would have the conspiracy  
22 claim time barred on those issues.

23 THE COURT: Thank you.

24 MR. BLUT: Thank you. There is substantial  
25 evidence of an unlawful activity by the parties, which

1 supports the civil conspiracy claim. The fraudulent  
2 activities related to the accounting and financial records,  
3 which were the heart of the issues on the alter ego and  
4 related entity, is sufficient to support any award. In  
5 this particular case, I have ensured there is no  
6 duplication of damages. And I have tried to identify that  
7 both the fraudulent conveyance claim and the transfers are  
8 included in the \$19 million on the Judgment. That doesn't  
9 include the attorneys' fees and litigation expenses. I  
10 anticipate I will hear more of, given what I did hear at  
11 the prior evidentiary hearing on the discovery torts.  
12 That's why I added the *Brunzell* factors.

13           So, that takes me -- you're both out of time. I'm  
14 going to take you to the Motion to Stay but I am going to  
15 let you tell me if you have a bond amount you want to give  
16 me because I'm not going to give you a stay without a bond.

17           MR. JOHNSON: Your Honor, given the Court's  
18 ruling, we didn't know, you know, exactly what the amount  
19 of the bond would be, anticipating it would be in that  
20 range of 19 million, though. They're in the process of  
21 applying for the bond. They're also in process of having  
22 the RTC property appraised because that may be part of the  
23 offer for collateral is the interest in the RTC property.  
24 So, that's why we need the additional time. And we would  
25 ask the Court extend the stay for 30 days so that we can

1 finish getting a bond and/or combining it with the RTC  
2 property.

3 THE COURT: Okay. Mr. Muije, now you can tell me  
4 about the post-trial and immediately during trial  
5 transactions.

6 MR. MUIJE: Very good, Your Honor.

7 THE COURT: Quickly.

8 MR. MUIJE: Not only do we have the two that here  
9 -- occurred here --

10 THE COURT: You have two minutes.

11 MR. MUIJE: Two minutes.

12 THE COURT: Because you're out of time.

13 MR. MUIJE: Not only do we have the two immediate  
14 transactions on the Casino Coolidge property, almost a  
15 million dollars in new debt, but one week before trial --  
16 and I would mark this Proposed Exhibit 3 for the hearing,  
17 Your Honor.

18 THE COURT: Okay.

19 MR. MUIJE: We have a \$2.1 million mortgage  
20 extended or recorded against Mr. Liberman's residence in  
21 New York in favor of a New York City attorney, not a  
22 finance --

23 THE COURT: So, I'm going to admit 1, 2, and 3  
24 because this issue now deals with a bond, not the  
25 substantive issues on the alter and amend. Okay. Keep

1 going.

2 MR. MUIJE: And, again, from my own personal  
3 experience, money may or may not have changed hands. We'll  
4 need discovery to determine it. But we will not be able to  
5 sell those at a sheriff's sale on the issue of marketable  
6 title, given \$3 million in brand new encumbrances that  
7 occurred within 30 days of the trial. And, as I noted on  
8 Casino Coolidge, --

9 THE COURT: So, you want a full amount of the  
10 bond? Okay.

11 MR. MUIJE: We want \$25 million, Your Honor.

12 THE COURT: All right. Thank you.

13 MR. MUIJE: Very good.

14 THE COURT: Mr. Johnson, you said you need some  
15 more time to post the bond. We've already had over 30 days  
16 since I entered the Judgment. Why do you need more time?

17 MR. JOHNSON: Well, it is a substantial amount of  
18 money. And there's the issue, of course, of what  
19 collateral would have to be posted to support the bond.  
20 And, so, that's part of the process. It does take time to  
21 -- underwriters have to look at it. And, again, we're  
22 getting the appraisal on the RTC property.

23 THE COURT: Okay.

24 MR. JOHNSON: And that -- we expect to get that in  
25 maybe a week or 10 days.

1           THE COURT: Because of the additional encumbrances  
2 that have occurred on the properties, I am going to deny  
3 the request for any additional stay and require a bond for  
4 stay of execution on appeal of \$25 million.

5           So, that takes me to the Motion to Tax Costs. I  
6 have read your briefing. I am going to reduce the  
7 litigation services request to 32,700. The remainder is  
8 not related to a recoverable cost. And I'm also going to  
9 retax the monthly service fee to Legal Wings.

10           Anything else anybody wants to say? Great. And,  
11 then, I think we've covered everything. All right. Bye,  
12 guys.

13           MR. EDWARDS: So, you're going to award the  
14 attorneys' fees?

15           MR. MUIJE: That wasn't on the calendar.

16           THE COURT: I don't have attorneys' fees on today.  
17 That's on March 13<sup>th</sup>, on my chambers calendar. I'm going to  
18 read it. I'm going to remember all the testimony I've had  
19 about the *Brunzell* factors before. And, then, I'm going to  
20 decide if I want to talk to you.

21           MR. EDWARDS: Okay.

22           THE COURT: There was a status check on an  
23 evidentiary hearing on March 16<sup>th</sup>, Dulce, and I believe  
24 that's on in error and belongs to another case. There's  
25 another motion that is the Plaintiffs' Motion to Amend

1 that's on March 20<sup>th</sup>. I'm probably going to put the 13<sup>th</sup> and  
2 the 20<sup>th</sup> hearing on, on a different day.

3 MR. EDWARDS: Okay.

4 MR. MUIJE: Your Honor, just so the Court is  
5 aware, if the Court does require a live hearing, I will be  
6 out of the country between the 13<sup>th</sup> and the 24<sup>th</sup>. So, --

7 THE COURT: I'll make sure I'll set it when you  
8 get back.

9 MR. MUIJE: Very good, Judge.

10 THE COURT: All right. Bye.

11

12 PROCEEDING CONCLUDED AT 9:58 A.M.

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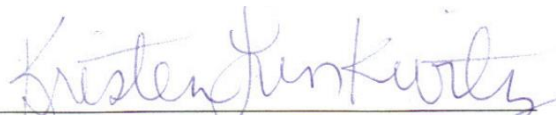
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**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER

LVLP Holdings LLC – Barnet Liberman (50%) David Mitchell (50%)

Las Vegas Land Partners LLC

Aaron Property LLC (inactive)

Aquarius Owner LLC (formerly Ava Property LLC)

Charleston Casino Partners LLC

Gaviayana Company LLC (inactive)

Las Vegas Bonneville Partners LLC (inactive)

Leah Property LLC

LiveWork Manager LLC  
LiveWork LLC

Marc Property LLC (inactive)

Meyer Property LLC

Stella Property LLC (inactive)

Wink One LLC

Zoe Property LLC (inactive)

305LV20156

MSJOPP000299

**1-0001**  
**Case No.: A-16-740689-B**

AA 2457

## **CERTIFICATE OF LAS VEGAS LAND PARTNERS, LLC**

The undersigned David J. Mitchell and Barnet L. Liberman, both individually and as the Managing Members of Las Vegas Land Partners, LLC, a Delaware limited liability company (the “**Company**”), the sole member of LiveWork Manager, LLC, a Delaware limited liability company (the “**LiveWork Manager**”), the sole member of LiveWork, LLC, a Delaware limited liability company (“**LiveWork**”), do hereby certify as follows:


1. Attached hereto as Exhibits A, B, and C, respectively, are true, correct and complete copies of the Certificate of Formation, Operating Agreement and Certificate of Good Standing, of the Company, each of which is in full force and effect on the date hereof. Attached hereto as Exhibit D is a true and complete copy of the resolutions of the Managing Members of the Company, relating to (i) the authorization of the sale by Livework of an undivided sixty percent (60%) tenancy-in-common interest in certain premises located in Las Vegas, Nevada more fully described in the resolutions and (ii) the loan from Keybank National Association, to Livework, FC Vegas 20 LLC, a Nevada limited liability company, and FC Vegas 39 LLC, a Nevada limited liability company (together with Livework, collectively, the “**Borrower**”) in the principal amount of up to \$116,400,000.00 (the “**Loan**”), which Loan may be secured by a deed of trust covering the Property and by other assets of the Borrower.
2. Attached hereto as Exhibit E is a list of all of the officers of the Company; the signatures set forth opposite their respective names are their genuine signatures; and said officers are, on the date hereof, duly elected officers of the Company, holding the offices set forth opposite their respective names:

[The Remainder of this Page is Intentionally Left Blank.]

IN WITNESS WHEREOF, the undersigned have executed this Certificate as of the \_\_\_\_ day of June, 2007 on behalf of themselves individually, and on behalf of the Company.



\_\_\_\_\_  
DAVID J. MITCHELL, individually, and as  
managing member of Las Vegas Land  
Partners, LLC



\_\_\_\_\_  
BARNETT L. LIBERMAN, individually, and  
as managing member of Las Vegas Land  
Partners, LLC

304775-1-W

Mitch0162899

**3-0002**

**Case No.: A-16-740689-B**

AA 2459

**EXHIBIT A**

Certificate of Formation

304775-1-W

Mitch0162900

**3-0003**

**Case No.: A-16-740689-B**

AA 2460

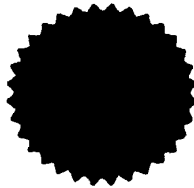
# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "LAS VEGAS LAND PARTNERS LLC", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF AUGUST, A.D. 2004, AT 12:46 O'CLOCK P.M.

3843407 8100  
040600796



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3299861

DATE: 08-17-04

Mitch0162901

3-0004

Case No.: A-16-740689-B

AA 2461

STATE OF DELAWARE  
CERTIFICATE OF FORMATION

OF

LAS VEGAS LAND PARTNERS LLC

FIRST: The name of the limited liability company is Las Vegas Land Partners LLC.

SECOND: The address of its registered office in the State of Delaware is Corporation Services Corporation, 2711 Centerville Road, Suite 400 Wilmington, Delaware, 19808. The name of its registered agent at such address is The Corporation Service Corporation.

THIRD: The limited liability company is to be managed by one or more members.

FOURTH: This Certificate shall be effective on the date of filing.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of Las Vegas Land Partners LLC this 16th day of August, 2004.

/s/ George N. Stavis  
George N. Stavis  
Organizer  
Estimote Katsky Korins & Siger, LLP  
605 Third Avenue  
New York, New York 10158

232117-1-W

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 12:54 PM 08/17/2004  
FILED 12:46 PM 08/17/2004  
SRV 040600796 - 3843407 FII

Mitch0162902

3-0005

Case No.: A-16-740689-B

AA 2462

**EXHIBIT B**

Operating Agreement

304775-1-W

Mitch0162903

**3-0006**

**Case No.: A-16-740689-B**

AA 2463



**AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
LAS VEGAS LAND PARTNERS LLC**

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this "Agreement"), of LAS VEGAS LAND PARTNERS LLC (the "Company"), dated as of December 15, 2004, is entered into by BARNET L. LIBERMAN ("Liberman"), DAVID J. MITCHELL ("Mitchell"), and any other Person (as hereafter defined) who is admitted as a Member of the Company from time to time in accordance with the terms of this Agreement.

WHEREAS, the parties to this Agreement previously entered into that certain Operating Agreement of the Company, dated as of August 17, 2004 (the "Original Agreement"); and

WHEREAS, the parties to this Agreement desire to make certain changes in the Original Agreement;

NOW, THEREFORE, the parties hereby completely amend and restate the Original Agreement and agree as follows:

**Certain Defined Terms.**

**Affiliate:** When used with reference to any Person, (i) any Person that, directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the specified Person (the term "control" for this purpose, shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, independently to select the managing partner of a partnership or the managers of a limited liability company, or otherwise to have the power independently to remove and then select a majority of those Persons exercising governing authority over an entity, and control shall be conclusively presumed in the case of the direct or indirect ownership of fifty (50%) percent or more of the equity interests); (ii) in the case of a Person that is an entity, a Principal of that Person, and (iii) in the case of a natural person, such Person's Family Members.

**Assignee:** A Person who has been assigned any Economic Rights in accordance with this Agreement and who has not been admitted as a Member of the Company.

**Contracts:** Those certain purchase and sale contracts for the purchase of real estate as described in greater detail in Schedule A attached hereto.

**Economic Rights:** The rights to receive distributions and allocations of profits and losses, or items of income, gain, loss and expense, as provided in this Agreement.

**Family Member:** The parents, spouse, children (including natural and adopted children and stepchildren), grandchildren and descendants of the designated natural person and the spouse of any such child, grandchild or other descendant.

**Managing Members:** Liberman and Mitchell or the successor in interest to Liberman's or Mitchell's rights to manage the Company under this Agreement, as permitted or effected pursuant to this Agreement.

**Members:** Liberman, Mitchell, any permitted successor or assign thereof who is admitted as a Member in accordance with Section 8 hereof, and any other Person who is admitted as a Member in accordance with this Agreement.

**Permitted Transferee:** As to any Member or Assignee,

(i) any Family Member of that Member or Assignee;

(ii) the executor, administrator, trustee or personal representative who succeeds to such Member's (or Assignee's) estate as a result of the Member's (or Assignee's) death and any transferee of such Member's (or Assignee's) Membership Interest or economic rights, as the case may be, from such Person;

(iii) a trust, guardianship or custodianship for the primary benefit of the any individuals described in (i) or (ii) or of the Member or Assignee and any such persons; and

(iv) any corporation, partnership, limited liability company or other business organization controlled by, and substantially all of the interests in which are owned directly or indirectly by, one or more individuals or entities described in (i), (ii), or (iii) above or by the Member or Assignee and one or more individuals or entities described in (i), (ii) or (iii) above; provided that with respect to an entity described in this clause (iv), the owners of substantially all of the interests therein execute an instrument reasonably satisfactory to the Members restricting transferability of the interests in such entity so that such interests may not be transferred to Persons other than Permitted Transferees.

**Person:** An individual, corporation, trust, association, unincorporated association, estate, partnership, joint venture, limited liability company or other legal entity, including a governmental entity.

**Principal:** A shareholder, partner, member, or other equity owner of an entity or, in the case of a trust, the grantor or any beneficiary of such trust.

**Transfer:** Any sale, assignment, pledge or grant of a security interest in, grant of an option to acquire, or other transfer.

**Unreturned Capital:** With respect to each Member, as of any date, an amount (but not less than zero) equal to the excess of (i) the aggregate amount of such Member's

capital contributions before such date, over (ii) the aggregate amount of cash heretofore distributed to such Member pursuant to Section 5(a)(ii).

1. **Formation.** The Company was formed as a Delaware limited liability company pursuant to the Delaware Limited Liability Company Act (as the same may be amended from time to time, the "Act"), by the filing of Articles of Organization with the Secretary of State of Delaware on August 17, 2004

2. **Purposes.** The purposes of the Company are to (a) acquire real estate in the greater Las Vegas, Nevada metropolitan area or options to acquire real estate, (b) hold for speculation to realize appreciation in value, (c) develop for various residential and commercial uses, including demolition of any existing improvements upon any of the properties, building residential units, office space and retail/restaurant space and various other commercial, recreation and open spaces, (d) sell, lease, maintain, manage, operate and otherwise dispose of and deal with any and all such properties or contracts to acquire such properties, (e) finance and refinance any and all of such activities and mortgage or otherwise encumber any of the properties in connection therewith, and (f) engage in any and all other activities and transactions permitted to a limited liability company under the Act.

3. **Contributions; Loans; Guarantees; Additional Members.**

(a) Initial Capital Contributions. As of the date of the Original Agreement, the parties contributed the amounts set forth on Exhibit A hereto. As of the date of this Agreement, the Members have contributed the property and/or cash identified in Exhibit A-1 attached hereto (the "Initial Contributions").

(b) Additional Capital Contributions. The Managing Members, acting by unanimous consent, may call for additional capital in excess of the Initial Contribution from all Members at any time on as needed basis by delivering a written notice thereof to the other Members specifying the amount of the call, each Member's pro rata share thereof (based on the Members' Percentage Interests), and specifying the purposes for which the capital is needed in reasonable detail (a "Capital Call"). Any contributions made pursuant to Capital Calls shall be made within 10 business days after the Managing Member issuing the call delivers a written demand to the other Members that an additional contribution be made pursuant to this Section 3(b). The Managing Members may permit contributions of property to be made to the Company. Any contribution of property shall be valued at its fair market value at the time of contribution, as agreed to by the contributing Member and the Managing Members. Additional contributions made by the Members shall be reflected on an amendment to Exhibit A, indicating the effective date of the contribution, and successively designated A-1, A-2, etc.

(c) Default on Additional Capital Contributions. To the extent that any Member (a "Defaulting Member") shall fail to contribute all or any portion of his share of any capital required pursuant to Section 3(b) within 10 business days after the date due (a "Defaulted Contribution"), the Members who have contributed all of their portion of the capital ("Non-Defaulting Members") shall have the right to take any or all of the following actions, or any combination thereof: (i) cause the Company to bring suit to enforce the Defaulting Member's

obligation under Section 3(b), or (ii) make a "Default Loan" as provided in this Section 3(c). The Non-Defaulting Members shall have the right, but not the obligation, to contribute all or any portion of the amount of the Defaulted Contribution to the Company on behalf of the Defaulting Member and such transaction shall be treated as a loan from the Non-Defaulting Member to the Defaulting Member ("Default Loan"), who shall be deemed to have contributed the funds to the Company as a capital contribution. The Non-Defaulting Members shall have the right to each make the portion of the Default Loan in proportion to their relative Percentage Interests, but may make the loan in any other proportions that they agree upon. Default Loans shall be evidenced by a written note ("Default Loan Note"), shall bear interest at the rate of 6 percent over the prime rate then being charged by JP Morgan Chase Bank (New York) per annum, and shall be payable only out of the available cash flow of the Company otherwise distributable or payable by the Company to the Defaulting Member under this Agreement, provided, that the Defaulting Member shall be personally liable to the Non-Defaulting Members who advanced such funds for extent any amount that remains due and payable following liquidation of the Company. The Default Loan Note shall not be secured, and may be prepaid at any time by the Defaulting Member out of its personal funds. The Default Loan Note shall be signed by the Defaulting Member or by his attorney-in-fact. Each Member who executes this Agreement thereby grants an irrevocable power of attorney, coupled with an interest, to each other Member authorizing each other Member to execute and deliver, on his behalf, any Default Loan Note evidencing a Default Loan made by such other Member to him or it pursuant to this Section 3(c). Such power of attorney shall terminate only upon earlier of the complete liquidation of the Company or the complete withdrawal of the granting Member from the Company. Notwithstanding anything in this Agreement to the contrary, the Company shall pay or distribute any and all payments or distributions that it is required to make under or in accordance with this Agreement or any contractual arrangement with the Defaulting Member directly to the Member who made the Default Loan on behalf of the Defaulting Member until such loans are repaid in full, and for all purposes of this Agreement such distributions or payments shall be treated as having been made by the Company to the Defaulting Member and the Defaulting Member shall be deemed to have immediately transferred such distributions or payments to the Member who made the Default Loan as a payment thereon. Any transferee or assignee of all or any portion of a Defaulting Member's Membership Interest shall be subject *pari passu* to the obligation to repay Default Loans made to such Defaulting Member, until such loan is repaid in full as provided in this Section 3(c); provided, however, that the transferring Member shall remain primarily liable for repayment of such loan unless specifically released, in writing, by the Non-Defaulting Members in their sole and absolute discretion.

(d) No Other Capital Contribution Obligations. Except as expressly provided in this Agreement, a Member shall have no obligation to contribute capital to the Company.

(e) Loans. The Company shall not borrow money from third party lenders, from a Member or an Affiliate of a Member except on terms and conditions approved by the Managing Members. In the event that a Member or an Affiliate a Member provides any financing to the Company, the Members agree that the Company and the Members shall waive and shall be deemed to have waived:

- (i) any right to seek to have any such loan characterized as a capital contribution as opposed to a loan; and
- (ii) any claim, or defense in any action or proceeding seeking to enforce the note and any mortgage or security interest in Company assets related to the financing, that:
  - (A) enforcement of the mortgage or security interest constitutes a breach of fiduciary duty by the Member affiliated with the holder of the mortgage or security interest;
  - (B) the mortgage or security interest cannot be enforced by reason of the mismanagement of the Company by the Member affiliated with the holder of the mortgage or security interest;
  - (C) the mortgage or security interest is subordinate to the rights, claims or interests of the other Members; or
  - (D) the mortgage or security interest is invalid by reason of a merger of interests between the Company and the Affiliated lender.

(f) Admission of New Members. The Company shall not admit new Members or issue any additional membership interests in the Company to any other Person except upon terms and conditions which are approved by the Managing Members. The provisions of this Section 3(f) do not apply to admissions of transferees of all or any portion of membership interests as Members pursuant to Section 8 hereof.

(g) Percentage Interests; Contributions Reflected on Exhibit A. The "Percentage Interests" of Liberman and Mitchell are 50% each, and shall be set forth on Exhibit A hereto, and reflected in any amendments to that exhibit made from time to time. The initial capital contributions of such Members are reflected on Exhibit A hereto. Additional contributions and contributions made by new Members (if any) shall be reflected from time to time in an amendment to Exhibit A, designated successively as Exhibits A-1, A-2, and the like, specifying the date of the amendment and reflecting total capital contributions by all of the Members to such date.

(h) No Preemptive Rights. No Member shall have any preemptive rights to acquire an additional interest in the Company, and the Managing Members, in seeking additional capital or loans, shall have no obligation to offer the opportunity to any other Member or Affiliate or to all other Members, even if seeking additional capital or loans from any Member or Affiliate of any Member.

(i) No Interest on Capital; No Right to Demand Return of Capital. No Member shall receive any interest on any capital contribution to the Company. The preceding

limitation shall not be construed to prohibit interest on Default Loans as provided in Section 3(c). No Member shall have the right to demand a return of his contributions or the right to demand to receive property other than cash for his membership interest.

4. **Allocations.** Profits and losses shall be allocated as provided in Exhibit B hereto.

5. **Distributions.**

(a) Manner of Distributions. Except as provided in Section 10 (relating to distributions following a dissolution of the Company), all distributions of cash shall be made in such amounts and at such times as the Managing Members shall determine. When made, except as provided in Section 10, all distributions to the Members shall be made as follows:

(i) First, to the Members, pro rata, in proportion to the outstanding balances of their respective Unreturned Capital, until the Unreturned Capital of all the Members is reduced to zero; and

(ii) Thereafter, to the Members in accordance with their Percentage Interests.

(b) Permitted Advances of Distributions. No Member may make draws upon his right to distributions from the Company and the Company shall not make advances or loans to any Member, except upon the approval of both of the Managing Members, in their sole and absolute discretion. However, notwithstanding the foregoing, during each calendar year, the Managing Members may, in their sole discretion, advance funds to the Members out of amounts expected to be distributed to them pursuant to Section 5(a) for or with respect to such calendar year, at such times and in such amounts as individual Members require funds in order to pay estimated taxes. Such distributions shall be treated as advances recoverable from future distributions from the Company and, to the extent such advances to a Member exceed the distributions to which the Member is entitled under Section 5(a) for the calendar year and have not been recovered from any other distributions, such advances shall be repaid by the Member to the Company within 105 days after the end of the calendar year.

(c) Withholding Taxes. In the event that the Company is required to deposit or pay any tax on behalf of a Member with respect to the taxable income of the Company allocable to such Member for any calendar year, such deposit or payment shall be treated as an advance recoverable from future distributions of cash to the Member. To the extent that such advances to a Member for a calendar year exceed the cash distributable to the Member for such year, and have not been recovered from any other distributions of cash, such advances shall be repaid by the Member to the Company within 105 days of the end of the calendar year.

6. **Management.**

(a) General. Except as otherwise expressly provided in this Agreement, the full powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed solely under the direction of, the Managing Members

acting by unanimous consent unless otherwise specified in this Agreement or unless and except to the extent otherwise authorized by them, in writing, pursuant to a written resolution or other written instrument executed by the Managing Members. Except as otherwise expressly provided in this Agreement, no approval or consent of any Member other than the Managing Members shall be required to make or implement any decisions affecting the Company, its assets or affairs, unless the Act specifically requires approval by the Members for any Managing Member's act and such requirement is not waivable under the Act. No Members other than the Managing Members shall execute agreements, contracts, deeds or other instruments or otherwise represent or act as an agent of or for the Company or have power to bind the Company, but all such representation of the Company and acts binding the Company shall be effected solely by the Managing Members except as otherwise expressly provided in this Agreement. The Managing Members may from time to time appoint and/or hire one or more persons (including but not limited to one of them) to act as officers of the Company or otherwise to manage the Company's day-to-day affairs, who shall have such titles, management powers and responsibilities as the Managing Members shall designate and determine, subject, however, to the management oversight of the Managing Members, and may designate such persons as "President," "Vice-President," "Secretary" or "Treasurer" or similar titles as customarily applicable with respect to their assigned duties. Persons appointed and/or hired or employed as such executive officers shall have the power, duties and responsibilities customarily attaching to their titular positions, or as otherwise specified or directed by the Managing Members. The Managing Members shall determine the terms and conditions of any such employment, subject, however, to Section 6(c) hereof.

(b) Compensation and Reimbursement of Members. No Member shall be paid or receive any fees, salaries or other compensation for the performance of its management responsibilities under this Agreement or be reimbursed for any personnel or overhead costs. A Managing Member shall be promptly reimbursed for any out-of-pocket expenses it pays or incurs to unrelated third parties in connection with the performance of its responsibilities under this Agreement if and to the extent such expenses are approved by the other Managing Member in its sole but reasonable discretion (which approval may be sought, given or obtained either before or after the expenses are paid or incurred. The Managing Member paying or incurring such expenses shall deliver copies of invoices or other written evidence of the charges to the Company. Each Managing Members shall act promptly in considering and responding to any request by the other Managing Member for reimbursement of expenses made hereunder.

(c) Dealing with Affiliates. When and to the extent otherwise applicable by their terms, the Managing Members may employ a Member, an Affiliate of a Member (including an Affiliate of itself), or a Principal of an Affiliate to render or perform a service for the Company or contract to buy property from, or sell property to, any such Member, Affiliate or Principal, or otherwise deal with any such Member, Affiliate or Principal, including but not limited to obtaining capital contributions or loans therefrom; provided, however, that any such transaction shall be on terms that are fair and equitable to the Company and no less favorable to the Company than the terms, if any, available from similarly qualified unrelated Persons.

(d) Books and Records. The Managing Members shall keep true and correct books of account with respect to the operations of the Company at such place(s) as they shall

determine. Any Member shall have the right to examine, or have its duly authorized representatives examine, the books and records of the Company at any reasonable time on at least two business days' advance notice.

(e) Banking. All funds of the Company shall be deposited in the Company's name at such banks or other financial institution and in such account or accounts in the name of the Company as the Managing Members shall designate. The funds in all Company accounts shall be used solely for the business of the Company. Withdrawals from, or checks drawn upon, such accounts shall require the signature of such person or persons as are designated by the Managing Members from time to time. Company bank statements will be sent directly to the Managing Members, but copies will be provided to any other Member upon request.

(f) Reports; No Annual Meeting Required. The Managing Members shall prepare and distribute to the Members annual compiled and quarterly compiled financial statements of the Company. The Company may, but is under no obligation to, hold any annual meeting of Members.

(g) Time; Other Interests. Each Managing Member shall devote such time as is appropriate to fulfill its responsibilities hereunder, and no Managing Member shall be required to devote all of its business time and energies to the Company. Each Member may engage in other business, charitable or civic activities, for compensation or otherwise, and may engage or hold interests in other business ventures of every kind and for his own account, regardless of whether it has an interest in or acts as a manager or consultant for business ventures that are in competition with the business of the Company, and no Member shall have any obligation to offer any business opportunities to the Company or any other Member, regardless of whether or not they compete with the business of the Company.

(h) Limitations on Power of All Members. Except as expressly set forth in this Agreement, no Member shall, directly or indirectly, in his capacity as a Member, (i) withdraw from the Company or require the Company to purchase his membership interest, (ii) dissolve, terminate or liquidate the Company, (iii) petition a court for the dissolution, termination or liquidation of the Company, or (iv) cause any property of the Company to be subject to the authority of any court, trustee or receiver (including suits for partition and bankruptcy, insolvency and similar proceedings).

(j) Confidentiality; Press Releases. Each Member agrees that at all times (including after the disassociation of the Member with the Company), the Member will keep the terms of this Agreement and the activities and plans of the Company, including but not limited to purchase plans, the terms of property purchase agreements, rezoning and development plans, the terms of financing or construction or other contracts, the financial condition of the Company, and any information it obtains about any the other Members, in strict confidence, and not disclose such information to any Person. The foregoing obligation shall not apply to any information (i) which has become publicly known and made generally available through no wrongful act of the Member or of others who were under confidentiality obligations as to the item or items involved, or (ii) the Member can demonstrate was known to him prior to his association as a member of the Company, or (iii) was received by the Member from a third party not affiliated with the



Company without any violation of any obligation of confidentiality and without confidentiality restrictions, or (iv) which the Member is required to provide by law or judicial process, provided, however, that the Member shall advise the Company of his obligation to provide the information promptly upon obtaining notice of the request or order for such information and provide the Company a reasonable amount of time to respond to the request before disclosing such information. Notwithstanding the foregoing, the Managing Members may disclose any and all information concerning the Company's properties and contracts, the Company and its activities and affairs to prospective investors, lenders and purchasers and their respective attorneys and consultants. No Member shall issue any press release or announcement, or make any statement to the press about any of the Company's properties, the Company, or the Company's activities or affairs unless such release, announcement or statement is approved by the Managing Members, which approval shall not be unreasonably withheld or conditioned.

(j) Qualifications, Tenure and Removal of Managing Member. The Company shall not have more than two Managing Members. The initial Managing Members shall be Liberman and Mitchell. Each Managing Member shall hold office until his death, adjudication of incompetence, or resignation in accordance with Section 6(k) or removal in accordance with this Section 6(j). A vacancy in the position of Managing Member occurring by reason of death or adjudication of incompetence of a Managing Member shall be filled by the designation of legal representative of the deceased Managing Member's estate or the legal representative of the incompetent Managing Member, subject, however, to the approval of a majority-in-interest of the remaining Members. A Managing Member may be removed as a manager of the Company only upon (i) a final determination by a court that he has committed fraud against the Company or any of its Members in their capacities as such, (ii) a final determination by a court that he has been grossly negligent in the performance of his duties as the Managing Member and that such gross negligence has resulted in material harm to the Company, or (iii) a final determination by a court that he has violated a fiduciary duty to the Company or any of its Members in their capacities as such. Upon such removal, the other Members may appoint or admit a replacement Managing Member on such terms and conditions as they deem advisable, acting by vote of a majority-in-interest of the other Members.

(l) Resignation of Managing Member. A Managing Member may resign its management authority at any time on at least 60 days prior written notice to the other Members, or at any time only if required to do so by applicable regulations or other law. Upon any resignation, a majority-in-interest of all the Members, including the resigning Managing Member, may appoint a successor to assume the resigning Managing Member's management responsibilities under this Agreement by designating such successor in written notice to all other Members. A resignation need not be accepted in order for it to be effective. The resigning Managing Member shall cooperate in effecting an orderly transition in the management of the Company with any successor Managing Member.

(m) Effect of Resignation, Removal or Replacement. Termination of a Managing Member's status as Managing Member, whether by removal, resignation, or other event, does not constitute a withdrawal, abandonment or forfeiture of such Member's membership interest in the Company, and such Member shall retain all of his or its membership interest in the Company, other than its management functions as a Managing Member. If the

new or replacement Managing Member has no membership interest in the Company, he shall be designated as a "Manager" of the Company, and the Company shall file any required amendment to its Articles of Organization indicating that the Company is "manager managed."

**7. Liability; Indemnification.**

(a) No Personal Liability to Third Parties. Except to the extent required by the Act or other applicable law or as expressly provided in this Agreement, as amended from time to time, all debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member shall have any personal liability for any such debt, obligation or liability of the Company solely by reason of being a Member or exercising management authority as a Member.

(b) Indemnification. To the fullest extent permitted by the Act, the Company hereby agrees to indemnify and save each Member from and against any and all third party claims, liabilities, damages, losses, costs and expenses, including, without limitation, (i) amounts paid in satisfaction of judgments, in compromises and settlements, or as fines and penalties and (ii) reasonable counsel fees or other costs and expenses of investigating or defending against any claim or alleged claim by a third party, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by the Member by reason of any act performed or omitted to be performed by the Member in connection with the business of the Company; provided, however, that indemnification under this Section 7(b) shall be available only if (i) the Member acted in good faith and in a manner it reasonably believed to be in, or not opposed to, the best interests of the Company, (ii) the action (or inaction) of the Member did not constitute fraud, gross negligence, willful misconduct or a breach of fiduciary duty by such Member and (iii) with respect to any criminal action or proceeding, the Member had no reason to believe that its conduct was unlawful. The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere shall not, of itself, create a presumption that the Member's conduct constituted fraud, gross negligence, willful misconduct or a breach of fiduciary duty. The satisfaction of any indemnification and any saving harmless pursuant to this Section 7(b) shall be limited to Company assets and no Member shall be personally liable on account thereof.

(c) Advance of Expenses. Expenses incurred by a Member in defense or settlement of any claim, shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Member to repay the amount advanced to the extent that it shall be determined ultimately that the Member is not entitled to be indemnified hereunder. The right of the Member to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Member may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Member's legal representatives and permitted successors and assigns.

(d) Survival. The rights to indemnification and reimbursement or advancement of expenses provided by, or granted pursuant to, this Section 7 shall continue as to a Member who has ceased to be a Member and shall inure to the benefit of the successors, executors, administrators, legatees and distributees of such person.

(e) Contract. The provisions of this Section 7 shall be a contract between the Company and each Member who serves in such capacity at any time while this Section 7 is in effect pursuant to which the Company and each such Member intend to be legally bound. No repeal or modification of this Section 7 shall affect any rights or obligations with respect to any state of facts then or theretofore existing or thereafter arising or any proceeding theretofore or thereafter brought or threatened based in whole or in part upon such state of facts.

(f) Subordination. The obligations of the Company under this Section 7 shall be subordinated to repayment of any loans made to the Company if and to the extent required by applicable loan documents; provided that any such subordination of payment shall not affect the right of any Member to indemnification under this Section 7, but shall only postpone the time at which the Company is permitted to make payment in respect of its obligations under this Section 7.

## 8. Assignment.

### (a) General.

(i) A Member may not Transfer all or any part of the Member's membership interest and an Assignee may not Transfer all or any part of the Assignee's Economic Rights unless the non-transferring Managing Member(s) and a majority-in-interest of all Members consent, in writing, to the Transfer, or except as provided in Section 8(b), Section 8(c), Section 8(d) or Section 11. Any Person who acquires all or any portion of any membership interest or any Economic Rights in the Company by Transfer takes subject to the provisions of Section 11 hereof.

(ii) Except as provided in this Section 8(a)(ii), Section 8(c) or Section 11, a Transfer of a membership interest or any portion thereof shall convey only the Economic Rights associated with the Transferred membership interest, and not convey any rights to manage the business or affairs of the Company or other rights of membership, unless the non-transferring Managing Member(s) and a majority-in-interest of all Members specifically consent, in writing, to the admission of the Transferee as a member to the Company, which consent may be granted or withheld in their sole and absolute discretion. Notwithstanding any other provision of this Agreement, a Managing Member's rights to manage the Company as a Managing Member may not be fractionated, and shall be held at all times only by one Member. Any Transferee shall, as a condition to being admitted as a Member, execute a signature addendum to this Agreement agreeing to be bound by the terms and conditions of this Agreement.

(b) Permitted Transfers of Economic Rights to or for the benefit of Family Members. Notwithstanding the restrictions of Section 8.1(a)(i) but subject to Section 8.1(a)(ii), a Member or Assignee may Transfer all or any portion of his Economic Rights to a Permitted Transferee without the prior approval of any other Member, provided, that he shall provide written notice of the Transfer and a copy of the executed instrument of Transfer to the Company no later than thirty (30) days following the date of the Transfer. If the transferee is an entity, a copy of the entity's organizational documents shall also be delivered to the Company with such notice, so that the Company can verify compliance with the requirements of this Agreement.

(c) Other Permitted Voluntary Transfers. Each of Liberman and Mitchell may Transfer up to twenty five percent (25%) of his original membership interest (i.e., up to a twelve and one-half percent (12.5%) Percentage Interest) in the Company to one or more Persons other than Permitted Transferees, provided that (i) any such transferee shall not acquire any rights as a managing member of the Company and the transferee shall be a non-managing Member of the Company, (ii) the transferee shall have sufficient net worth to meet its obligations to contribute capital pursuant to Section 3(b) hereof, as demonstrated to the reasonable satisfaction of the non-transferring Managing Member prior to the Transfer, (iii) the instrument of Transfer shall contain an express statement that the membership interest being transferred conveys no rights to manage the Company and shall otherwise be in form and content approved, in writing, by the non-transferring Managing Member prior to the date of Transfer, such approval not to be unreasonably withheld, conditioned or delayed, (iv) if the Transfer is not just a Transfer of Economic Rights but is intended to convey a non-managing membership interest in the Company, the transferee shall, as a condition to being admitted as a Member, execute a signature addendum to this Agreement agreeing to be bound by the terms and conditions of this Agreement, (v) a copy of the executed instrument of Transfer and the original signature addendum shall be delivered to the Company promptly following the date of Transfer, and (vi) the Transfer shall be in accordance with, or pursuant to an exemption from, federal and state securities laws (provided that the Company has no obligation to register its membership interests).

(d) Certain Involuntary Transfers of Economic Rights. The Company and the Members will recognize and respect as valid any involuntary transfer of a membership interest or portion thereof that occurs by operation of law, such as a transfer pursuant to a divorce decree, to a trustee in bankruptcy upon the filing of a voluntary petition in bankruptcy or a transfer to an individual Member's estate upon that Member's death; provided, however, that such transfer will only effect a transfer of the Economic Rights associated with the transferred interest, and the transferee will not be admitted as a member of the Company unless the Managing Member and a majority-in-interest of all Members consent to such admission in their sole and absolute discretion, nor will the transferee succeed to or possess any management or approval rights. Transfers occurring by operation of law upon a voluntary act of a Member, such as a merger, are not permitted by this Section 8(d).

(e) Indirect Transfers. A Transfer of any of the interests in a Member that is an entity shall be deemed a Transfer of a portion of a membership interest in the Company for the purposes of this Section 8 and shall be subject to all of the provisions of this Agreement in respect of Transfers of membership interests in the Company.

(f) Prohibited Transfers Void. Any Transfer of membership interests in the Company in violation of the provisions of this Agreement shall be void.

9. Term; Dissolution. The Company shall continue in existence until the occurrence of any of the following events:

- (a) The sale of all or substantially all of the assets of the Company; or

(b) The written election of the Managing Member and a majority-in-interest of all Members of the Company to dissolve the Company.

The death, incompetence, withdrawal, insolvency or bankruptcy of a Member shall not dissolve the Company, but the occurrence of such events with respect to all Members shall dissolve the Company upon the occurrence of any such event with respect to the last of the Members to be so affected.

10. **Liquidation.** Following dissolution of the Company in accordance with Section 9 above, the Company's business shall be wound up and the Company liquidated, in a manner designed to preserve or realize the fair value of the Company's assets. The proceeds of the liquidation shall be distributed in the following manner:

- (a) first, to the payments of the expenses of liquidation;
- (b) second, to pay the debts and obligations of the Company, excluding debts owing to Members but including any loans made by Affiliates of any Member;
- (c) third, to the establishment of any reserve which the Managing Member shall deem reasonably necessary for contingent or unforeseen liabilities;
- (d) fourth, to repayment of any outstanding debts (excluding Member loans) to Members;
- (e) fifth, to repayment of loans made by Members to the Company; provided, however, that if such loans are outstanding to more than one Member and there are not sufficient funds remaining to pay all amounts owed on such loans, then, to the extent that the outstanding amounts of principal and accrued but unpaid interest on such loans are not proportionate to such Members' relative Percentage Interests, payment shall be made first entirely to the Member who is owed more than such proportionate share until the amounts owed to such Members are in proportion to their relative Percentage Interests, and thereafter each shall be paid pro rata in proportion to their relative Percentage Interests; and
- (f) finally, in accordance with Section 5.

11 **Buy-Sell.** Mitchell and any of his permitted successors and assigns, on the one hand (the "Mitchell Group"), and Liberman and his respective permitted successors and assigns, on the other hand (the "Liberman Group"), shall have the rights of purchase and sale provided by this Section 11, to be exercised upon delivering a written notice any time after one year from the date of this Agreement (an "Election Notice"). The group giving the Election Notice as provided herein is referred to as the "Electing Group," and the group receiving the Election Notice is referred to as the "Notice Group." In issuing or responding to an Election Notice hereunder, the action of members of the Mitchell Group or Liberman Group holding at least 75%

of the distributive shares of all of the members of that group shall constitute the action of, and be binding upon, all of the members of that group.

(a) Invocation of Buy-Sell Procedure. The buy-sell procedure established in this Section 11 is initiated by the giving of a written Election Notice which states an amount (the "Stated Amount") to be used in computing the Net Equity (as defined in Section 11(b) hereof) of the Members' interests, to the members of the Notice Group. The date that an Election Notice is delivered is herein referred to as the "Election Day." The Electing Group shall simultaneously deliver a copy of the Election Notice to the firm of independent certified public accountants regularly employed by the Company (the "Accountants"), who shall compute the each Member's Net Equity as required by Section 11(c) hereof.

(b) Effect of Election Notice; Buy-Sell Price. An Election Notice shall constitute an irrevocable offer by the Electing Group either to (1) purchase all, but not less than all, of the interests in the Company of the Notice Group, or (2) sell all, but not less than all, of its or their interests in the Company to the Notice Group. The price at which the interest of any Member in the selling group is purchased and sold under this Section 11 (the "Buy-Sell Price" of such interest) is the Net Equity thereof, determined as of the Election Day.

(c) Net Equity. The "Net Equity" of a Member's membership interest in the Company, as of any day, shall be the amount that would be distributed to such Member in liquidation of the Company pursuant to Section 10 hereof if (1) all of the Company's property were sold for the Stated Amount, (2) the Company paid its accrued, but unpaid, liabilities as of the Election Day (including, for this purpose, transfer taxes on the assumed sale of the Company's property) and established reserves pursuant to Section 10 for the payment of reasonably anticipated contingent or unknown liabilities as of the Election Day, and (3) the Company distributed the remaining proceeds to the Members in liquidation, all as of such day, provided that in determining such Net Equity, no reserve for contingent or unknown liabilities shall be taken into account if one or more individual members of the Selling Group having a significant net worth in the sole opinion of the Purchasing Group (or his successor in interest) agrees to indemnify the Company and all other Members for that portion of any such reserve as would be treated as having been withheld pursuant to Section 10 from the distribution such Member would have received pursuant to Section 10 if no such reserve were established. The Net Equity of a Member's membership interest in the Company shall be determined by the Accountants, without audit or certification, from the books and records of the Company, within twenty (20) days after the day the Accountants are informed, in writing, of the Stated Amount, and the amount of such Net Equity shall be disclosed to the Company and each of the Members by written notice to each Member sent by overnight courier or certified mail return receipt requested (the "Net Equity Notice"). The Net Equity determination of the Accountants shall be final and binding in the absence of a showing of gross negligence or willful misconduct. The Accountants shall consult with the Selling and Purchasing Groups before deciding upon the appropriate amount of reserves used for making the calculations hereunder. The cost of determining Net Equity shall be borne by the Company and shall be treated as an expense for purposes of such determination.

(d) Notice Group's Election to Purchase or Sell. For a period (the "Election

Period") ending at 11:59 p.m. (local time at the Company's principal place of business) on the tenth (10<sup>th</sup>) business day following the date the Purchasing Group receives the Net Equity Notice, the Notice Group shall have the right to elect to purchase the entire Membership Interest of the Electing Group, by giving notice thereof (the "Purchase Notice") to all Members. If the Notice Group is willing to purchase, pursuant to a valid Purchase Notice, the entire interest of the Electing Group, the Notice Group shall become the "Purchasing Group" and shall be obligated to purchase the entire membership interest of the Electing Group and the Electing Group shall become a "Selling Group" and shall be obligated to sell its entire Interest to the Purchasing Group. In any other case, the Electing Group shall become the Purchasing Group and shall be obligated to purchase the entire Membership Interest of the Notice Group, who shall become the Selling Group and shall be obligated to sell its entire Membership Interests to such Purchasing Group. Members of the Purchasing Group may agree among themselves as to which members thereof will purchase the membership interests of members of the Selling Group, and in what proportions, provided that all membership interests of the Selling Group shall be purchased as provided in this Section 11.

(e) Deposit. The Purchasing Group shall deposit an amount, in cash, equal to ten percent (10%) of the Selling Group's Net Equity with the attorney (or law firm for the Selling Group, as escrow agent ("Escrow Agent"), before the close of business on the fifth (5th) business day after the date that the group that is the Purchasing Group is determined pursuant to Section 11(d) (the "Deposit"), provided that the Seller's Group has identified an attorney or law firm with offices in New York to act as Escrow Agent. If not, the Deposit will be deposited in the attorneys in New York designated by the Purchasing Group.

(f) Terms of Purchase; Closing. The closing of the purchase and sale of the Selling Group's membership interests (the "Buy-Sell Closing") shall occur on a date and time mutually agreeable to the Purchasing and the Selling Groups, which shall not be later than 10:00 A.M. (local time at the place of the closing) on the first business day occurring on or after the ninetieth (90th) day following the last day of the Election Period and at such place as is designated by the Purchasing Group's lender, if any, or if no such lender, at such place as is mutually agreeable to the Purchasing Group and Selling Group, or upon the failure to agree, at the Company's principal place of business. At the Buy-Sell Closing, the Escrow Agent shall release and distribute the Deposit to the Selling Group and the Purchasing Group shall pay the balance of the Buy-Sell Price, as adjusted pursuant to this Section 11(f), of the Selling Group's membership interests to the Selling Group, in each case by cash, certified or bank check, drawn on a New York Clearing House member bank, or by wire transfer of immediately available funds, and the Selling Group shall deliver to the Purchasing Group good title, free and clear of any liens, claims, encumbrances, security interests or options (other than those imposed pursuant to the terms of this Agreement or granted or imposed in connection with financing obtained by the Company) to the Selling Group's membership interests thus purchased. At the Buy-Sell closing, the Purchasing Group may offset the amount of principal and interest outstanding on any Default Loans payable by the Selling Group to the Purchasing Group against the amount to be paid by Purchasing Group to the Selling Group at the Buy-Sell Closing. The Purchasing Group shall acquire the Selling Group's membership interests subject to any and all liens, security interests, or other encumbrances imposed pursuant to the terms of this Agreement or granted or imposed by the Selling Group in connection with financing obtained by the Company. At the

Buy-Sell Closing the members of the Selling Group shall execute such documents and instruments of conveyance as may be necessary or appropriate to confirm the transactions contemplated hereby, including, without limitation, the transfer of the membership interests of the Selling Group to the Purchasing Group and the assumption by the Purchasing Group of the Selling Group's obligations with respect to the Selling Group's membership interests so transferred to the Purchasing Group. The reasonable costs of such transfer and closing, including, without limitation, attorneys' fees and filing fees incurred by the Company, shall be divided equally between the Selling Group and the Purchasing Group; except that the Selling Group and Purchasing Group shall each be responsible for payment of their own attorney fees.

(g) Complete Termination of All Interests.

(i) Withdrawal. The members of the Selling Group shall remain a Member (or Transferee holding only economic rights, as the case may be) with all management and other rights and obligations provided herein (but, notwithstanding any provision of this Agreement to the contrary, no obligation to make further contributions, or guarantee any debt or otherwise incur a new financial obligation to the Company or any of their respective members from and after the Election Day) until their membership interests are purchased in accordance with Section 11(d) hereof. Upon the Buy-Sell Closing, the Selling Group shall be deemed to have transferred all of their right, title and interest in and to their membership interests to the members of the Purchasing Group who purchase such interests, and to have withdrawn as Members (or Transferees) from the Company.

(ii) Termination of Guarantees, Security Interests. In the event that any members of the Selling Group or any of their Affiliates have guaranteed, or pledged or assigned any collateral (other than their membership interests in the Company) to secure, any Company indebtedness, the members of the Purchasing Group shall, at their sole cost and expense, no later than, and as a condition to, the Buy-Sell Closing, obtain the complete release of such guarantees and/or collateral. Written evidence of such releases reasonably satisfactory to the Selling Group shall be provided at the Buy-Sell Closing.

(h) Payment of Loans Made by the Selling Group. At the Buy-Sell Closing, and as a condition thereto, the Company shall pay all accrued and unpaid interest and remaining principal of any loans made by members of the Selling Group, as well as any other sums then due and payable by the Company to members of the Selling Group in accordance with the terms of this Agreement. Notwithstanding any provision of this Agreement to the contrary, (i) it shall be the obligation of the members of the Purchasing Group to provide any and all funds to the Company necessary to make the payments required by this Section 11(g), (ii) the consent of the Selling Group shall not be required to permit the Purchasing Group to make an additional capital contribution, to cause the Company to borrow such funds or to admit one or more new Persons as Members who are providing all or a portion of such funds, provided such contribution, borrowing or admission occurs simultaneously with the Buy-Sell Closing.

(i) Failure to Make Deposit or to Close.



(A) If the Purchasing Group fails to make the Deposit as required in Section 11(e), the Purchasing Group shall be deemed to have irrevocably elected to be the Selling Group and the original Electing Group shall become the Purchasing Group, but shall not be obligated to make the Deposit.

(B) If the Purchasing Group (or assignee pursuant to Section 11(j)) fails to pay the entire Buy-Sell Price of the Selling Group's membership interests or otherwise fails to close on the Buy-Sell Closing ("Closing Default"), then the Selling Group and the Purchasing Group agree that the Escrow Agent shall promptly pay the entire Deposit to the Selling Group as liquidated damages for the Purchasing Group's Closing Default. The Purchasing Group hereby acknowledges and agrees that such amount is fair and reasonable liquidated damages for any such default, agrees not to contest any payment thereof and waives any defenses it has to contest the payment of such liquidated damages to the Selling Group. In addition, the Selling Group may elect, by written notice to the Purchasing Group delivered within ten (10) days after the Closing Default, to purchase all, but not less than all, of the membership interests of the Purchasing Group at the Buy-Sell Price for such interests (the "Purchase Notice"), in which case the Purchasing Group shall become the Selling Group and the Selling Group shall become the Purchasing Group under this Section 11 effective immediately upon delivery of such notice, provided, however, that the new Purchasing Group shall not be required to make the Deposit required by Section 11(e) hereof. The Buy-Sell Closing for such transaction shall occur on a date and time mutually agreeable to the Purchasing and the Selling Groups, which shall not be later than 10:00 A.M. (local time at the place of the closing) on the first business day occurring on or after the ninetieth (90th) day following the date the Purchase Notice was delivered to the former Purchasing Group, and otherwise in accordance with the terms and conditions of this Section 11 (other than those relating to the Deposit).

(j) Purchasing Group's Rights to Assign. The Purchasing Group may assign its rights to purchase the Selling Group's membership interests to one or more Persons on such terms and conditions as it deems advisable, provided, however, that the Purchasing Group shall remain primarily liable for closing on the purchase of the Selling Group's membership interest at the Buy-Sell Closing, should the assignee default.

12. Arbitration of Disputes. In the event of any dispute, controversy or claim between the parties under or relating to this Agreement (a "Dispute"), then upon written notice, specifying the claims, the basis thereof and the relief sought, given by the initiating party to the other party, the Dispute will be resolved by binding arbitration in New York, New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, as modified by this Section 12. An arbitration award rendered by the arbitrators will be final and binding on the parties and may be filed with any court having jurisdiction over the parties or their property as a basis of declaratory or other judgment or the issuance of execution, including, but not limited to, any state or federal court in the State of New York. Each party hereby consents to the jurisdiction of such courts and agrees that in addition to all other permitted manners, service of the summons and complaint in any such action may be made by mailing same to the parties at the addresses set forth in the Agreement (or to such other address which is indicated in writing) by certified mail (return receipt requested). The Dispute will be resolved by a panel of three neutral arbitrators to be selected as follows: each party will select

one arbitrator within fifteen (15) days of the receipt of notice from the initiating party with respect to the commencement of the arbitration of the Dispute, and the two arbitrators so selected will choose a third arbitrator with ten (10) days after their appointment. The arbitrators shall schedule a hearing as soon as possible taking into consideration the matters at issue, including, without limitation, the complexity of the issues relating to the Dispute and the need for discovery in preparation for such hearings. All hearings shall be scheduled on consecutive days to the extent possible. The action of a majority of the arbitration panel will govern all actions by the panel, and the arbitrators will render their decision promptly but in no event more than 45 days after the conclusion of submission of evidence. The arbitration award will be in writing and will specify factual and legal basis for the award. Either party may make application to the arbitration panel seeking injunctive relief to maintain the *status quo* until such time as the arbitration award is rendered or the Dispute is otherwise resolved. Each party will pay the fees and expenses of the arbitrator selected by it and one-half of the reasonable fees and expenses of the third arbitrator. All other fees and expenses of each party (including, without limitation, reasonable attorneys' fees) incurred in connection with the arbitration or to enforce this Agreement will be paid as determined by the arbitrators, who shall have discretion to award such fees and expenses as part of the arbitration award.

### 13. Miscellaneous.

(a) Majority-in-Interest. Whenever in this Agreement an action is to be taken or decided by a "majority-in-interest" of all of the Members or a group of Members, the majority is to be determined not on a per capita basis but by reference to the Percentage Interests of the Members or the particular group of Members, as applicable.

(b) Power of Attorney. Each Member irrevocably appoints each Managing Member as its attorney-in-fact, coupled with an interest, (i) to effect the admission of any Persons as Members when such admission is otherwise in accordance with the terms of this Agreement, (ii) to make any amendments to this Agreement to reflect or implement such admissions or which are permitted, by the terms of this Agreement, to be made by solely by the Managing Member (such as changes to Exhibit A as described in Section 13(g) below, and (iii) to execute, acknowledge and swear to all documents or instruments necessary to carry out the actions described in clauses (i) and (ii) of this Section 13(b).

(c) Governing Law. This Agreement is governed by and shall be construed in accordance with the internal laws of the state of Delaware, excluding its rules applicable to conflict-of-laws.

(d) Notices. All notices, demands, offers or other communications required or permitted by this Agreement shall be in writing and shall be sent by prepaid registered or certified mail, return receipt requested overnight delivery service, or by hand delivery, and addressed to the other party hereto at such party's address set forth in Exhibit A as the same shall be amended from time to time, and shall be deemed given upon the date of delivery.

(e) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, representatives, successors and permitted assigns.

(f) Waiver. The waiver by any Member of any matter provided herein shall be effective only if made in writing and signed by such Member. The failure of any party to this Agreement to enforce any of its terms, provisions or covenants shall not be construed as a waiver of the same or of the right of such party to enforce the same. Waiver by either party hereto of any breach or default by the other party of any term or provision of this Agreement shall not operate as a waiver of any other breach or default.

(g) Entire Agreement; No Oral Modifications. This Agreement sets forth the entire agreement and understanding of the Members and supersedes all prior agreements or understanding, whether oral or written, between the parties with respect to the subject matter of this Agreement. This Agreement may only be amended by a writing signed by the Managing Members and a majority-in-interest of all of the Members of the Company and designated as an amendment or modification of this Agreement; provided, however, that any Managing Member may amend this Agreement to reflect changes in the amount of the Members' capital contributions through the date of such change in Exhibit A; and provided, further, that the consent of a Member shall be required for any amendment to this Agreement that (i) obligates the Member to make additional capital contributions or loans to the Company or to guarantee any Company debt or pledge personal assets as security therefor, (ii) deprives the Member of limited liability under the Act with respect to his membership interest in the Company, (iii) imposes limitations or restrictions (beyond those set forth in Section 8 hereof) upon the Member's rights to transfer all or any portion of such Member's interest in the Company, or (iv) deprives the Member of any rights to manage the Company.

(h) No Third Party Beneficiaries. The provisions of this Agreement are not intended to be for the benefit of any creditor or any other Person (other than a Member in his capacity as such) to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) the Company or any of the Members; and no such creditor or other Person shall obtain any right under any of such provisions or shall by reason of any of such provisions make any claim in respect of any debt, liability or obligation (or otherwise) against the Company or any of the Members.

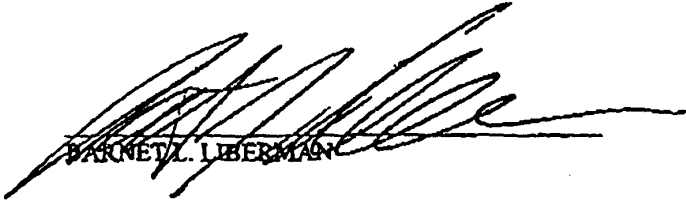
(i) Gender. References to "he," "his" or "him" relating to any Member shall be construed in a gender neutral manner and shall be construed as referring to any Member, whether a male, female or an entity.

(j) Attorneys' Fees. In the event of any litigation brought by any Member against the Company and/or any other Member in the Member's capacity as a Member of the Company, the prevailing party shall be entitled to recover the reasonable attorneys' fees incurred by it in prosecuting or defending against the action.

(k) Counterparts. This Agreement may be executed in one or more counterparts and by facsimile, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

[Signatures on next page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day  
and year first above written.

  
BARNETT L. LIBERMAN

\_\_\_\_\_  
DAVID J. MITCHELL

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

\_\_\_\_\_  
BARNET L. LIBERMAN



\_\_\_\_\_  
DAVID J. MITCHELL

**Schedule A**

**Contracts and /or Cash Initially Contributed**

152121-6-W

Schedule A

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**3-0029**

**Case No.: A-16-740689-B**

AA 2486

**EXHIBIT A**

**Capital Contributions and Percentage Interest of the Members**  
**(as of August 17, 2004)**

<b><u>Name and Address</u></b>	<b><u>Total Contributions:</u></b>	<b><u>Percentage Interest</u></b>
Barnet L. Liberman 421 Hudson Street New York, NY 10014	\$100	50%
David J. Mitchell c/o Mitchell Holdings LLC 20 West 55th Street New York, NY 10019	\$100	50%
TOTAL		100%

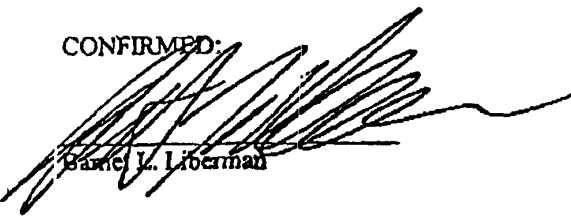


EXHIBIT A-1

Capital Contributions and Percentage Interest of the Members  
(as of December 15, 2004)

<u>Name and Address</u>	<u>Contributions to Date</u>	<u>Percentage Interest</u>
Earnest L. Liberman 421 Hudson Street New York, NY 10014	\$[2,000,100]	50%
David J. Mitchell c/o Mitchell Holdings 20 West 55th Street New York, NY 10019	\$[2,000,100] ---\$ 575,548 cash ---\$1,424,552 value of membership interest in Gaviayana LLC	50%
TOTAL	\$[4,000,200]	100%

CONFIRMED:

  
Earnest L. Liberman

\_\_\_\_\_  
David J. Mitchell

**EXHIBIT A-1**

**Capital Contributions and Percentage Interest of the Members**  
**(as of December 15, 2004)**

<b><u>Name and Address</u></b>	<b><u>Contributions to Date</u></b>	<b><u>Percentage Interest</u></b>
Barnet L. Liberman 421 Hudson Street New York, NY 10014	\$[2,000,100]	50%
David J. Mitchell c/o Mitchell Holdings 20 West 55th Street New York, NY 10019	\$[2,000,100] ---\$ 575,548 cash ---\$1,424,552 value of membership interest in Gaviayana LLC	50%
TOTAL	\$[4,000,200]	100%

CONFIRMED:

\_\_\_\_\_  
Barnet L. Liberman



\_\_\_\_\_  
David J. Mitchell

## EXHIBIT B

### Allocations of Profits and Losses and Certain Tax Matters

**B-1. Taxation; Capital Accounts.** It is the intention of the Members that the Company be classified as a partnership for purposes of federal and state income tax law. The Company shall establish and maintain a separate capital account (each, a "Capital Account") for each Member in accordance with Section 704 of the Internal Revenue Code of 1986, as amended (the "Code") and the rules set forth in Treasury Regulations §1.704-1(b)(2)(iv). For purposes of this Agreement, the profit ("Profit") or loss ("Loss") of the Company for each fiscal year shall be the net income or net loss of the Company for such year as determined for federal income tax purposes (including for this purpose in such net income or net loss all items of income, gain, deduction or loss that are required to be separately stated pursuant to Section 703 of the Code), but computed with the following adjustments:

- (a) without regard to any adjustment to basis pursuant to Section 743 of the Code;
- (b) by including as an item of gross income any tax-exempt income received by the Company;
- (c) by treating as a deductible expense any expenditure of the Company described in Section 705(a)(2)(B) of the Code;
- (d) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, by taking into account instead depreciation in accordance with Regulations Section 1.704-1(b)(2)(iv)(g);
- (e) in the event that any asset of the Company is distributed in kind to a Member or there is a liquidation of the Company pursuant to Section 10, by including the difference between (i) an amount equal to the book value of such asset on the date of such distribution and (ii) the fair market value of such asset on that date, as determined by the Managing Members in their reasonable judgment;
- (f) by computing gain or loss resulting from any disposition of an asset by the Company from which gain or loss is recognized for federal income tax purposes with reference to the book value of the asset (after adjustment for depreciation in accordance with Regulations Section 1.704-1(b)(2)(iv)(g)), notwithstanding that the adjusted basis for federal income tax purposes of such asset differs from such book value; and
- (g) after making the special allocations (if any) required by Section B-4.

The amounts of the items of income, gain, loss or deduction of the Company to be specially allocated pursuant to Section B-4 shall be determined by applying rules analogous to those set forth in subsections (a) through (f).

**B-2. Allocations of Profits.** From and after the date of this Agreement, Profits for each fiscal year shall be allocated to the Members as follows:

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B-1

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3-0033

Case No.: A-16-740689-B

AA 2490

(a) first, to the Members who have received allocations of Losses for earlier fiscal years pursuant to Section B-3(c), pro rata, in proportion to the cumulative amount of those Losses previously allocated to them, until those Members have received cumulative allocations of Profits pursuant to this Section B-2(a) for the current fiscal year and all prior fiscal years equal to the cumulative amount of Losses allocated to them pursuant to Section B-3(c) for all prior fiscal years;

(b) second, to the Members who have received allocations of Losses for earlier years pursuant to Section B-3(b), pro rata, in proportion to the cumulative amount of those Losses previously allocated to them, until those Members have received cumulative allocations of Profits pursuant to this Section B-2(b) for the current fiscal year and all prior fiscal years equal to the cumulative amount of Losses allocated to them pursuant to Section B-3(b) for all prior fiscal years;

(c) finally, to the Members in proportion to their Percentage Interests.

**B-3. Allocation of Losses.** From and after the date of this Agreement, Losses shall be allocated to the Members as follows:

(a) first, to the Members who have received allocations of Profits for earlier years pursuant to Section B-2(c), pro rata, in proportion to the cumulative amount of those Profits previously allocated to them, until those Members have received cumulative allocations of Losses pursuant to this Section B-3(a) for the current fiscal year and all prior fiscal years equal to the cumulative amount of Profits allocated to them pursuant to Section B-2(c) for all prior fiscal years;

(b) second, to the Members who have positive Adjusted Capital Accounts (as defined in Section B-4(g) below), pro rata, in proportion to the respective amounts of their positive Adjusted Capital Accounts, until the Adjusted Capital Accounts of those Members are reduced to zero; and

(c) finally, to the Members, in proportion to their Percentage Interests.

**B-4. Special Allocations to Comply with Section 704 Regulations.**

(a) Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement to the contrary, if there is a net decrease in Company minimum gain (determined in accordance with Regulations Section 1.704-2(d) as if the Company were a partnership) ("Company Minimum Gain") during any fiscal year, then there shall be specially allocated to each Member items of Company income and gain for such year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain (determined in accordance with Regulations Section 1.704-2(g) as if the Company were a partnership). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f)(6) and 1.704-2(j)(2)(i) and (iii). This Section B-4(a) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement to the contrary, if there is a net decrease in Member Minimum Gain during any fiscal year, then each Member shall be specially allocated items of Company income

and gain for such year (and, if necessary, for subsequent fiscal years) in an amount equal to that Member's share, if any (determined in accordance with Regulations Section 1.704-2(i)(4)), of the net decrease in Member Minimum Gain. The items to be so allocated shall be determined in accordance with the provisions of Regulations Section 1.704-2(i)(4) and 1.704-2(j)(2)(i). As used herein, the term "Member Minimum Gain" shall have the meaning ascribed to partner nonrecourse debt minimum gain, determined in accordance with Regulations Sections 1.704-2(i)(2) and 1.704-2(i)(3). This Section B-4(b) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(c) Limitation on Losses. Notwithstanding the provisions of Section B-3, if the allocation of a Loss to a Member for any fiscal year pursuant to Section B-3 would cause or increase a negative balance in the Member's Adjusted Capital Account on the last day of the fiscal year, then the portion of the Loss that would have such effect shall instead be specially allocated among the Members who have positive balances in their Adjusted Capital Accounts on the last day of the fiscal year. The Loss to be specially allocated pursuant to the preceding sentence shall be allocated among the Members referred to in the preceding sentence, pro rata, in proportion to their respective Adjusted Capital Accounts.

(d) Gross Income Allocation/Qualified Income Offset. If, at the end of any fiscal year, one or more Members would otherwise have a negative balance in their Adjusted Capital Accounts (as defined below), then income (including, if necessary, gross income) and gain for such fiscal year (and, if necessary, subsequent fiscal years) shall be allocated as quickly as possible among all Members who have such negative balances in their Adjusted Capital Accounts, pro rata, in proportion to their respective negative balances to the extent necessary to eliminate such negative balances as of the end of such fiscal year; provided that an allocation pursuant to this Section B-4(d) shall be made only if and to the extent that such Member would have such a negative balance in the Member's Adjusted Capital Account after all other allocations provided for in this Exhibit B have been tentatively made as if this Section B-4(d) were not a part of this Agreement. The allocations referred to in this paragraph shall be interpreted and applied, inter alia, to satisfy the requirements of Regulations Section 1.704-1(c)(2)(ii)(d)(3).

(e) Member Nonrecourse Deductions. Notwithstanding any other provision of this Agreement to the contrary, Company losses and deductions that are attributable to a particular Member Nonrecourse Liability (as determined in accordance with Regulations Section 1.704-2(i)(2)) shall be specially allocated to the Member(s) who bear(s) the economic risk of loss for such liability. As used herein, the term "Member Nonrecourse Liability" shall have the same meaning ascribed to "partner nonrecourse liability" set forth in Regulations Section 1.704-2(b)(4). This Section B-4(e) is intended to comply with the allocation provision of Regulations Section 1.704-2(i)(1) and shall be interpreted consistently therewith.

(f) Nonrecourse Deductions. Nonrecourse deductions (as defined in Regulations Section 1.704-2(b)(1) and 1.704-2(c)) for any fiscal year shall be specially allocated to the Members in accordance with their Percentage Interests.

(g) Adjusted Capital Account. The term "Adjusted Capital Account" shall mean the balance in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments: (i) crediting to such Capital Account any amounts that such Member is obligated to restore or is deemed to be obligated to restore pursuant to Regulations Sections 1.704-1(b)(2)(ii)(b)(3), 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i)(5) and (ii) debiting to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) to the extent such items are not otherwise reflected in such Capital Account.

(h) Curative Allocations. Any special allocations pursuant to Section B-4(a) through Section B-4(f) shall be taken into account in computing subsequent allocations pursuant to this Exhibit B, so that the net amount of any items so allocated and all other items allocated pursuant to this Exhibit B shall, to the extent possible, be equal to the net amount that would have been allocated to each Member pursuant to this Exhibit B if such special allocations had not been made. For this purpose, future special allocations under Section B-4(a) and Section B-4(b) that are likely to offset current special allocations shall be taken into account.

(i) Winding Up and Related Matters. If, upon the winding up of the Company, the amount of the distribution to a Member pursuant to Section 10 does not equal his Capital Account immediately before such distribution (after the tentative allocation of profit or loss and special allocations of income, gain, deduction or loss for such fiscal year), then the Managing Members shall make such special allocations of income, gain, deduction or loss necessary to maintain (to the greatest extent possible) equality between the Capital Account of the Member and the amount of the distribution to him or her. The Managing Members may otherwise make such special allocations of income, gain, deduction or loss for any fiscal year necessary to maintain equality between the Capital Account of a Member and the amount that would be distributed to such Member if the Company were dissolved, its affairs wound up and its assets distributed to the Members as of the end of such fiscal year. All allocations made pursuant to this Section B-4(i) shall be made in good faith by the Managing Members.

#### **B.5. Income Tax Allocations.**

(a) Except as otherwise provided herein, for purposes of Sections 702 and 704 of the Code, or the corresponding sections of any future Federal internal revenue law, or any similar tax law of any state or other jurisdiction, the Company's profits, gains and losses for Federal income tax purposes, and each item of income, gain, loss or deduction entering into the computation thereof, shall be allocated among the Members in the same proportions as the corresponding "book" items are allocated pursuant to this Exhibit B.

(b) In accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company (and any revalued property of the Company) shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and the book value of such property. Allocations shall be made using such method as set forth in Section 1.704-3 of the Treasury Regulations as the Managing Members shall select.

**B-6. Assignees Treated as Members.** For all purposes of this Exhibit B and Sections 5(a) and 10, but for no other purpose, an assignee of economic rights associated with a membership interest shall be treated as a Member and each reference in this Exhibit B and Sections 5(a) and 10 to a Member shall be deemed to include such assignees.

**B-7. Capital Account Deficit.** No Member with a deficit in its Capital Account shall be obligated to restore such deficit balance or make a capital contribution to the Company solely by reason of such deficit.

**B-8. Tax Matters Partner.** The Managing Member shall be the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Code (the "Tax Matters Partner"). The Tax Matters Partner shall have the power to prepare and file tax returns for the Company and to manage and control on behalf of the Company any administrative proceeding at the Company level with the Internal Revenue Service relating to the determination of any item of Company income, gain, loss, deduction or credit for federal income tax purposes. In addition, the Tax Matters Partner shall be authorized and required to represent the Company (at the expense of the Company) in connection with all examinations of the affairs of the Company by any federal, state or local tax authorities, including any resulting administrative and judicial proceedings, and to expend funds of the Company for professional services and costs associated therewith. The other Members agree to cooperate with the Tax Matters Partner and to do or refrain from doing any or all things reasonably required by the Tax Matters Partner in connection with the conduct of all such proceedings.

**EXHIBIT C**

Certificate of Good Standing

304775-1-W

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**3-0038**

**Case No.: A-16-740689-B**

AA 2495



# SECRETARY OF STATE



## CERTIFICATE OF EXISTENCE WITH STATUS IN GOOD STANDING

I, ROSS MILLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that I am, by the laws of said State, the custodian of the records relating to filings by corporations, non-profit corporations, corporation soles, limited-liability companies, limited partnerships, limited-liability partnerships and business trusts pursuant to Title 7 of the Nevada Revised Statutes which are either presently in a status of good standing or were in good standing for a time period subsequent of 1976 and am the proper officer to execute this certificate.

I further certify that the records of the Nevada Secretary of State, at the date of this certificate, evidence, **LAS VEGAS LAND PARTNERS, LLC**, as a limited liability company duly organized under the laws of Delaware and existing under and by virtue of the laws of the State of Nevada since May 23, 2005, and is in good standing in this state.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on June 14, 2007.



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

ROSS MILLER  
Secretary of State

Electronic Certificate  
Certificate Number: C20070614-1080  
You may verify this electronic certificate  
online at <http://secretaryofstate.biz/>

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3-0039

Case No.: A-16-740689-B

AA 2496

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "LAS VEGAS LAND PARTNERS LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIFTEENTH DAY OF JUNE, A.D. 2007.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



3843407 8300

070713456

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5761734

DATE: 06-15-07

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3-0040

Case No.: A-16-740689-B

AA 2497

**EXHIBIT D**

Resolutions

304775-I-W

Mitch0162938

**3-0041**

**Case No.: A-16-740689-B**

AA 2498

**UNANIMOUS WRITTEN CONSENT OF THE MEMBERS  
OF LAS VEGAS LAND PARTNERS, LLC**

The undersigned, being all of the members (the "**Members**") of LAS VEGAS LAND PARTNERS, LLC, a Delaware limited liability company (the "**Company**"), hereby consent to and authorize the following actions to be taken by the Company, both in its own capacity, and in its capacity as the sole member of LiveWork Manager, LLC, a Delaware limited liability company ("**Livework Manager**"), both in its own capacity and in its capacity as Sole Member of LiveWork, LLC, a Delaware limited liability company ("**Livework**"):

RESOLVED, that the Company be, and hereby is, authorized to cause Livework Manager to cause Livework to enter into that certain Agreement for Purchase and Sale (the "**Sale Agreement**") by and between Livework and Zoe Property, LLC, a Delaware limited liability company ("**Zoe**", together with Livework, collectively, the "**Seller**"), as seller, and Forest City Commercial Development, Inc., an Ohio corporation (the "**Buyer**"), as buyer, pursuant to which (i) Zoe will sell and convey to Livework all of Zoe's right, title, and interest in all real property owned by Zoe together with all improvements located thereon and certain other items of personal property used in connection therewith, in each case as more fully described in the Sale Agreement and (ii) Livework will sell and convey to FC Vegas 39, LLC, New York limited liability company ("**Vegas 39**"), and FC Vegas 20, LLC, a Nevada limited liability company ("**Vegas 20**", together with Vegas 39, collectively, the "**FC TIC Owners**") an aggregate undivided sixty percent (60%) tenancy in common interest in Livework's right, title, and interest in all real property owned by Livework (inclusive of all real property conveyed by Zoe to Livework) together with all improvements located thereon and certain other items of personal property used in connection therewith, in each case as more fully described in the Sale Agreement (collectively, the "**Property**"), upon the terms and subject to the conditions set forth therein, and that the terms and conditions of the Sale Agreement are hereby, authorized and approved by the Company, Livework Manager, and Livework; and be it further

RESOLVED, that in connection with the foregoing the Company be, and hereby is, authorized to cause Livework Manager to cause Livework to enter into that certain Tenancy-in-Common Agreement by and between Livework and FC TIC Owners under which Livework shall own, after the sale of the Property to Buyer, an undivided forty percent (40%) tenancy-in-common interest in the Property, and the FC TIC Owners shall own an aggregate undivided sixty percent (60%) tenancy-in-common interest in the Property; and be it further

RESOLVED, that the Company be, and hereby is, authorized, to cause Livework Manager to cause Livework, together with the FC TIC Owners, in borrowing from Keybank National Association, the principal amount of up to \$116,400,000.00 (the "**Mortgage Loan**"), which Mortgage Loan may be secured by one or more mortgages covering the Property; and be it further

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**3-0042**

**Case No.: A-16-740689-B**

AA 2499

RESOLVED, that David J. Mitchell be, and hereby is, appointed as President of the Company, and Barnet L. Liberman be, and hereby is, appointed as Vice President of the Company; and be it further

RESOLVED, that each of David J. Mitchell, as President of the Company, Barnet L. Liberman, as Vice President of the Company, the Sole Member and any other officer of the Company, in each case acting alone, be, and hereby is, authorized to execute and deliver, in connection with the foregoing, one or more deeds, conveyance documents, credit agreements, loan agreements, note or notes, security instruments, and such other agreements, mortgages, assignments of leases and rents, pledge agreements, financing statements, affidavits, and such other certificates, affidavits, instruments, indemnities and other documents as are or may be necessary, appropriate or convenient in connection with the sale of the Property, the Mortgage Loan transaction described herein, and/or the foregoing resolutions; in each case, all in such form and containing such provisions as the officer or the Sole Member executing the same may deem advisable, such determination to be conclusively evidenced by the execution and delivery thereof by any such officer or the Sole Member, and to do such acts and things as may be necessary or, in the opinion of the officer or the Sole Member executing the same, are desirable or proper to carry out the transactions contemplated by the foregoing resolutions; such determination to be conclusively evidenced by such officer's signature; and be it further

RESOLVED, that all actions of any kind heretofore taken by the Company, Livework, Livework Manager and/or any representative thereof, in connection with the Sale Agreement and the matters contemplated by the foregoing resolutions are hereby confirmed, ratified and approved in all respects; and be it further

RESOLVED, that this consent may be executed in any number of counterparts, each of which, when taken together, shall constitute one and the same instrument.

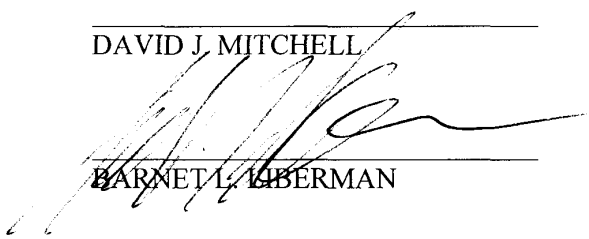
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IN WITNESS WHEREOF, the undersigned has signed this consent as of the \_\_ day of June, 2007.

**MEMBERS:**



\_\_\_\_\_  
DAVID J. MITCHELL



\_\_\_\_\_  
BARNETT L. LIBERMAN

304793-1-W


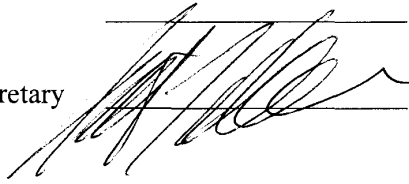
Mitch0162941

**3-0044**

**Case No.: A-16-740689-B**

AA 2501

**EXHIBIT E**

<u>Name of Officer</u>	<u>Title</u>	<u>Signature</u>
David J. Mitchell	President & Treasurer	
Barnet L. Liberman	Vice President and Secretary	

304775-1-W

Mitch0162942

**3-0045**

**Case No.: A-16-740689-B**

AA 2502

**ENTITY INFORMATION****ENTITY INFORMATION****Entity Name:**

LIVEWORK, LLC

**Entity Number:**

E0223242005-6

**Entity Type:**

Foreign Limited-Liability Company

**Entity Status:**

Permanently Revoked

**Formation Date:**

04/18/2005

**NV Business ID:**

NV20051109473

**Termination Date:**

Perpetual

**Annual Report Due Date:**

4/30/2012

**Series LLC:****Domicile Name:****Jurisdiction:**

Delaware



**REGISTERED AGENT INFORMATION****Name of Individual or Legal Entity:**

CT CORPORATION SYSTEM

**Status:**

Active

**CRA Agent Entity Type:****Registered Agent Type:**

Commercial Registered Agent

**NV Business ID:**

NV19991300515

**Office or Position:****Jurisdiction:**

DELAWARE

**Street Address:**

701 S CARSON ST STE 200, Carson City, NV, 89701, USA

**Email Address:**

CT-STATECOMMUNICATIONS@WOLTERSKLUWER.COM

**Mailing Address:****Individual with Authority to Act:**

MATTHEW TAYLOR

**Contact Phone Number:****Fictitious Website or Domain Name:****PRINCIPAL OFFICE ADDRESS****Address:****Mailing Address:**

**OFFICER INFORMATION** **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Managing Member	LIVEWORK MANAGER, LLC	C/O MITCHELL HOLDINGS, 815 FIFTH AVE #5A, NEW YORK, NY, 10065, USA	02/02/2011	Active

**Page 1 of 1, records 1 to 1 of 1**[Filing History](#)[Name History](#)[Mergers/Conversions](#)[Return to Search](#)[Return to Results](#)


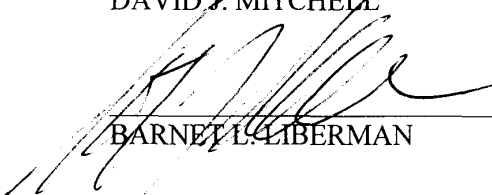
### **CERTIFICATE OF LIVEWORK, LLC**

The undersigned David J. Mitchell and Barnet L. Liberman, as, respectively, the President and Treasurer and the Vice President and Secretary of LiveWork, LLC, a Delaware limited liability company (the “**Company**”), do hereby certify as follows:

1. Attached hereto as Exhibits A, B, and C, respectively, are true, correct and complete copies of the Certificate of Formation, Operating Agreement (as amended) and Certificates of Good Standing, of the Company, each of which is in full force and effect on the date hereof. Attached hereto as Exhibit D is a true and complete copy of the resolutions of the Sole Member of the Company, relating to (i) the authorization of the sale of an undivided sixty percent (60%) tenancy-in-common interest in certain premises located in Las Vegas, Nevada more fully described in the resolutions and (ii) the loan from Keybank National Association, to the Company, FC Vegas 20 LLC, a Nevada limited liability company, and FC Vegas 39 LLC, a Nevada limited liability company (together with the Company, collectively, the “**Borrower**”) in the principal amount of up to \$116,400,000.00 (the “**Loan**”), which Loan may be secured by a deed of trust covering the Property and by other assets of the Borrower.
2. Attached hereto as Exhibit E is a list of all of the officers of the Company; the signatures set forth opposite their respective names are their genuine signatures; and said officers are, on the date hereof, duly elected officers of the Company, holding the offices set forth opposite their respective names:

[The Remainder of this Page is Intentionally Left Blank.]

IN WITNESS WHEREOF, the undersigned have executed this Certificate as of the \_\_\_\_ day of June, 2007 on behalf of themselves individually, and on behalf of the Company.

  
\_\_\_\_\_  
DAVID J. MITCHELL  
\_\_\_\_\_  
BARNETT L. LIBERMAN

304773-1-W

Mitch0162846

**10-0002**

**Case No.: A-16-740689-B**

AA 2507

**EXHIBIT A**

Certificate of Formation

304773-1-W

Mitch0162847

**10-0003**

**Case No.: A-16-740689-B**

AA 2508

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "LIVEWORK, LLC", FILED IN THIS OFFICE ON THE SIXTH DAY OF APRIL, A.D. 2005, AT 11:18 O'CLOCK A.M.



3951262 8100

050278071

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3794770

DATE: 04-06-05

Mitch0162848

10-0004

Case No.: A-16-740689-B

AA 2509

## CERTIFICATE OF FORMATION

OF

LIVEWORK, LLC

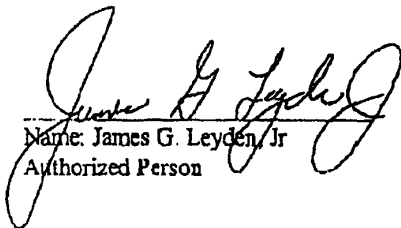
This Certificate of Formation of LiveWork, LLC (the "LLC"), dated as of April 6, 2005, has been duly executed and is being filed by an authorized person to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. § 18-101, *et seq.*).

FIRST. The name of the limited liability company is LiveWork, LLC.

SECOND. The address of the registered office of the LLC in the State of Delaware is c/o RL&F Service Corp., One Rodney Square, 10th Floor, Tenth and King Streets, Wilmington, New Castle County, Delaware 19801

THIRD. The name and address of the registered agent for service of process on the LLC in the State of Delaware are RL&F Service Corp., One Rodney Square, 10th Floor, Tenth and King Streets, Wilmington, New Castle County, Delaware 19801.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.



Name: James G. Leyden, Jr.  
Authorized Person

RLF1-2367286-1  
RLF1-2860639-1

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 11:18 AM 04/06/2005  
FILED 11:18 AM 04/06/2005  
SRV 050278071 - 3951262 FILE

Mitch0162849

10-0005

Case No.: A-16-740689-B

AA 2510

**EXHIBIT B**

Operating Agreement (as amended)

304773-1-W

Mitch0162850

**10-0006**

**Case No.: A-16-740689-B**

AA 2511



LIMITED LIABILITY COMPANY AGREEMENT  
OF  
LIVEWORK, LLC

This Limited Liability Company Agreement (together with the schedules attached hereto, this "Agreement") of LIVEWORK, LLC (the "Company"), is entered into by LIVEWORK MANAGER, LLC as the sole equity member (the "Member"), and CARRIE TILLMAN and BETH PEOPLES, as the Special Members (as defined on Schedule A hereto). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

The Member, by execution of this Agreement, hereby forms the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. Section 18-101 et seq.), as amended from time to time (the "Act"), and this Agreement, and the Member and Carrie Tillman and Beth Peoples hereby agree as follows:

THE TRANSFER OF THE LIMITED LIABILITY COMPANY INTERESTS DESCRIBED IN THIS AGREEMENT IS RESTRICTED AS DESCRIBED HEREIN.

Section 1.     Name.

The Company was formed under the name of LiveWork, LLC, pursuant to a Certificate of Formation filed with the Secretary of State of the State of Delaware on April 6, 2005.

Section 2.     Principal Business Office.

The principal business office of the Company shall be located at 20 West 55<sup>th</sup> Street, 12<sup>th</sup> Floor, New York, New York 10019, (for mailing purposes, c/o Mitchell Holdings at such address) or such other location as may hereafter be determined by the Member.

Section 3.     Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o RL&F Service Corp., One Rodney Square, in the City of Wilmington, County of New Castle, Delaware 19801.

Section 4.     Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is RL&F Service Corp., One Rodney Square, in the City of Wilmington, County of New Castle, Delaware 19801.

Section 5.     Members.

(a)     The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to this Agreement.

263501-3-W

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10-0007

Case No.: A-16-740689-B

AA 2512

(b) Subject to Section 9(j), the Member may act by written consent.

(c) Upon the occurrence of any event that causes the Member to cease to be a member of the Company (other than (i) upon an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), each person acting as an Independent Director pursuant to Section 10 shall, without any action of any Person and simultaneously with the Member ceasing to be a member of the Company, automatically be admitted to the Company as a Special Member and shall continue the Company without dissolution. No Special Member may resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, and (ii) such successor has also accepted its appointment as Independent Director pursuant to Section 10; provided, however, the Special Members shall automatically cease to be members of the Company upon the admission to the Company of a substitute Member. Each Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. A Special Member, in its capacity as Special Member, may not bind the Company. Except for the matters and activities herein specified to be voted on or, approved by a Special Member and as required by any mandatory provision of the Act, each Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of each Special Member, each person acting as an Independent Director pursuant to Section 10 shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, each person acting as an Independent Director pursuant to Section 10 shall not be a member of the Company.

Section 6. Certificates.

James G. Leyden, Jr. is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an "authorized person" ceased, and the Member thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Act. The Member or an Officer shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in the State of Nevada and in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purposes.

(a) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, the sole purpose to be conducted or promoted by the Company is to engage in the following activities:

- (i) to acquire, own, hold, lease, operate, manage, maintain, develop and improve, the Mortgaged Property (as defined in the Loan Documents);
- (ii) to enter into and perform its obligations under the Loan Documents;
- (iii) to sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with the Mortgaged Property to the extent permitted under the Loan Documents; and
- (iv) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

(b) The Company, and the Member, or any Director or Officer on behalf of the Company, may enter into and perform their obligations under the Basic Documents and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any Member, Director, Officer or other Person notwithstanding any other provision of this Agreement, the Act or applicable law, rule or regulation. The foregoing authorization shall not be deemed a restriction on the powers of the Member or any Director or Officer to enter into other agreements on behalf of the Company.

Section 8. Powers.

Subject to Section 9(j), the Company, and the Board of Directors and the Officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. Management.

(a) Board of Directors. Subject to Section 9(j), the business and affairs of the Company shall be managed by or under the direction of a Board of one or more Directors designated by the Member. Subject to Section 10, the Member may determine at any time in its sole and absolute discretion the number of Directors to constitute the Board. The authorized number of Directors may be increased or decreased by the Member at any time in its sole and absolute discretion, upon notice to all Directors, and subject in all cases to Section 10. The initial number of Directors shall be five, of which two shall be Independent Directors pursuant to

Section 10. Each Director elected, designated or appointed by the Member shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. Each Director shall execute and deliver the Management Agreement. Directors need not be a Member. The initial Directors designated by the Member are listed on Schedule D hereto.

(b) Powers. Subject to Section 9(j), the Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Section 7, the Board of Directors has the authority to bind the Company.

(c) Meeting of the Board of Directors. The Board of Directors of the Company may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the President on not less than one day's notice to each Director by telephone, facsimile, mail, telegram or any other means of communication, and special meetings shall be called by the President or Secretary in like manner and with like notice upon the written request of any one or more of the Directors.

(d) Quorum: Acts of the Board. At all meetings of the Board, a majority of the Directors (other than the Independent Directors) shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Except as otherwise expressly provided in this Agreement, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board (other than the Independent Directors) or committee as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee, as the case may be.

(e) Electronic Communications. Members of the Board, or any committee designated by the Board, may participate in meetings of the Board, or any committee, by means of telephone conference or similar communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in Person at the meeting. If all the participants are participating by telephone conference or similar communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(f) Committees of Directors.

(i) The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the Directors of the Company. The Board may designate one or

more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

- (ii) In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.
- (iii) Any such committee, to the extent provided in the resolution of the Board, and subject to, in all cases, Sections 9(j) and 10, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

(g) Compensation of Directors; Expenses. The Board shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at meetings of the Board, which may be a fixed sum for attendance at each meeting of the Board or a stated salary as Director. No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

(h) Removal of Directors. Unless otherwise restricted by law, any Director or the entire Board of Directors may be removed or expelled, with or without cause, at any time by the Member, and, subject to Section 10, any vacancy caused by any such removal or expulsion may be filled by action of the Member.

(i) Directors as Agents. To the extent of their powers set forth in this Agreement and subject to Section 9(j), the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company. Notwithstanding the last sentence of Section 18-402 of the Act, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company.

(j) Limitations on the Company's Activities.

- (i) This Section 9(j) is being adopted to comply with certain provisions necessary to qualify the Company as a "special purpose" entity.
- (ii) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, for so long as any Obligation is outstanding, neither the Member, the Special Member nor the Company shall amend, alter, change any of Sections 1, 5(b), 5(c), 6, 7, 8, 9, 10, 14, 16, 20(b), 20(f), 21, 22, 23,

24, 25, 26, 27, 29, 30, 31 or 32 or Schedule A of this Agreement (to the extent that the terms defined in Schedule A are used in any of the foregoing sections) (the “Special Purpose Provisions”), or any other provision of this or any other document governing the formation, management or operation of the Company in a manner that is inconsistent with any of the Special Purpose Provisions, unless the Lender consents in writing and the Rating Agency Condition is satisfied. Subject to this Section 9(j), the Member and the Special Member (as applicable) reserve the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 32. In the event of any conflict between any of the Special Purpose Provisions and any other provision of this or any other document governing the formation, management or operation of the Company, the Special Purpose Provisions shall control.

- (iii) Notwithstanding any other provision of this Agreement or any other document governing the formation, management or operation of the Company, and notwithstanding any provision of law that otherwise so empowers the Company, the Member, the Board, any Officer or any other Person, neither the Member nor the Board nor any Officer nor any other Person shall be authorized or empowered, nor shall they permit the Company to, and the Company shall not, without the prior unanimous written consent of the Member and the Board (including all Independent Directors), take any Material Action, provided, however, that the Board may not vote on, or authorize the taking of, any Material Action, unless there are at least two Independent Directors then serving in such capacity.
- (iv) The Board, the Member and the Special Member (as applicable) shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, the Board also shall cause the Company to and the Company shall:
  - (A) not enter into any transaction of merger or consolidation, or liquidate or to the fullest extent permitted by law, dissolve itself (or suffer any liquidation or dissolution), or acquire by purchase or otherwise all or substantially all the business or assets of, or stock or other evidence of beneficial ownership of, any Person;
  - (B) except with respect to the Obligations under the Loan Documents, shall not guarantee or otherwise become liable on or in connection with any obligation of any other Person;
  - (C) not own any asset other than the Mortgaged Property;
  - (D) not engage, directly or indirectly, in any business other than the

ownership, management and operation of the Mortgaged Property and shall remain organized solely for the purpose of the ownership, management and operation of the Mortgaged Property;

(E) not enter into any contract or agreement with any affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third parties other than an Affiliate;

(F) not incur any indebtedness, secured or unsecured, direct or contingent (including any Contingent Obligation), other than the Permitted Indebtedness (as defined in the Loan Agreement);

(G) not make any loans or advances to any third party and will not acquire, obligations or securities of its partners, members or shareholders;

(H) remain solvent and pay its own liabilities, Indebtedness (as defined in the Loan Documents) and obligations of any kind, including all administrative expenses, as the same shall become due and shall pay all such liabilities, Indebtedness and obligations from its own separate assets;

(I) do all things necessary to preserve its existence, and shall not, nor will any Member amend, modify or otherwise change its certificate of formation or limited liability company agreement in a manner which adversely affects the Company's existence as a Single Purpose Entity;

(J) conduct and operate its business generally as presently conducted and operated subject to such operational changes as may be reasonably necessary or appropriate to maintain the Mortgaged Property;

(K) except for the Loan Accounts, which shall be maintained in accordance with the Loan Documents, shall maintain bank accounts separate from any other Person;

(L) maintain separate books and records and prepare separate financial statements which are not consolidated or combined with the financial statements of any other Person;

(M) not hold itself out to the public or any other Persons, as being other than, a legal entity separate and distinct from any other Person (including any Affiliate);

(N) file its own tax returns and shall not permit its financial results to be consolidated or combined with those of any other Person for financial reporting purposes, except to the extent that the financial results of the Company are, pursuant to the requirements of applicable law or GAAP required to be, and are, in fact, included in the consolidated financial statements of the Member, provided such consolidated financial statements indicate that the Company and

the Member are separate legal entities with separate liabilities and assets; and shall not permit any of its funds to be distributed, loaned or otherwise transferred to any other Person;

(O) be at all times adequately capitalized for the normal obligations reasonably foreseeable in a business of its size and character and in light of the Company's contemplated business operations, provided, however that no Member is obligated to contribute capital to the Company in excess of the amounts specifically agreed to be contributed pursuant to Section 13 hereof;

(P) to the fullest extent permitted bylaw, not seek its dissolution or winding up, in whole or in part;

(Q) not commingle its funds and assets with those of any other Person;

(R) maintain its assets in such manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(S) not hold itself out to be responsible for the debts or obligations of any other Person;

(T) do any act which would make it impossible to carry on its ordinary business;

(U) not possess or assign the Mortgaged Property for other than a business or company purpose;

(V) not sell, encumber or otherwise dispose of, all or substantially all of the Mortgaged Property;

(W) not hold title to its assets other than in its own name;

(X) maintain its books, records, resolutions and agreements as official records;

(Y) observe all limited liability company formalities;

(Z) not fail to correct any known misunderstandings regarding its separate identity;

(AA) keep its assets separately identified, maintained and segregated (this restriction requires, among other things, that Company funds shall not be commingled with those of any Affiliate or any other Person, that no funds of the Company will be distributed, loaned or otherwise transferred to any Person except for returns of capital or distributions which are properly authorized by requisite partnership, corporate or limited liability company action and reflected in the books and records of all applicable parties) and shall maintain all accounts in its



own name and with its own tax identification number, separate from those of any Affiliates or any other Person;

(BB) not take any action if, as a result of such action, it would have been or would be required to register as an investment company under the Investment Company Act of 1940, as amended; and

(CC) allocate fairly and reasonably shared expenses, including shared office space and will continue to use separate stationary, invoices and checks; will not have any obligation to indemnify its Members, directors, officers, representatives or Independent Directors, or if it has such an obligation, such obligation is fully subordinated to the Obligations and such indemnification obligations will not constitute a claim against such Person if cash flow in excess of the Obligations is not sufficient to satisfy such indemnification obligations; and such Person's organizational documents require consideration of the interests of the creditors of such Person in connection with all limited liability company actions, as the case may be, of such Person.

Section 10. Independent Directors.

As long as any Obligation is outstanding, the Member shall cause the Company at all times to have at least two Independent Directors who will be appointed by the Member. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, the Independent Directors shall consider only the interests of the Company and its creditors in acting or otherwise voting on the matters referred to in Section 9(j)(iii). No resignation or removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until such successor (i) shall have accepted his or her appointment as an Independent Director by a written instrument, which may be a counterpart signature page to the Management Agreement and (ii) shall have executed a counterpart to this Agreement as required by Section 5(c). In the event of a vacancy in the position of Independent Director, the Member shall, as soon as practicable, appoint a successor Independent Director. All right, power and authority of the Independent Directors shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement. Except as provided in the second sentence of this Section 10, in exercising their rights and performing their duties under this Agreement, any Independent Director shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Delaware. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

Section 11. Officers.

(a) Officers. The initial Officers of the Company shall be designated by the Member. The additional or successor Officers of the Company shall be chosen by the Board and shall consist of at least a President, a Secretary and a Treasurer. The Board of Directors may also choose one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person. The Board shall choose a President, a

Secretary and a Treasurer. The Board may appoint such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The salaries of all Officers and agents of the Company shall be fixed by or in the manner prescribed by the Board. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the Board. Any vacancy occurring in any office of the Company shall be filled by the Board. The initial Officers of the Company designated by the Member are listed on Schedule E hereto.

(b) President. The President shall be the chief executive officer of the Company, shall preside at all meetings of the Board, shall be responsible for the general and active management of the business of the Company and shall see that all orders and resolutions of the Board are carried into effect. The President or any other Officer authorized by the President or the Board shall execute all bonds, mortgages and other contracts, except: (i) where required or permitted by law or this Agreement to be otherwise signed and executed, including Section 7(b); (ii) where signing and execution thereof shall be expressly delegated by the Board to some other Officer or agent of the Company, and (iii) as otherwise permitted in Section 11(c).

(c) Vice President. In the absence of the President or in the event of the President's inability to act, the Vice President, if any (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Directors, or in the absence of any designation, then in the order of their election), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents, if any, shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(d) Secretary and Assistant Secretary. The Secretary shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings of the Board and record all the proceedings of the meetings of the Company and of the Board in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or shall cause to be given, notice of all meetings of the Member, if any, and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the President, under whose supervision the Secretary shall serve. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board (or if there be no such determination, then in order of their election), shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(e) Treasurer and Assistant Treasurer. The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Company as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the

President and to the Board, at its regular meetings or when the Board so requires, an account of all of the Treasurer's transactions and of the financial condition of the Company. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(f) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, subject to Section 9(j), the actions of the Officers taken in accordance with such powers shall bind the Company.

(g) Duties of Board and Officers. Except to the extent otherwise provided herein, each Director and Officer shall have a fiduciary duty of loyalty and care similar to that of directors and officers of business corporations organized under the General Corporation Law of the State of Delaware.

Section 12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor the Special Member nor any Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member, Special Member or Director of the Company.

Section 13. Capital Contributions.

The Member will contribute to the Company the property listed on Schedule B attached hereto on or before the date of the Loan Agreement. In accordance with Section 5(c), the Special Member shall not be required to make any capital contributions to the Company.

Section 14. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the written consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise Schedule B of this Agreement. The Member and the Special Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 15. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 16. Distributions.

(a) Distributions of capital shall be made to the Member at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate Section 18-607 of the Act or any other applicable law or any Basic Document or would constitute a default under the Loan Documents.

(b) Any payments made pursuant to the Loan Documents to or for the benefit of the Mezzanine Borrower shall constitute distributions to or at the direction of the Member.

Section 17. Books and Records.

The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Board. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company, and the Board on behalf of the Company, shall not have the right to keep confidential from the Member any information that the Board would otherwise be permitted to keep confidential from the Member pursuant to Section 18-305(c) of the Act. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Member.

Section 18. Reports.

(a) Within 60 days after the end of each fiscal quarter, the Board shall cause to be prepared an unaudited report setting forth as of the end of such fiscal quarter:

- (i) unless such quarter is the last fiscal quarter, a balance sheet of the Company; and
- (ii) unless such quarter is the last fiscal quarter, an income statement of the Company for such fiscal quarter.

(b) The Board shall use diligent efforts to cause to be prepared and mailed to the Member, within 90 days after the end of each fiscal year, an audited or unaudited report setting forth as of the end of such fiscal year:

- (i) a balance sheet of the Company;
- (ii) an income statement of the Company for such fiscal year; and

(iii) a statement of the Member's capital account.

(c) The Board shall, after the end of each fiscal year, use reasonable efforts to cause the Company's independent accountants, if any, to prepare and transmit to the Member as promptly as possible any such tax information as may be reasonably necessary to enable the Member to prepare its federal, state and local income tax returns relating to such fiscal year.

Section 19. Other Business.

The Member, the Special Member and any Affiliate of the Member or the Special Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others notwithstanding any provision to the contrary at law or at equity. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement, regardless of whether any such other ventures are competitive with the business of the Company.

Section 20. Exculpation and Indemnification.

(a) Neither the Member nor the Special Member nor any Officer, Director, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member or the Special Member (collectively, the "Covered Persons") shall, to the fullest extent permitted by law, be liable to the Company or any other Person that is a party to or is otherwise bound by this Agreement, for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 20 by the Company shall be provided out of and to the extent of Company assets only, and the Member and the Special Member shall not have personal liability on account thereof; and provided further, that so long as any Obligation is outstanding, no indemnity payment from funds of the Company (as distinct from funds from other sources, such as insurance) of any indemnity under this Section 20 shall be payable from amounts allocable to any other Person pursuant to the Basic Documents.

(c) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall,

from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 20.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member and the Special Members to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this Section 20 shall survive any termination of this Agreement.

#### Section 21. Assignments.

Subject to Section 23 and any transfer restrictions contained in the Loan Documents, the Member may pledge or assign in whole or in part its limited liability company interest in the Company. Subject to Section 23, if the Member transfers all of its limited liability company interest in the Company pursuant to this Section 21, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement and upon the registration of the limited liability company interest of the Company on the books of the Company maintained by the Board pursuant to Section 36. Such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding any other provision of this Agreement, any successor to a Member by merger or consolidation in compliance with the Basic Documents shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

#### Section 22. Resignation.

So long as any Obligation is outstanding, the Member may not resign, except as permitted under the Basic Documents and if the Lender consents in writing and the Rating

Agency Condition is satisfied and if an additional member is admitted to the Company pursuant to Section 23. If the Member is permitted to resign pursuant to this Section 22, an additional member of the Company shall be admitted to the Company, subject to Section 23, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement and upon the registration of the limited liability company interest of the Company on the books of the Company maintained by the Board pursuant to Section 36. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

Section 23. Admission of Additional Members and Transfers of Indirect Interests.

(a) One or more additional members of the Company may be admitted to the Company with the written consent of the Member upon the registration of the limited liability company interest of the Company on the books of the Company maintained by the Board pursuant to Section 36; provided, however, that, notwithstanding the foregoing, no additional Member may be admitted to the Company pursuant to Sections 21, 22 or 23, other than pursuant to Section 24(a) or Section 5(c), and no transfer of any direct or to the fullest extent permitted by law indirect interest in the Company may be made that results in a Change in Control of the Company, except as may be expressly provided otherwise in the Loan Documents, unless (1) the Rating Agency Condition is satisfied and (2) the Lender consents in writing

(b) Upon a foreclosure, sale or other transfer of the limited liability company interests in the Company pursuant to that certain Pledge and Security Agreement, dated as of the date of the Loan Agreement (the "Mezzanine Pledge Agreement"), among Member, in its capacity as mezzanine borrower ("Mezzanine Borrower"), and SFT I, Inc. in its capacity as Mezzanine Lender (together with its successors and assigns, "Mezzanine Lender") the holder of such limited liability company interests shall, upon the execution of a counterpart to this Agreement, automatically be admitted as member of the Company upon such foreclosure, sale or other transfer, with all of the rights and obligations of the Member hereunder, subject to the limitations on transferability of such interests as described in this Section 23. The Company acknowledges that the pledge of the limited liability company interest in the Company made by the Member in connection with the Mezzanine Pledge Agreement shall be a pledge not only of profits and losses of the Company, but also a pledge of all rights and obligations of the Member. Upon a foreclosure, sale or other transfer of the limited liability company interests of the Company pursuant to the Mezzanine Pledge Agreement, the successor Member may transfer its interests in the Company, subject to this Section 23. Notwithstanding any provision in the Act or any other provision contained herein to the contrary, the Member shall be permitted to pledge and, upon any foreclosure of such pledge in connection with the admission of the Mezzanine Lender as a member, to transfer to the Mezzanine Lender its rights and powers to manage and control the affairs of the Company pursuant to the terms of the Mezzanine Pledge Agreement. Upon the exercise of its rights under the Mezzanine Pledge Agreement, the Mezzanine Lender shall have, among its other powers, the right to appoint and remove Directors pursuant to the terms of Section 9 herein.

(c) Notwithstanding anything to the contrary contained herein, the Member shall not, without the prior written consent of the Mezzanine Lender, issue and shall not permit the issuance of any additional limited liability company interests of the Company other than its initial issuance of limited liability company interests issued on or prior to the date of this Agreement.

Section 24. Dissolution.

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner required under Section 5(c) or this Section 24(a) or permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company (other than (i) upon an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company or the Member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member or a Special Member or any additional member shall not cause the Member or Special Member or additional member, respectively, to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) Notwithstanding any other provision of this Agreement, each of the Member, the Special Member and any additional member waive any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of the Member, Special Member or additional member, or the occurrence of an event that causes the Member, Special Member or additional member to cease to be a member of the Company.

(d) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.



(e) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

Section 25. Waiver of Partition; Nature of Interest.

To the fullest extent permitted by law, each of the Member and the Special Members, and any additional member admitted to the Company hereby irrevocably waives any right or power that such Person might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to Section 16 hereof. The interest of the Member in the Company is personal property.

Section 26. Tax Status.

It is intended that the Company shall be a disregarded entity for federal, state, and local income tax purposes.

Section 27. Benefits of Agreement; No Third-Party Rights.

With the exception of the Mezzanine Lender with respect to the provisions of Sections 16(b), 23(b), 23(c) and 23(d) of this Agreement, and with the exception of the Lender under the Basic Documents while the Obligations remain outstanding, none of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member or a Special Member, and nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person, except as provided in Section 30.

Section 28. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 29. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 30. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement, including, without limitation, the Special Purpose Provisions, constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member by the Independent Directors and the Lender, in accordance with its terms. In addition, the Independent Directors and the Lender (while the Obligations remain outstanding) shall be intended beneficiaries of this Agreement.

Section 31. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 32. Amendments.

Subject to Section 9(j), this Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member. Notwithstanding anything to the contrary in this Agreement, so long as any Obligation is outstanding, this Agreement may not be modified, altered, supplemented or amended unless the Lender consents in writing and the Rating Agency Condition is satisfied except: (i) to cure any ambiguity or (ii) to convert or supplement any provision in a manner consistent with the intent of this Agreement and the other Basic Documents.

Section 33. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 34. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

Section 35. Effectiveness.

Pursuant to Section 18-201 (d) of the Act, this Agreement shall be effective as of the date hereof.

Section 36. Limited Liability Company Interests

(a) Each limited liability company interest in the Company shall constitute a "security" within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware, and (ii) Article 8 of the Uniform Commercial Code of the State of New York and any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995.

(b) The limited liability company interests in the Company shall not be evidenced by certificates. The Board on behalf of the Company shall maintain books for the purpose of registering the issuance and transfer of limited liability company interests, and, upon any transfer of limited liability company interests in the Company, the Board on behalf of the Company shall notify the registered owner of any applicable restrictions on the transfer of limited liability company interests.

(c) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, for so long as the loan made by the Mezzanine Lender to the Member pursuant to the Mezzanine Loan Agreement is outstanding, neither the Member, the Special Member nor the Company shall amend, alter, change any provision of Section 36 of this Agreement unless the Mezzanine Lender consents in writing.

[SIGNATURE PAGE FOLLOWS]

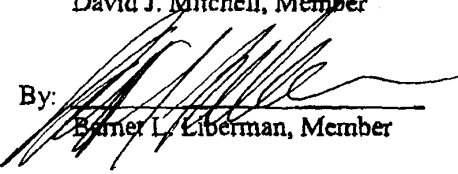
IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the 14<sup>th</sup> day of April 2005.

MEMBER:

LIVEWORK MANAGER, LLC

By: Las Vegas Land Partners, LLC, its sole member

By:   
David J. Mitchell, Member

By:   
Barner L. Liberman, Member

SPECIAL MEMBERS:

  
CARRIE TILEMAN

  
BETH PEOPLES

S-1

263501-3-W

Mitch0162870

10-0026

Case No.: A-16-740689-B

AA 2531

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the 14<sup>th</sup> day of April 2005.

MEMBER:

LIVEWORK MANAGER, LLC

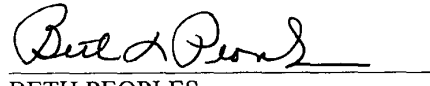
By: Las Vegas Land Partners, LLC, its sole member

By: \_\_\_\_\_  
David J. Mitchell, Member

By: \_\_\_\_\_  
Barnet L. Liberman, Member

SPECIAL MEMBERS:

  
CARRIE TILLMAN

  
BETH PEOPLES

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10-0027

Case No.: A-16-740689-B

AA 2532

## SCHEDULE A

### Definitions

#### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

"Act" has the meaning set forth in the preamble to this Agreement.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

"Agreement" means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

"Bankruptcy" means, with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (vii) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated or (viii) admits in writing its inability to pay its debts generally as such debts become due. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

"Basic Documents" means this Agreement, the Management Agreement, the Loan Documents, and all documents and certificates contemplated thereby or delivered in connection therewith.

"Board" or "Board of Directors" means the Board of Directors of the Company.

A-1

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Case No.: A-16-740689-B

AA 2533

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on April 6, 2005, as may be amended or amended and restated from time to time.

"Change in Control of the Company" means (a) a transfer resulting in a Person that owned less than 49% of the direct or indirect equity interests in the Company upon the closing of the Loan owning 49% or more of such equity interests after the transfer, (b) a transfer or transfers after the closing of the Loan that aggregate of 49% or more of the direct or indirect equity interests in the Company or (c) a change in the equity owners that Control the Company

"Company" means LiveWork, LLC, a Delaware limited liability company.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

"Covered Persons" has the meaning set forth in Section 20(a).

"Directors" means the Persons elected to the Board of Directors from time to time by the Member, including the Independent Directors, in their capacity as managers of the Company. A Director is hereby designated as a "manager" of the Company within the meaning of Section 18-101(10) of the Act.

"Independent Director" means a natural Person who is not at the time of initial appointment, or at any time while serving as a director of the Company, and has not been at any time during the preceding five (5) years: (a) a stockholder, manager, director, officer, employee, partner, member, attorney or counsel of the Company, or an Affiliate of the Company; (b) a creditor, customer, supplier or other Person who derives any of its purchases or revenues from its activities with the Company or any Affiliate of the Company; (c) a Person controlling or under common control with any such stockholder, partner, member, creditor, customer, supplier or other person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, creditor, customer, supplier or other Person.. A natural Person who satisfies the foregoing definition other than item (b) shall not be disqualified from serving as an Independent Director of the Company if such individual is an Independent Director provided by a nationally-recognized company that provides professional independent directors or analogous offices and that also provides other corporate services in the ordinary course of its business to the Company or any Affiliate of the Company, or, if such natural Person receives customary director's fees for serving subject to the limitation on fees set forth below. A natural Person who otherwise satisfies the foregoing shall not be disqualified from serving as an Independent Director of the Company if such individual is at the time of initial appointment, or at any time while serving as an Independent Director of the Company, an independent director, member or manager of a "special purpose entity" affiliated with the Company (other than any Person which

A-2

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Case No.: A-16-740689-B

AA 2534

owns any direct or indirect equity interest in the Company) if such individual is an Independent Director provided by a nationally-recognized company that provides professional independent directors or managers if the Person serving as such independent Person does not derive more than 5% of his or her annual income from serving as an Independent Director of the Company or any affiliate of the Company. For purposes of this paragraph, a "special purpose entity" is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve a Person's separateness that are substantially similar to those of the Company, and provide, *inter alia*, that it: (a) is organized for the limited purpose of owning and operating one or more properties, being the general partner or a member of a borrower or, in a securitization context, the limited purpose of issuing mortgage or asset-backed securities; (b) has restrictions on its ability to incur indebtedness, dissolve, liquidate, consolidate, merge and/or sell assets; (c) may not file voluntarily a bankruptcy petition on its own behalf or on behalf of such entity without the consent of the independent director, manager or member; and (d) shall conduct itself and cause the itself to conduct itself in accordance with certain "separateness covenants," including, but not limited to, the maintenance of its and such entity's books, records, bank accounts and assets separate from those of any other person or entity.

"Lender" means SFT I, Inc., a Delaware corporation in its capacity as lender under the Loan Agreement, together with its successors and assigns.

"Loan" means that certain loan in the amount of \$36,500,000.00 to be made by Lender to the Company in accordance with the terms, conditions and provisions of the Loan Documents.

"Loan Agreement" means that certain Loan and Security Agreement dated April 21, 2005 by and between the Company and Lender.

"Loan Documents" means the following documents and instruments, as the same may be amended from time to time:

- (a) Promissory Note (the "Note") made by the Company to Lender in the principal amount of \$36,500,000.00
- (b) Loan Agreement;
- (c) Deed of Trust with Security Agreement and Fixture Filing given by the Company in favor of First American Title Insurance Company, as trustee, in trust for the benefit of Lender and covering the Mortgaged Property;
- (d) Assignment of Contracts, Agreements and Equipment Leases made by the Company in favor of Lender as further security for the Note;
- (e) Assignment of Licenses, Permits and Approvals, made by the company in favor of the Lender as further security for the Note
- (f) Carveout Guaranty by David J. Mitchell and Barnet L. Liberman for the benefit of Lender;

A-3

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10-0030

Case No.: A-16-740689-B

AA 2535



- (g) Guaranty by David J. Mitchell and Barnet L. Liberman for the benefit of Lender;
- (h) Assignment of Purchase and Option Contracts, given by the Company in favor of the Lender;
- (i) Environmental Indemnity Agreement made by the Company, David J. Mitchell and Barnet L. Liberman for the benefit of Lender;
- (j) Rate Cap Pledge and Security Agreement, made by the Company in favor of Lender;.
- (k) Assignment and Subordination of Management Agreement by and among the Company, Lender and APS Management, Inc. d/b/a Shaw & Associates;
- (l) UCC Financing Statements made by the Company, as debtor, for the benefit of Lender, as secured party;
- (m) one or more Amendments to Loan and Security Agreement and Other Loan Documents, by and between the Company and the Lender;
- (n) one or more Modifications to Deed of Trust with Security Agreement and Fixture Filing given by the Company in favor of First American Title Insurance Company, as trustee, in trust for the benefit of Lender and covering the Mortgaged Property,
- (o) one or more Ratifications of Guaranty, Carveout Guaranty and Environmental Indemnity, made by the Company, David J. Mitchell and Barnet L. Liberman for the benefit of Lender; and
- (p) any other instruments or documents defined as "Loan Documents" in the Loan Agreement.

"Management Agreement" means the agreement of the Directors in the form attached hereto as Schedule C. The Management Agreement shall be deemed incorporated into, and a part of, this Agreement.

"Material Action" means to the fullest extent permitted by law to liquidate or dissolve the Company in whole or in part, consolidate, merge or enter into any form of consolidation with or into any Person, or convey, transfer or lease the assets of the Company substantially as an entity to any Person or permit any Person to consolidate, merge or enter into any form of consolidation with or into the Company, to file any insolvency, or reorganization case or proceeding, to institute proceedings to have the Company be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against the Company, to file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law

relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for the Company or a substantial part of its property, to make any assignment for the benefit of creditors of the Company, to admit in writing the Company's inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

"Member" means LiveWork Manager, LLC, as the initial member of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company; provided, however, the term "Member" shall not include the Special Members.

"Mezzanine Borrower" shall have the meaning given to such term in Section 23(b) of this Agreement.

"Mezzanine Lender" shall have the meaning given to such term in Section 23(b) of this Agreement.

"Mezzanine Loan Agreement" means that certain Loan Agreement dated April 21, 2005, by and between the Mezzanine Lender and Mezzanine Borrower.

"Mezzanine Pledge Agreement" shall have the meaning given to such term in Section 23(c) of this Agreement.

"Mortgaged Property" shall have the meaning given thereto in Section 7(a) of this Agreement.

"Obligations" shall mean the indebtedness, liabilities and obligations of the Company under or in connection with the Loan Documents.

"Officer" means an officer of the Company described in Section 11.

"Officer's Certificate" means a certificate signed by any Officer of the Company who is authorized to act for the Company in matters relating to the Company.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

"Rating Agency" has the meaning assigned to that term in the Loan Documents, or if no such defined term exists, means a nationally-recognized rating agency that is rating or that has rated the Loan or any pool of loans of which the Loan forms a part or any securities issued in connection with a securitization of the Loan or such pool of loans.

"Rating Agency Condition" means with respect to any action taken at any time after the loan evidenced and secured by the Loan Documents has been sold or assigned to a securitization trust, that each Rating Agency shall have notified the Company in writing that such action will not result in a reduction, withdrawal, downgrade or qualification of the then current rating by such Rating Agency of the Loan or any pool of loans of which the Loan forms a part, or of any of securities issued by such securitization trust.

"Special Member" means, upon such person's admission to the Company as a Member of the Company pursuant to Section 5(c), a person acting as Independent Director, in such person's capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

"Special Purpose Entity" means an entity, whose organizational documents contain restrictions on its purpose and activities and impose requirements intended to preserve the its separateness that are substantially similar to the Special Purpose Provisions of this Agreement.

"Special Purpose Provisions" shall have the meaning given in Section 9(j)(ii) of this Agreement.

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

SCHEDULE B

Member

<u>Name</u>	<u>Mailing Address</u>	<u>Capital Contribution</u>	<u>Membership Interest</u>
LIVEWORK MANAGER, LLC	c/o Mitchell Holdings 20 West 55 <sup>th</sup> Street 12 <sup>th</sup> Floor New York, New York 10019	the Mortgaged Property	100%

B-1

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**10-0035**

**Case No.: A-16-740689-B**

AA 2540

SCHEDULE C

Management Agreement

April 14, 2005

LiveWork, LLC  
c/o Mitchell Holdings  
20 West 55<sup>th</sup> Street, 12<sup>th</sup> Floor  
New York, New York 10019

Re: Management Agreement -- LiveWork, LLC

Ladies and Gentlemen:

For good and valuable consideration, each of the undersigned Persons, who have been designated as directors of LiveWork, LLC, a Delaware limited liability company (the "Company"), in accordance with the Limited Liability Company Agreement of the Company, dated as of April 14, 2005 as it may be amended or restated from time to time (the "LLC Agreement"), hereby agree as follows:

1. Each of the undersigned accepts such Person's rights and authority as a Director under the LLC Agreement and agrees to perform and discharge such Person's duties and obligations as a Director under the LLC Agreement, and further agrees that such rights, authorities, duties and obligations under the LLC Agreement shall continue until such Person's successor as a Director is designated or until such Person's resignation or removal as a Director in accordance with the LLC Agreement. Each of the undersigned agrees and acknowledges that it has been designated as a "manager" of the Company within the meaning of the Delaware Limited Liability Company Act.

2. So long as any Obligation is outstanding, each of the undersigned agrees, solely in its capacity as a creditor of the Company on account of any indemnification or other payment owing to the undersigned by the Company, not to acquiesce, petition or otherwise invoke or cause the Company to invoke the process of any court or governmental authority for the purpose of commencing or sustaining a case against the Company under any federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Company or any substantial part of the property of the Company, or ordering the winding up or liquidation of the affairs of the Company.

3. THIS MANAGEMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

C-1

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10-0036

Case No.: A-16-740689-B

AA 2541

Initially capitalized terms used and not otherwise defined herein have the meanings set forth in the LLC Agreement.

This Management Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Management Agreement and all of which together shall constitute one and the same instrument.

C-2

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**10-0037**

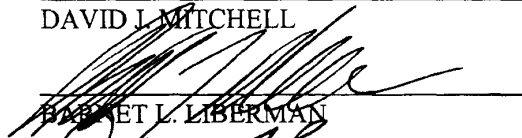
**Case No.: A-16-740689-B**

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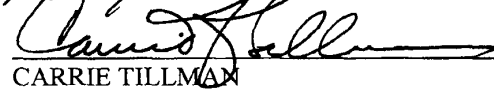
IN WITNESS WHEREOF, the undersigned have executed this Management Agreement  
as of the day and year first above written.



\_\_\_\_\_  
DAVID I. MITCHELL



\_\_\_\_\_  
BARNETT L. LIBERMAN



\_\_\_\_\_  
CARRIE TILLMAN



\_\_\_\_\_  
BETH PEOPLES

C-3

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Case No.: A-16-740689-B

AA 2543



## SCHEDULE D

### DIRECTORS

1. DAVID J. MITCHELL
2. BARNET L. LIBERMAN
3. CARRIE TILLMAN
4. BETH PEOPLES

D-1

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**10-0039**

**Case No.: A-16-740689-B**

AA 2544

SCHEDULE E

OFFICERS

TITLE

David J. Mitchell

President

Barnet L. Liberman

Vice President

David J. Mitchell

Treasurer

Barnet L. Liberman

Secretary

E-1

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**10-0040**

**Case No.: A-16-740689-B**

AA 2545

**FIRST AMENDMENT TO  
LIMITED LIABILITY COMPANY AGREEMENT OF  
LIVEWORK, LLC**

THIS FIRST AMENDMENT TO LIMITED LIABILITY COMPANY AGREEMENT OF LIVEWORK, LLC (this "First Amendment"), dated as of September \_\_, 2006 is made by LIVEWORK MANAGER, LLC, a Delaware limited liability company as the sole equity member (the "Member"), and CARRIE TILLMAN and BETH PEOPLES, as the Special Members.

Preliminary Statement

A. The Members entered into that certain Limited Liability Company Agreement of LiveWork, LLC (the "Company") dated as of April 14, 2005 (the "Operating Agreement"; capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Operating Agreement).

B. The undersigned wish to acknowledge and confirm certain changes to the terms of, and the correction of certain other items in, the Operating Agreement.

In consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. Amendments. (a) Schedule A of the Operating Agreement is hereby amended to provide that the defined terms set forth in the Operating Agreement shall have the following meanings:

"Lender" means Guggenheim Corporate Funding, LLC ("Guggenheim"), together with certain other Lenders determined by Guggenheim pursuant to the Loan Agreement, together with their respective successors and assigns.

"Loan" means that certain loan in the amount of \$124,279,000.00 to be made by Lender to the Company in accordance with the terms, conditions and provisions of the Loan Documents.

"Loan Agreement" means that certain Loan and Security Agreement dated September 29, 2006 by and between the Company and Lender.

"Loan Documents" means the following documents and instruments, as the same may be amended from time to time:

- (i) Loan Agreement;
- (ii) Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing given by the Company in favor of First American Title Insurance Company, as trustee, in trust for the benefit of Lender and covering the Mortgaged Property;

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Case No.: A-16-740689-B

AA 2546

- (iii) UCC-1 financing statements, each showing the Company as debtor, and Agent, as secured party, and prepared for filing as a fixture filing;
  - (iv) UCC-1 financing statements, each showing the Company as debtor, and Agent, as secured party, and prepared for filing under Article 9 of the UCC;
  - (v) Guaranty of Payment from the Member in favor of Agent;
  - (vi) Carve-out Guaranty from Las Vegas Land Partners, LLC, a Delaware limited liability company ("LVLP"), David J. Mitchell, an individual ("Mitchell") and Barnet L. Liberman, an individual ("Liberman"), in favor of Agent;
  - (vii) Assignment of Contracts, Agreements and Equipment Leases from the Company in favor of Agent;
  - (viii) Assignment of Licenses, Permits and Approvals from the Company in favor of Agent;
  - (ix) Assignment of Purchase Agreements from the Company in favor of Agent;
  - (x) Assignment and Subordination of Management Agreement from the Company and RMI, Inc., in favor of Agent;
  - (xi) Environmental Indemnity Agreement from the Company, the Member, LVLP, Mitchell and Liberman, in favor of Agent;
  - (xii) Pledge Agreement from the Member in favor of Agent;
  - (xiii) Pledge Agreement from LVLP in favor of Lender;
  - (xiv) Pledge Agreement by Liberman in favor of Agent, regarding 305 Second Avenue Associates;
  - (xv) Pledge Agreement by Liberman in favor of Agent, regarding Mountbatten Equities;
  - (xvi) Warrant, made by the Member and acknowledged by the Company in favor of Agent; and
  - (xvii) any other instruments or documents defined as "Loan Documents" in the Loan Agreement.
- (b) Section 23 and Schedule A of the Operating Agreement are amended to provide that the defined terms set forth in the Operating Agreement shall have the following meanings:

"Mezzanine Borrower" shall mean the Member.

"Mezzanine Lender" shall mean the Lender.

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Case No.: A-16-740689-B

AA 2547

The definition of "Mezzanine Loan Agreement" shall be deleted in its entirety.

"Mezzanine Pledge Agreement" shall mean that certain Security Agreement, made by the Member, Las Vegas Land Partners, LLC, a Delaware limited liability company, Mitchell and Liberman for the benefit of Lender.

(c) Section 36(c) of the Operating Agreement is hereby deleted in its entirety, and the following is inserted in lieu thereof:

"Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, for so long as the Loan is outstanding, neither the Member, the Special Member nor the Company shall amend, alter, change any provision of Section 36 of this Agreement unless the Lender consents in writing."

(d) Schedule B and Schedule C of the Operating Agreement are hereby modified to provide that the mailing address for each of the Company and the Member is c/o Mitchell Holdings, 41 East 60<sup>th</sup> Street, New York, New York 10022.

2. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

3. Binding Effect. Except as otherwise provided in the Operating Agreement, this Amendment shall be binding upon and inure to the benefit of the Member, its distributees, heirs, legal representatives, executors, administrators, successors and assigns.

4. Ratification. Except as amended herein, all the terms, conditions and provisions set forth in the Operating Agreement are hereby ratified and confirmed and shall remain in full force and effect.

5. Further Assurances. The Member and the Special Members agree to execute, acknowledge and deliver any and all further instruments and other documents as any Member of the Company or counsel to the Company may determine to be necessary or desirable for the achievement of the purposes of this Amendment; provided that such instrument or other document does not adversely affect the rights and obligations of such Member in any material respect.

6. Governing Law. This First Amendment shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

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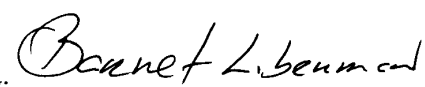
IN WITNESS WHEREOF, the parties have entered into this Second Amendment as of the day first written.

**MEMBER:**

LIVEWORK MANAGER, LLC

By: Las Vegas Land Partners, LLC, its sole member

By:   
\_\_\_\_\_  
David J. Mitchell, Managing Member

By:   
\_\_\_\_\_  
Barnet L. Liberman, Managing Member

*By David Mitchell his attorney in fact*

**SPECIAL MEMBERS:**

\_\_\_\_\_  
CARRIE TILLMAN

\_\_\_\_\_  
BETH PEOPLES

IN WITNESS WHEREOF, the parties have entered into this Second Amendment as of the day first written.

**MEMBER:**

LIVEWORK MANAGER, LLC

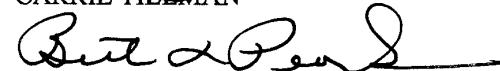
By: Las Vegas Land Partners, LLC, its sole member

By: \_\_\_\_\_  
David J. Mitchell, Managing Member

By: \_\_\_\_\_  
Barnet L. Liberman, Managing Member

**SPECIAL MEMBERS:**

  
CARRIE TILLMAN

  
BETH PEOPLES

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Case No.: A-16-740689-B

AA 2550

**EXHIBIT C**

Certificate of Good Standing

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**10-0046**

**Case No.: A-16-740689-B**

AA 2551



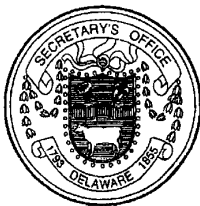
# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "LIVEWORK, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIFTEENTH DAY OF JUNE, A.D. 2007.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



3951262 8300

070713468

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5761748

DATE: 06-15-07

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Case No.: A-16-740689-B

AA 2552

# SECRETARY OF STATE




## CERTIFICATE OF EXISTENCE WITH STATUS IN GOOD STANDING

I, ROSS MILLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that I am, by the laws of said State, the custodian of the records relating to filings by corporations, non-profit corporations, corporation soles, limited-liability companies, limited partnerships, limited-liability partnerships and business trusts pursuant to Title 7 of the Nevada Revised Statutes which are either presently in a status of good standing or were in good standing for a time period subsequent of 1976 and am the proper officer to execute this certificate.

I further certify that the records of the Nevada Secretary of State, at the date of this certificate, evidence, **LIVEWORK, LLC**, as a limited liability company duly organized under the laws of Delaware and existing under and by virtue of the laws of the State of Nevada since April 18, 2005, and is in good standing in this state.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on June 14, 2007.



  
ROSS MILLER  
Secretary of State

Electronic Certificate  
Certificate Number: C20070614-1071  
You may verify this electronic certificate  
online at <http://secretaryofstate.biz/>

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10-0048

Case No.: A-16-740689-B

AA 2553

**EXHIBIT D**

Resolutions

304773-1-W

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**10-0049**

**Case No.: A-16-740689-B**

AA 2554

## CONSENT OF THE SOLE MEMBER OF LIVEWORK, LLC

The undersigned, being the sole member (the "**Sole Member**") of LIVEWORK, LLC, a Delaware limited liability company (the "**Company**"), hereby consents to and authorizes the following actions to be taken by the Company:

RESOLVED, that the Company be, and hereby is, authorized to enter into that certain Agreement for Purchase and Sale (the "**Sale Agreement**") by and between the Company and Zoe Property, LLC, a Delaware limited liability company ("**Zoe**", together with the Company, collectively, the "**Seller**"), as seller, and Forest City Commercial Development, Inc., an Ohio corporation (the "**Buyer**"), as buyer, pursuant to which (i) Zoe will sell and convey to the Company all of Zoe's right, title, and interest in all real property owned by Zoe together with all improvements located thereon and certain other items of personal property used in connection therewith, in each case as more fully described in the Sale Agreement and (ii) the Company will sell and convey to FC Vegas 39, LLC, New York limited liability company ("**Vegas 39**"), and FC Vegas 20, LLC, a Nevada limited liability company ("**Vegas 20**", together with Vegas 39, collectively, the "**FC TIC Owners**") an aggregate undivided sixty percent (60%) tenancy in common interest in the Company's right, title, and interest in all real property owned by the Company (inclusive of all real property conveyed by Zoe to the Company) together with all improvements located thereon and certain other items of personal property used in connection therewith, in each case as more fully described in the Sale Agreement (collectively, the "**Property**"), upon the terms and subject to the conditions set forth therein, and that the terms and conditions of the Sale Agreement are hereby, authorized and approved by the Company and the Sole Member; and be it further

RESOLVED, that in connection with the foregoing the Company be, and hereby is, authorized to enter into that certain Tenancy-in-Common Agreement by and between the Company and FC TIC Owners under which the Company shall own, after the sale of the Property to Buyer, an undivided forty percent (40%) tenancy-in-common interest in the Property, and the FC TIC Owners shall own an aggregate undivided sixty percent (60%) tenancy-in-common interest in the Property; and be it further

RESOLVED, that the Company be, and hereby is, authorized, together with the FC TIC Owners, in borrowing from Keybank National Association, the principal amount of up to \$116,400,000.00 (the "**Mortgage Loan**"), which Mortgage Loan may be secured by one or more mortgages covering the Property; and be it further

RESOLVED, that David J. Mitchell be, and hereby is, appointed as President of the Company, and Barnet L. Liberman be, and hereby is, appointed as Vice President of the Company; and be it further

RESOLVED, that each of David J. Mitchell, as President of the Company, Barnet L. Liberman, as Vice President of the Company, the Sole Member and any other officer of the

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10-0050

Case No.: A-16-740689-B

AA 2555

Company, in each case acting alone, be, and hereby is, authorized to execute and deliver, in connection with the foregoing, one or more deeds, conveyance documents, credit agreements, loan agreements, note or notes, security instruments, and such other agreements, mortgages, assignments of leases and rents, pledge agreements, financing statements, affidavits, and such other certificates, affidavits, instruments, indemnities and other documents as are or may be necessary, appropriate or convenient in connection with the sale of the Property, the Mortgage Loan transaction described herein, and/or the foregoing resolutions; in each case, all in such form and containing such provisions as the officer or the Sole Member executing the same may deem advisable, such determination to be conclusively evidenced by the execution and delivery thereof by any such officer or the Sole Member, and to do such acts and things as may be necessary or, in the opinion of the officer or the Sole Member executing the same, are desirable or proper to carry out the transactions contemplated by the foregoing resolutions; such determination to be conclusively evidenced by such officer's signature; and be it further

RESOLVED, that all actions of any kind heretofore taken by the Company, the Sole Member and/or any representative thereof, in connection with the Sale Agreement and the matters contemplated by the foregoing resolutions are hereby confirmed, ratified and approved in all respects; and be it further

RESOLVED, that this consent may be executed in any number of counterparts, each of which, when taken together, shall constitute one and the same instrument.


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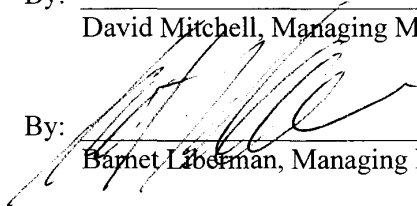
IN WITNESS WHEREOF, the undersigned has signed this consent as of the \_\_\_ day of June, 2007.

**SOLE MEMBER:**

LIVEWORK MANAGER, LLC, a Delaware limited liability company

By: LAS VEGAS LAND PARTNERS, LLC, a Delaware limited liability company, its member

By:   
David Mitchell, Managing Member

By:   
Barnett Liberman, Managing Member

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**10-0052**

**Case No.: A-16-740689-B**

AA 2557

**EXHIBIT E**

Name of Officer

Title

Signature

David J. Mitchell

President & Treasurer



Barnet L. Liberman

Vice President and Secretary



304773-1-W

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**10-0053**

**Case No.: A-16-740689-B**

AA 2558

TERM SHEET  
FOR RESTRUCTURE OF  
FOREST CITY/LIVEWORK ENTITIES

BACKGROUND

This term sheet, dated as of May 27, 2010 sets forth the basic terms of a proposed restructure of the business deal between Forest City Enterprises, Inc. ("FCE"), David Mitchell and Barnet Liberman ("Mitchell and Liberman") in connection with the ownership of multiple parcels of land in Las Vegas, Nevada.

Parcels A1, A2, A3 and B are owned by FC Vegas 39, LLC, ("FC 39") and FC Vegas 20, LLC, both affiliates of FCE and LiveWork LLC, which is owned by Mitchell and Liberman, as tenants in common (collectively, the "Vegas TICs"). The Forest City entities collectively own 60% of the TIC interests and LiveWork owns 40%. The Vegas TICs entered into a Tenancy In Common Agreement dated as of June 22, 2007 ("Vegas TIC Agreement").

The RTC Parcel, upon which a transportation center is being built, is owned by FC RTC 39, LLC and FC RTC 20, LLC, both affiliates of FCE and LiveWork, LLC, as tenants in common (collectively, the "RTC TICs"). The Forest City entities collectively own 60% of the RTC TIC interests and LiveWork owns 40%. The RTC TICs entered into a Tenancy In Common Agreement dated as of April 28, 2008 ("RTC TIC Agreement").

The parties wish to modify certain terms and provisions of the Vegas TIC and RTC TIC Agreements, the basics of which are set forth below. This term sheet is not intended to encompass all of the changes that will be made to the TIC Agreements, but rather to set forth the major deal points that will change.

I. VEGAS TIC AGREEMENT

The Vegas TIC Agreement shall be terminated and replaced with an operating agreement which shall include the terms set forth below.

A. Ownership percentages: As of January 31, 2009 (the "Effective Date"), the ownership percentages shall be adjusted to reflect the following: Forest City entities – 90%; LiveWork – 10%. LiveWork's percentage ownership will increase to 20% pursuant to the terms set forth below.

B. Equity Balances: The initial equity balances for the parties shall be established as of the Effective Date as \$26,352,000 for Forest City ("FC Base Equity Investment") and \$6,588,000 for LiveWork ("LiveWork Base Equity Investment").

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**Case No.: A-16-740689-B**

AA 2559



- C. Equity Contributions: As of the Effective Date, the Forest City members shall be solely responsible for making all necessary equity contributions on behalf of the members ("Subsequent FC Equity Investments"). The Forest City members shall contribute 100% of all equity requirements for the company, with 90% of each equity contribution being made on its own account and the remaining 10% of each equity investment shall be made as an equity loan for the benefit of LiveWork. This equity loan shall bear interest at 10% per annum until repaid. All Subsequent FC Equity Investments made after the Effective Date, including equity contributed on behalf of Forest City members and all equity contributed in the form of loans to LiveWork, and all interest accrued on those loans, shall receive a priority return on distributable proceeds.
- D. Governance: FC 39 shall be named the Managing Member of the company and shall manage the day-to-day operations of the company and shall have the power and authority to make all decisions for the company.
- E. LiveWork Equity Adjustment: Once the Forest City members have received a return of all Subsequent FC Equity Investments invested after the Effective Date and LiveWork has repaid all equity loans with interest, LiveWork's ownership shall increase from 10% to 20%.
- F. Distributions: Once all Subsequent FC Equity Investments have been repaid and LiveWork has repaid all equity loans with interest, then any cash distributions shall be paid out as follows:
- a. The first \$7MM of distributable proceeds shall be paid out 60% to the Forest City members and 40% to LiveWork;
  - b. The next \$14MM of distributable proceeds shall be paid out 90% to the Forest City members and 10% to LiveWork;
  - c. All distributable proceeds in excess of \$21MM shall be paid out 80% to the Forest City members and 20% to LiveWork.
- G. LiveWork's right to purchase additional interests in the company: Once the Forest City members have received a return of all Subsequent FC Equity Investments, including all equity contributed in the form of loans to LiveWork, and all interest accrued on those loans, then LiveWork shall have the option to purchase up to an additional 20% interest in the Company. The purchase price for the additional interest shall be equal to the value of the equity interest being purchased plus a 20% IRR return.
- H. Reimbursement for LiveWork expenses: Upon the City's approval of the City Hall transaction and the funding of the COPs, Forest City shall make a one-time payment of \$250,000 to LiveWork as reimbursement for expenses incurred in connection with the City Hall project. This payment is subject to verification of all expenses by FC 39. In addition, as of the Effective Date,

MITDEF003401

**12-0002**  
**Case No.: A-16-740689-B**

**AA 2560**

LiveWork shall be eligible to be reimbursed for travel and other project-related expenses that have been pre-approved by FC 39.

I. Entity structure: The Vegas TICs desire to contribute parcels A1, A2, A3 and B into one or more limited liability companies which shall be owned by the Vegas TICs.

II. RTC TIC AGREEMENT

With respect to the RTC TIC Agreement:

(A) After repayment of the RTC loan in full, net rental payments from the RTC Lease shall be distributed as follows:

- (i) to the extent that the Forest City members have received a repayment in full of the FC Base Equity Investment prior to the repayment of the RTC Loan, then net cash distributions from the RTC parcel shall be 60% to the Forest City TICs and 40% to LiveWork during the remainder of the RTC Lease term.
- (ii) to the extent that the Forest City TICs have not received full repayment of the FC Base Equity Investment prior to the repayment of the RTC Loan, then net cash distributions from the RTC parcel shall be 80% to Forest City and 20% to LiveWork until the FC Base Equity Investment has been repaid in full.

(B) At the end of the initial term of the ground lease entered into by and between LiveWork, LLC, as landlord, and The Regional Transportation Commission of Southern Nevada, as tenant, the land encumbered by said ground lease, also known as the RTC Parcel, shall be transferred to LiveWork LLC, upon the following conditions:

- (i) to the extent that the Forest City TICs have received a repayment in full of FC Base Equity Investment prior to the expiration of the RTC Lease, then the RTC Parcel shall be transferred to LiveWork at the end of the RTC Lease;
- (ii) to the extent that the Forest City TICs have not received full repayment of the FC Base Equity Investment, then Forest City shall retain an equity ownership stake in the RTC Parcel equal to the amount of the FC Base Equity Investment that remains outstanding. In no event shall FC's equity ownership stake in the RTC Parcel exceed 80% of the total residual value of the RTC Parcel.

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**12-0003**  
**Case No.: A-16-740689-B**

III. Miscellaneous.

A. The parties agree to negotiate in good faith to agree upon and execute such operating agreements and/or amendments to the existing TIC agreements (collectively, the "Definitive Agreements") as are necessary to carry out the purposes set forth herein on or before July 1, 2010 (the "Tolling Period"). So long as the parties are negotiating in good faith to execute the Definitive Agreements during the Tolling Period, FCE agrees to forego exercise of its remedies under the Vegas TIC Agreement during the Tolling Period as more particularly described in the letter dated April 23, 2010 from FC Vegas 39, LLC and FC Vegas 20, LLC to LiveWork, LLC and ORB Management. If the Definitive Agreements are not executed on or before the expiration of the Tolling Period, FCE reserves all rights to exercise any and all remedies available to it and its affiliates under the Vegas TIC Agreement.

B. This term sheet may be executed in counterparts.

FC Vegas 39, LLC

By: 

FC Vegas 20, LLC

By: 

FC RTC 39, LLC

By: 

FC RTC 20, LLC

By: 

MITDEF003403

12-0004  
Case No.: A-16-740689-B

AA 2562

LiveWork, LLC

By: \_\_\_\_\_

*CP*  
**DAVID MITCHELL**

LiveWork, LLC

By: \_\_\_\_\_

MITDEF003404

**12-0005**  
**Case No.: A-16-740689-B**

AA 2563

**305 LAS VEGAS LLC****Business Entity Information**

Status:	Active	File Date:	4/30/2007
Type:	Foreign Limited-Liability Company	Entity Number:	E0298142007-5
Qualifying State:	DE	List of Officers Due:	4/30/2018
Managed By:		Expiration Date:	
NV Business ID:	NV20071665414	Business License Exp:	4/30/2018

**Additional Information**

Central Index Key:	
--------------------	--

**Registered Agent Information**

Name:	CSC SERVICES OF NEVADA, INC.	Address 1:	2215-B RENAISSANCE DR
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89119
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

**Financial Information**

No Par Share Count:	0	Capital Amount:	\$ 0
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**No stock records found for this company****Officers**☐ Include Inactive Officers**Managing Member - 305 SECOND AVENUE ASSOCIATES, L.P.**

Address 1:	421 HUDSON STREET	Address 2:	
City:	NEW YORK	State:	NY
Zip Code:	10014	Country:	
Status:	Active	Email:	

**Actions\Amendments**

Action Type:	Application for Foreign Registration		
Document Number:	20070298056-19	# of Pages:	1
File Date:	4/30/2007	Effective Date:	

**305LV00012**<https://nvsos.gov/SOSEntitySearch/PrintCorp.aspx?lx8nvq=4AUMNqoumzQxbv4ch57PPw%253d%253d> 8/10/2017**17-0001****Case No.: A-16-740689-B**

AA 2564

(No notes for this action)			
Action Type:	Initial List		
Document Number:	20070842641-54	# of Pages:	1
File Date:	12/12/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20080405445-32	# of Pages:	1
File Date:	6/17/2008	Effective Date:	
(No notes for this action)			
Action Type:	Acceptance of Registered Agent		
Document Number:	20100585842-95	# of Pages:	1
File Date:	7/29/2010	Effective Date:	
(No notes for this action)			
Action Type:	Reinstatement		
Document Number:	20100585843-06	# of Pages:	1
File Date:	7/29/2010	Effective Date:	
REINSTATED/REVOKED 5-1-2010			
Action Type:	Annual List		
Document Number:	20110489315-94	# of Pages:	1
File Date:	6/30/2011	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20120189783-11	# of Pages:	1
File Date:	3/19/2012	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20130179295-19	# of Pages:	1
File Date:	3/18/2013	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140176168-36	# of Pages:	1
File Date:	3/10/2014	Effective Date:	
2014-2015			
Action Type:	Annual List		
Document Number:	20150112824-66	# of Pages:	1
File Date:	3/12/2015	Effective Date:	
15-16			
Action Type:	Annual List		
Document Number:	20160106104-41	# of Pages:	1
File Date:	3/7/2016	Effective Date:	
16-17			

305LV00013

<https://nvsos.gov/SOEntitySearch/PrintCorp.aspx?lx8nvq=4AUMNqoumzQxbv4ch57PPw%253d%253d> 8/10/2017

17-0002

Case No.: A-16-740689-B

AA 2565

Action Type:	Amended List		
Document Number:	20160263205-87	# of Pages:	1
File Date:	6/13/2016	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20170204440-14	# of Pages:	1
File Date:	5/9/2017	Effective Date:	
(No notes for this action)			

CT-07

FEB-18-1997 10:03

C T CORPORATION

1212 315 7988 P.03/05

CERTIFICATE OF ADOPTION OF  
REVISED LIMITED PARTNERSHIP ACT OF  
305 SECOND AVENUE ASSOCIATES

970211000441

UNDER SECTION 121-1202 OF THE REVISED LIMITED PARTNERSHIP ACT

THE UNDERSIGNED, being a general partner of 305 Second Avenue Associates hereby certifies:

1. The name of the limited partnership is 305 Second Avenue Associates.
2. The original certificate of limited partnership of the above limited partnership was filed with the county clerk of New York County, State of New York on the 23rd day of September, 1983.
3. The office of the limited partnership is located in the County of New York, State of New York.
4. The Secretary of State of the State of New York is hereby designated the agent of the limited partnership upon whom process served against the limited partnership may be served: The post office address to which the Secretary of State shall mail a copy of any process against the limited partnership served upon him as agent of the limited partnership is c/o Christy & Viener, 620 Fifth Avenue, New York, New York 10020, Attn: Mitchell Nelson, Esq.  
Mitchell Nelson, Esq.
5. Christy & Viener, having a business address at 620 Fifth Avenue, New York, New York 10020, is hereby designated pursuant to Section 121-105 of the Revised Limited Partnership Act of New York, the registered agent of the limited partnership upon whom process against the limited partnership may be served.

6. The name and business or residence address of each general partner is as follows:

Winthrop D. Chamberlin, 421 Hudson Street, New York, New York 10014

Barnet L. Liberman, 421 Hudson Street, New York, New York 10014

7. The latest date upon which the limited partnership is to dissolve is December 31, 2020.

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18-0001  
Case No.: A-16-740689-B

AA 2567



8. The limited partnership hereby adopts the provisions of the Revised Limited Partnership Act as set forth in Article 8-A of the Partnership Law of New York.

IN WITNESS WHEREOF, I have made and signed this certificate this 10<sup>th</sup> day of February, 1997 and I affirm the statements contained therein as true under the penalties of perjury.

Winthrop D. Chamberlin  
Winthrop D. Chamberlin  
General Partner

114091.1

305LV03203

18-0002  
Case No.: A-16-740689-B

AA 2568

CT-07

CERTIFICATE OF ADOPTION OF  
REVISED LIMITED PARTNERSHIP ACT  
OF  
305 SECOND AVENUE ASSOCIATES

UNDER SECTION 121-1202 OF THE REVISED LIMITED PARTNERSHIP ACT

RECEIVED  
RECEIVED  
FEB 11 12 01 PM '97  
FEB 10 2 21 PM '97

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED FEB 11 1997  
TAXS  
BY: *Ant*

CHRISTY & VIENER  
ROCKEFELLER CENTER  
620 FIFTH AVE  
NY, NY 10020-2457

970211000 577

3

305LV03204

18-0003  
Case No.: A-16-740689-B

AA 2569

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on August 14, 2014.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

Rev. 06/13

305LV03205

18-0004  
Case No.: A-16-740689-B

AA 2570

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through May 24, 2018.

---

Selected Entity Name: 305 SECOND AVENUE ASSOCIATES, L.P.

Selected Entity Status Information

**Current Entity Name:** 305 SECOND AVENUE ASSOCIATES, L.P.

**DOS ID #:** 2112121

**Initial DOS Filing Date:** FEBRUARY 11, 1997

**County:** NEW YORK

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC LIMITED PARTNERSHIP

**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

305 SECOND AVENUE ASSOCIATES, L.P.

421 HUDSON STREET

NEW YORK, NEW YORK, 10014

**Registered Agent**

REGISTERED AGENT REVOKED

» »

### \*Stock Information

# of Shares	Type of Stock	\$ Value per Share
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No Information Available

\*Stock information is applicable to domestic business corporations.

**305LV03199**

<https://annext20.dos.ny.gov/corp>

Entity Information

5/25/2018

**19-0001**

**Case No.: A-16-740689-B**

AA 2571

## Name History

Filing Date	Name Type	Entity Name
FEB 11, 1997	Actual	305 SECOND AVENUE ASSOCIATES
FEB 11, 1997	Actual	305 SECOND AVENUE ASSOCIATES, L.P.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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**305LV03200**

<https://appext20.dos.nv.gov/corn> nu...

Entity Information

5/25/2018

**19-0002**

**Case No.: A-16-740689-B**

AA 2572

**CERTIFICATE OF FORMATION**

**OF**

**305 LAS VEGAS LLC**

The undersigned, an authorized natural person, for the purpose of forming a limited liability company, under the provisions and subject to the requirements of the Delaware Limited Liability Company Act (the “*Act*”), hereby certifies that:

1. The name of the limited liability company is “305 LAS VEGAS LLC” (hereinafter referred to as the “*LLC*”).

2. The address of the registered office of the LLC is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, City of Wilmington, 19808, County of New Castle. The name of the registered agent at that address for purposes of service of process, as required by Section 18-104 of the Act, is: Corporation Service Company.

3. The term of the LLC shall continue until terminated in accordance with the operating agreement of the LLC.

Dated: April 19, 2007

/s/ Anila E. Hoxha  
Anila E. Hoxha  
Authorized Person

{530850;1}

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 02:11 PM 04/19/2007  
FILED 02:11 PM 04/19/2007  
SRV 070454128 - 4337320 FILE

**305LV03357**

**20-0001**  
**Case No.: A-16-740689-B**

AA 2573

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "305 LAS VEGAS LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE NINETEENTH DAY OF APRIL, A.D. 2007, AT 2:11 O'CLOCK P.M.

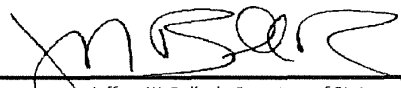
AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID LIMITED LIABILITY COMPANY, "305 LAS VEGAS LLC".



4337320 8100H

141068897

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 1618534

DATE: 08-13-14

305LV03358

20-0002  
Case No.: A-16-740689-B

AA 2574

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
305 LAS VEGAS LLC**

This Limited Liability Company Agreement (together with the schedules attached hereto, this "Agreement") of 305 Las Vegas LLC (the "Company"), is entered into by 305 Second Avenue Associates, L.P., as the sole equity member (the "Member"), and Joseph K. Winrich, as the Independent Manager (as defined on Schedule A hereto). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

WHEREAS, the Member has by execution of this Agreement, acknowledged the formation of the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101 et seq. ), as amended from time to time (the "Act"), and this Agreement and the Member and the Independent Manager hereby agree as follows:

Section 1.     Name.

The name of the limited liability company formed hereby is 305 Las Vegas LLC.

Section 2.     Principal Business Office.

The principal business office of the Company shall be located c/o Orb Management, Ltd., 421 Hudson Street, New York, New York 10014 or such other location as may hereafter be determined by the Member.

Section 3.     Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Wilmington, Delaware 19808.

Section 4.     Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Wilmington, Delaware 19808.

Section 5.     Members.

(a)     The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to this Agreement.

(b)     Subject to Section 9(c), the Member may act by written consent.

(c)     Upon the occurrence of any event that causes the Member to cease to be a member of the Company (other than upon an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to

{528689;2}

**305LV03362**

**21-0001  
Case No.: A-16-740689-B**

**AA 2575**



Sections 21 and 23), the person acting as an Independent Manager pursuant to Section 10 shall, without any action of any Person and simultaneously with the Member ceasing to be a member of the Company, automatically be admitted to the Company as a Special Member and shall continue the Company without dissolution. No Special Member may resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, and (ii) such successor has also accepted its appointment as Independent Manager pursuant to Section 10; provided, however, the Special Member shall automatically cease to be a member of the Company upon the admission to the Company of a substitute Member. The Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, the Special Member shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. The Special Member, in its capacity as Special Member, may not bind the Company. Except as required by any mandatory provision of the Act, the Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of the Special Member, the person acting as an Independent Manager pursuant to Section 10 shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, the person acting as an Independent Manager pursuant to Section 10 shall not be a member of the Company.

Section 6. Certificates.

Anila E. Hoxha is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, her powers as an "authorized person" ceased, and the Member thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Act. The Member or an Officer shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in Nevada and in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purposes.

The purpose to be conducted or promoted by the Company is to engage in the following activities:

(a)

- (i) to acquire, own, manage, operate, lease, finance, refinance, hold, sell and otherwise deal with and dispose of an interest in certain real property, together with all improvements thereon, located at 320 East Charleston

{528689;2}

305LV03363

21-0002  
Case No.: A-16-740689-B

AA 2576

Boulevard and 300 East Charleston Boulevard, in Las Vegas, Nevada (the "Property"); and

- (ii) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

Section 8. Powers.

Subject to Section 9(c), the Company, and the Member and the Officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act. Subject to Section 7, the Member (and any Officer authorized by the Member) has the authority to bind the Company.

Section 9. Management.

(a) Member-Managed. Subject to Section 9(c), the business and affairs of the Company shall be managed by or under the discretion of the Member.

(b) Member as Agent. To the extent of its powers set forth in this Agreement and subject to Section 9(c), the Member is an agent of the Company for the purposes of the Company's business, and the actions of the Member taken in accordance with such powers set forth in this Agreement shall bind the Company. Notwithstanding the last sentence of Section 18-402 of the Act, except as provided in this Agreement or in a resolution of the Member, the Member may not bind the Company.

(c) Limitations on the Company's Activities.

- (i) This Section 9(c) is being adopted in order to comply with certain provisions required in order to qualify the Company as a "special purpose" entity.
- (ii) The Member shall not, so long as Company remains a borrower under the Loan, amend, alter, change or repeal the definition of "Independent Manager" or Sections 5(b), 5(c), 7, 8, 9, 10, 12, 16, 20, 21, 22, 23, 24, 25, 26, 29, 30, 31 or 34 or Schedule E of this Agreement (the "Special Purpose Provisions") without the unanimous written consent of the Member and the Independent Manager. In addition, the Member shall not, so long as Company remains a borrower under the Loan, amend, alter, change or repeal the Special Purpose Provisions without the prior written consent of the Lender. Subject to this Section 9(c), the Member reserves the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 31.

{528689;2}

305LV03364

21-0003  
Case No.: A-16-740689-B

AA 2577

- (iii) Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Company, the Member, any Officer or any other Person, neither the Member nor any Officer nor any other Person shall be authorized or empowered, nor shall they permit the Company, without the prior unanimous written consent of the Member and the Independent Manager, to take any Material Action, provided, however, that the Member may not vote on, or authorize the taking of, any Material Action, unless there is at least one (1) Independent Manager then serving in such capacity.
- (iv) The Member shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if the Member shall determine that the preservation thereof is no longer desirable for the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Company. The Company shall and the Member shall cause the Company to comply with the provisions of Schedule E attached hereto.

The provisions of Schedule E are incorporated herein by reference. Notwithstanding anything in this Agreement to the contrary, to the extent any conflict exists between the provisions of this Agreement and the provisions of Schedule E, the provisions of Schedule E shall control. Failure of the Company or the Member on behalf of the Company, to comply with any of the covenants in Schedule E or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Member or the managers.

Section 10. Independent Manager.

As long as Company remains a borrower under the Loan, the Member shall cause the Company at all times to have at least one (1) Independent Manager who will be appointed by the Member. The Independent Manager shall be, and is hereby designated as a "manager" within the meaning of Section 18-101(10) of the Act, and shall have only those powers in management of the business and affairs of the Company and shall be specifically provided in this Agreement. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, the Independent Manager shall consider only the interests of the Company, including its creditors, in acting or otherwise voting on the matters referred to in Section 9(c)(iii). No resignation or removal of the Independent Manager, and no appointment of a successor Independent Manager, shall be effective until such successor (i) shall have accepted his or her appointment as the Independent Manager by a written instrument, which may be a counterpart signature page to the Management Agreement, and (ii) shall have executed a counterpart to this Agreement as required by Section 5(c). In the event of a vacancy in the position of Independent Manager, the Member shall, as soon as practicable, appoint a successor Independent Manager. All right, power and authority of the Independent Manager shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement. Except as provided in the third sentence of this Section 10, in exercising their rights and performing their duties under this

{528689;2}

305LV03365

21-0004  
Case No.: A-16-740689-B

AA 2578

Agreement, the Independent Manager shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Delaware. No Independent Manager shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

Section 11. Officers.

(a) The Member may appoint officers ("Officers"), from time to time, with such titles as it may select, including the titles of Chairman, Chief Executive Officer, President, Vice President, Treasurer and Secretary to act on behalf of the Company. An Officer shall have such power and authority as the Member shall delegate to any such person. The initial Officers of the Company designated by the Member are listed on Schedule D hereto.

(b) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Member not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, subject to Section 9(c), the actions of the Officers taken in accordance with such powers shall bind the Company.

(c) Duties of Member and Officers. Except to the extent otherwise provided herein, any manager and each Officer shall have a fiduciary duty of loyalty and care similar to that of directors and officers of business corporations organized under the General Corporation Law of the State of Delaware.

Section 12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor the Special Member nor any manager shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member, Special Member or manager of the Company.

Section 13. Capital Contributions.

The Member has contributed to the Company all of the capital existing in the Company. In accordance with Section 5(c), the Special Member shall not be required to make any capital contributions to the Company.

Section 14. Additional Contributions.

The provisions of this Agreement are intended to benefit the Member and the Special Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Member and the Special Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

{528680;2}

305LV03366

21-0005  
Case No.: A-16-740689-B

AA 2579

Section 15. Reimbursable Expenses.

To the fullest extent permitted by law, the Company will reimburse the Member and the Officers for all actual out-of-pocket third-party expenses incurred in connection with the carrying out of the duties set forth in this Agreement.

Section 16. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to the Member on account of its interest in the Company if such distribution would violate the Act, the Loan Agreement or any other applicable law.

Section 17. Records.

The Member shall keep or cause to be kept at the principal office of the Company the following: (a) a written record of the full name and mailing address of the Member; (b) a copy of the initial Certificate of Formation and all amendments thereto; (c) copies of all written operating agreements no longer in effect; (d) copies of any written and signed promises by the Member to make capital contributions to the Company; (e) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years; (f) copies of any prepared financial statements of the Company for the three most recent years; and (g) minutes of every meeting as well as any written consents of actions taken without a meeting.

Section 18. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 19. Other Business.

The Member, the Special Member and any Affiliate of the Member or the Special Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 20. Exculpation and Indemnification.

(a) Neither the Member nor the Special Member nor any Officer, manager, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member or the Special Member (collectively, the "Covered Persons") shall, to the fullest extent permitted by law, be liable to the Company or any other Person that is a party to or is otherwise bound by this Agreement, for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

{528689;2}

305LV03367

21-0006  
Case No.: A-16-740689-B

AA 2580

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 20 by the Company shall be provided out of and to the extent of Company assets only, and the Member and the Special Member shall not have personal liability on account thereof; and provided, further, that so long as the Company remains a borrower under the Loan, no indemnity payment from funds of the Company (as distinct from funds from other sources, such as insurance) of any indemnity under this Section 20 shall be payable from amounts allocable to any other Person pursuant to the Loan Documents.

(c) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 20.

(d) To the fullest extent permitted by applicable law, a Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, to the fullest extent permitted by applicable law, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member and the Special Member to replace such other duties and liabilities of such Covered Person to the fullest extent permitted by applicable law.

(f) The foregoing provisions of this Section 20 shall survive any termination of this Agreement.

{528689;2}

305LV03368

21-0007  
Case No.: A-16-740689-B

AA 2581

Section 21. Assignments.

Subject to any applicable restrictions on transferability contained in the Loan Agreement, the Member may assign in whole or in part its limited liability company interest in the Company. Subject to Section 23, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its limited liability company interest in the Company pursuant to this Section 21, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by merger or consolidation shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

Section 22. Resignation.

For so long as the Company is a borrower under the Loan, Member may not resign except as permitted under the Loan Documents and if an additional member is admitted as a member of the Company.

Section 23. Admission of Additional Members.

One or more additional Members of the Company may be admitted to the Company with the written consent of the Member; provided, however, that, notwithstanding the foregoing, so long as Company remains a borrower under the Loan, no additional Member may be admitted to the Company.

Section 24. Dissolution.

(a) Subject to Section 9(c), the Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company (other than upon an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company or the Member in the Company.

{528689;2}

305LV03369

21-0008  
Case No.: A-16-740689-B

AA 2582

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member or a Special Member shall not cause the Member or Special Member, respectively, to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) Notwithstanding any other provision of this Agreement, each of the Member and the Special Member waives any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of the Member or a Special Member, or the occurrence of an event that causes the Member or a Special Member to cease to be a member of the Company.

(d) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(e) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

Section 25. Waiver of Partition; Nature of Interest.

Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each of the Member, the Special Member and any additional member admitted pursuant to Section 23 hereof hereby irrevocably waives any right or power that such Person might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to Section 16 hereof. The interest of the Member in the Company is personal property.

Section 26. Benefits of Agreement; No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member or a Special Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (except as provided in Section 29).

Section 27. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

{528689;2}

305LV03370

21-0009  
Case No.: A-16-740689-B

AA 2583



Section 28. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 29. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement, including, without limitation, Sections 7, 8, 9, 10, 20, 21, 22, 23, 24, 26, 29 and 31, constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member by the Independent Manager, in accordance with its terms. In addition, the Independent Manager shall be an intended beneficiary of this Agreement.

Section 30. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 31. Amendments.

Subject to Section 9(c), this Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member.

Section 32. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 33. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

Section 34. Independent Manager and Special Member Provisions.

To the fullest extent permitted by law, notwithstanding anything herein to the contrary, once Company ceases to be a borrower under the Loan, all provisions with respect to the Independent Manager and Special Member shall be of no further force or effect, and the restrictions of Sections 9(c), 23, and 31 shall be of no further force or effect.

[SIGNATURE PAGE FOLLOWS]

{528689;2}

305LV03371

21-0010  
Case No.: A-16-740689-B

AA 2584

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Amended and Restated Limited Liability Company Agreement as of the 30<sup>th</sup> day of April, 2007.

MEMBER:

305 Second Avenue Associates, L.P.

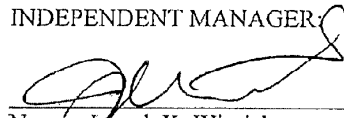
By: \_\_\_\_\_

Name: Winthrop Chamberlin  
Title: General Partner

By: \_\_\_\_\_

Name: Barnet Liberman  
Title: General Partner

INDEPENDENT MANAGER:

  
Name: Joseph K. Winrich

{528689;2}

305LV03372

21-0011  
Case No.: A-16-740689-B

AA 2585

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has  
duly executed this Amended and Restated Limited Liability Company Agreement as of the 30<sup>th</sup>  
day of ~~May~~ April, 2007.

MEMBER:

305 Second Avenue Associates, L.P.

By: Winthrop Chamberlin  
Name: Winthrop Chamberlin  
Title: General Partner

By: Barnet Liberman  
Name: Barnet Liberman  
Title: General Partner

INDEPENDENT MANAGER:

Name: \_\_\_\_\_

{528689;2}

305LV03373

21-0012  
Case No.: A-16-740689-B

AA 2586

## SCHEDULE A

### Definitions

#### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

"Act" has the meaning set forth in the preamble to this Agreement.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

"Agreement" means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

"Bankruptcy" means, with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (vii) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(l) and 18-304 of the Act.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on April 19, 2007, as amended or amended and restated from time to time.

"Company" means 305 Las Vegas LLC, a Delaware limited liability company.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

{528689;2}MIA-FSIN721449v13

A-1

305LV03374

21-0013  
Case No.: A-16-740689-B

AA 2587

"Covered Persons" has the meaning set forth in Section 20(a).

"Independent Manager" means a natural person who, for the five-year period prior to his or her appointment as Independent Manager has not been, and during the continuation of his or her service as Independent Manager is not: (i) a stockholder, director, officer, employee, member or partner of the Company (other than his or her service as an Independent Manager or similar capacity); (ii) a customer, supplier or other Person who derives more than 10% of its purchases or revenues from its activities with the Company, (iii) a Person or other entity controlling or under common control with any Person described in (i) or (ii); or (iv) a member of the immediate family of any Person described in (i), (ii) or (iii).

"Lender" means Heartland Bank, in its capacity as lender under the Loan Agreement, together with its successors and assigns.

"Loan" means that certain loan in the original amount of \$7,000,000.00 and that certain loan in the original amount of \$4,000,000.00 to be made by the Lender to the Company, as borrower (the "Borrower"), in accordance with the terms, conditions and provisions of the Loan Documents.

"Loan Agreement" means that certain Loan Agreement, dated as of the date hereof, by and between the Borrowers and the Lender.

"Loan Documents" means the Loan Agreement, the "Loan Documents" (as defined in the Loan Agreement) and all other agreements, documents, instruments, certificates or papers executed and delivered in connection with the Loan.

"Management Agreement" means the agreement of the Independent Manager in the form attached hereto as Schedule C. The Management Agreement shall be deemed incorporated into, and a part of this Agreement.

"Material Action" means to institute proceedings to have the Company be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company or file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the Company.

"Member" means 305 Second Avenue Associates, L.P., as the initial member of the Company, and includes any Person admitted as a substitute member of the Company pursuant to the provisions of this Agreement, in its capacity as a member of the Company; provided, however, the term "Member" shall not include the Special Members.

"Obligations" shall mean the indebtedness, liabilities and obligations of the Company under or in connection with the Loan.

"Officer" means an officer of the Company described in Section 11.

"Officer's Certificate" means a certificate signed by any Officer of the Company who is authorized to act for the Company in matters relating to the Company.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited partnership, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

"Special Member" means, upon such person's admission to the Company as a member of the Company pursuant to Section 5(c), a person acting as Independent Manager, in such person's capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

SCHEDULE B

Member

<u>Name</u>	<u>Mailing Address</u>	<u>Agreed Value of Capital Contribution</u>	<u>Membership Interest</u>
305 Second Avenue Associates, L.P.	421 Hudson Street New York, NY 10014	[\$ _____]	100%

{528689;2}MIA-FS1\1721449v13

B-1

305LV03377

21-0016  
Case No.: A-16-740689-B

AA 2590

SCHEDULE C

Management Agreement

May \_\_, 2007

305 Las Vegas LLC  
421 Hudson Street  
New York, NY 10014

Re: Management Agreement – 305 Las Vegas LLC

Ladies and Gentlemen:

For good and valuable consideration, each of the undersigned Persons, who have been designated as Independent Manager of 305 Las Vegas LLC, a Delaware limited liability company (the "Company"), in accordance with the Limited Liability Company Agreement of the Company, dated as of March \_\_, 2007, as it may be amended or restated from time to time (the "LLC Agreement"), hereby agree as follows:

1. Each of the undersigned accepts such Person's rights and authority as an Independent Manager under the LLC Agreement and agrees to perform and discharge such Person's duties and obligations as an Independent Manager under the LLC Agreement, and further agrees that such rights, authorities, duties and obligations under the LLC Agreement shall continue until such Person's successor as an Independent Manager is designated or until such Person's resignation or removal as an Independent Manager in accordance with the LLC Agreement. Each of the undersigned agrees and acknowledges that it has been designated as a "manager" of the Company within the meaning of the Delaware Limited Liability Company Act.

2. So long as Company remains a borrower under a certain loan from Heartland Bank, each of the undersigned agrees, solely in its capacity as a creditor of the Company on account of any indemnification or other payment owing to the undersigned by the Company, not to acquiesce, petition or otherwise invoke or cause the Company to invoke the process of any court or governmental authority for the purpose of commencing or sustaining a case against the Company under any federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Company or any substantial part of the property of the Company, or ordering the winding up or liquidation of the affairs of the Company.

3. THIS MANAGEMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

Initially capitalized terms used and not otherwise defined herein have the meanings set forth in the LLC Agreement.

{528689;2}MIA-PSIV1721449v13

C-1

305LV03378

21-0017  
Case No.: A-16-740689-B

AA 2591



This Management Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Management Agreement and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Management Agreement as of the day and year first above written.

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: Independent Manager

{528689;2}MIA-FS1\1721449v13

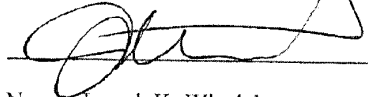
C-2

305LV03379

21-0018  
Case No.: A-16-740689-B

AA 2592

IN WITNESS WHEREOF, the undersigned have executed this Management Agreement  
as of the day and year first above written.



Name: Joseph K. Winrich

Title: Independent Manager

{528689;2}MIA-FS IV721449v13

C-3

305LV03380

21-0019  
Case No.: A-16-740689-B

AA 2593

SCHEDULE D

Officers

Name:

Title:

- |    |                |
|----|----------------|
| 1. | President      |
| 2. | Secretary      |
| 3. | Vice President |

{528689;2}

305LV03381

21-0020  
Case No.: A-16-740689-B

AA 2594

## SCHEDULE E

### **Special Purpose Entity Provisions**

All capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to them in the Loan Document made by and between Heartland Bank (together with its successors and assigns, "Heartland") and 305 Las Vegas LLC, a Delaware limited liability company, as borrower ("Borrower") (the "Loan Agreement") regarding that certain loan ("Loan").

#### **ARTICLE I. SINGLE PURPOSE ENTITY REQUIREMENTS**

(a) Notwithstanding anything to the contrary contained in this Agreement, the Member shall cause the Company to, and the Company shall, conduct its activities in a manner consistent with the following:

(i) shall preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization, except to the extent expressly permitted as a Permitted Transfer under the Loan Agreement, provided, however, in the event such entity was not in good standing prior to the date hereof, such entity has properly reinstated in accordance with the applicable laws of its state of organization and is currently in good standing as of the date hereof;

(ii) to the fullest extent permitted by law, shall not merge or consolidate with any other Person, except to the extent expressly permitted as a Permitted Transfer under the Loan Agreement;

(iii) to the fullest extent permitted by law, shall not take, any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets, except to the extent expressly permitted under the Loan Agreement; to change its legal structure, transfer, or, to the fullest extent permitted by law, permit the direct or indirect transfer of, any partnership, membership or other Equity Interests, as applicable, other than Permitted Transfers under the Loan Agreement; or, to the fullest extent permitted by law, seek to accomplish any of the foregoing;

(iv) shall maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person;

(v) shall only enter into any contract or agreement with any member or Affiliate upon terms and conditions that are intrinsically fair, and except for capital distributions and capital contributions, substantially similar to those that would be available on an arms-length basis with third parties;

(vi) shall file its own tax returns except to the extent that the Company is treated as a "disregarded entity" for tax purposes and is not required to file returns under applicable law, and pay only taxes required to be paid under applicable law;

(vii) shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations, provided, however, that the foregoing shall not require the Member to make additional capital contributions to the Company;

(viii) shall allocate shared expenses (including, without limitation, shared office space) and use separate stationery, invoices and checks;

(ix) shall not permit its assets to be listed as assets on the financial statement of any other Person; provided, however, that its assets may be included in a consolidated financial statement of its Affiliates, provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of it and such Affiliates and to indicate that its assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person and (B) such assets shall be listed on its own separate balance sheet;

(x) shall not incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation) other than indebtedness and liabilities incurred in the ordinary course of its business that are related to the ownership and operation of the Property and are expressly permitted under the Loan Documents;

(xi) shall not own any subsidiary or make any investment in, any other Person (other than the Member);

(xii) shall not commingle its assets with the assets of any other Person;

(xiii) shall not maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xiv) shall not assume or guaranty the debts of any other Person; (B) shall not hold itself out to be responsible for the debts of another Person, and (C) shall not pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xv) shall hold itself out to the public as a legal entity separate and distinct from any other Person and shall conduct its business solely in its own name and shall correct any known misunderstanding regarding its separate identity, shall conduct its business in its own name, and has not identified and shall not identify itself or any of its Affiliates as a division or part of the other;

(xvi) shall pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds and has maintained and shall maintain a sufficient number of employees (if any) in light of its contemplated business operations;

(xvii) except as contemplated by the Loan Documents, shall not acquire obligations or securities of its members, or any other Affiliate;

(xviii) shall not permit any Affiliate or constituent party independent access to its bank accounts;

(xix) in the event of a Securitization, such entity shall have at least two (2) Independent Managers; and

(xx) shall not make any loans or advances to any other Person.

**INITIAL/ANNUAL LIST OF MANAGERS OR MANAGING MEMBERS AND STATE  
BUSINESS LICENSE APPLICATION OF:**

**305 LAS VEGAS LLC**

NAME OF LIMITED-LIABILITY COMPANY

**E0298142007-5**

ENTITY NUMBER

**FOR THE FILING PERIOD OF 2016 TO 2017. DUE BY 4/30/2016**



\*100403\*

USE BLACK INK ONLY - DO NOT HIGHLIGHT

**YOU MAY FILE THIS FORM ONLINE AT [www.nvsilverflume.gov](http://www.nvsilverflume.gov)**

- ☐ Return one file stamped copy. (If filing not accompanied by order instructions, file stamped copy will be sent to registered agent.)

**IMPORTANT: Read instructions before completing and returning this form**

1. Print or type names and addresses, either residence or business, for all managers or managing members. A Manager, or if none, Managing Member of the LLC or other person authorized by the LLC must sign the form. **FORM WILL BE RETURNED IF UNSIGNED.**
2. If there are additional managers or managing members, attach a list of them to this form.
3. Annual list fee is \$150.00. A \$75.00 penalty must be added for failure to file this form by the deadline. An annual list received more than 90 days before its due date shall be deemed an amended list for the previous year.
4. State Business License fee is \$200.00. Effective 2/1/2010, \$100.00 must be added for failure for file form by deadline.
5. Make your check payable to the Secretary of State.
6. Ordering Copies: If requested above, one file stamped copy will be returned at no additional charge. To receive a certified copy, enclose an additional \$30.00 per certification. A copy fee of \$2.00 per page is required for each additional copy generated when ordering 2 or more file stamped or certified copies. Appropriate instructions must accompany your order.
7. Return the completed form to: Secretary of State, 202 North Carson Street, Carson City, Nevada 89701-4201, (775) 684-5708.
8. Form must be in the possession of the Secretary of State on or before the last day of the month in which it is due. (Postmark date is not accepted as receipt date.) Forms received after due date will be returned for additional fees and penalties. Failure to include annual list and business license fees will result in rejection of filing.

Filed in the office of <i>Barbara K. Cegavske</i> Barbara K. Cegavske Secretary of State State of Nevada	Document Number <b>20160106104-41</b>
	Filing Date and Time <b>03/07/2016 10:00 AM</b>
	Entity Number <b>E0298142007-5</b>

ABOVE SPACE IS FOR OFFICE USE ONLY

ANNUAL LIST FILING FEE: \$150.00

LATE PENALTY: \$75.00 (if filing late)

BUSINESS LICENSE FEE: \$200.00

LATE PENALTY: \$100.00 (if filing late)

**CHECK ONLY IF APPLICABLE AND ENTER EXEMPTION CODE IN BOX BELOW**

- ☐ Pursuant to NRS, this entity is exempt from the business license fee. Exemption Code:

**NRS 76.020 Exemption Codes**

- 001 - Governmental Entity  
005 - Motion Picture Company  
006 - NRS 680B.020 Insurance Co.

**NOTE: If claiming an exemption, a notarized Declaration of Eligibility form must be attached. Failure to attach the Declaration of Eligibility form will result in rejection, which could result in late fees.**

<b>WINTHROP CHAMBERLIN</b>	
NAME:	<b>MANAGER OR MANAGING MEMBER</b>
421 HUDSON STREET, C-9	NEW YORK NY 10014
ADDRESS:	CITY: STATE: ZIP:
<b>BARNET LIBERMAN</b>	
NAME:	<b>MANAGER OR MANAGING MEMBER</b>
421 HUDSON STREET, C-9	NEW YORK NY 10014
ADDRESS:	CITY: STATE: ZIP:
NAME:	<b>MANAGER OR MANAGING MEMBER</b>
ADDRESS:	CITY: STATE: ZIP:
NAME:	<b>MANAGER OR MANAGING MEMBER</b>
ADDRESS:	CITY: STATE: ZIP:
NAME:	<b>MANAGER OR MANAGING MEMBER</b>
ADDRESS:	CITY: STATE: ZIP:

None of the managers or managing members identified in the list of managers and managing members has been identified with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a manager or managing member in furtherance of any unlawful conduct.

I declare, to the best of my knowledge under penalty of perjury, that the information contained herein is correct and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

**X** *W. Chamberlin*  
Signature of Manager, Managing Member  
or Other Authorized Signature

Title *Managing Member*

Date *3-3-16*

Nevada Secretary of State List Man/Mem  
Revised: 7-1-15

**305LV03361**

MSJOPP000375

**23-0001**  
**Case No.: A-16-740689-B**

AA 2598



ROSS MILLER  
Secretary of State  
204 North Carson Street, Suite 4  
Carson City, Nevada 89701-4520  
(775) 684-5708  
Website: www.nvsus.gov



\*050104\*

# Articles of Organization Limited-Liability Company

(PURSUANT TO NRS CHAPTER 86)

Filed in the office of  Ross Miller Secretary of State State of Nevada	Document Number <b>20140697900-58</b> Filing Date and Time <b>10/01/2014 1:55 PM</b> Entity Number <b>E0503672014-7</b>
--	--

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

<b>1. Name of Limited Liability Company:</b> (must contain approved limited-liability company wording; see instructions)	CASINO COOLIDGE LLC	Check box if a Series Limited-Liability Company <input type="checkbox"/>	Check box if a Restricted Limited-Liability Company <input type="checkbox"/>
<b>2. Registered Agent for Service of Process:</b> (check only one box)	<input checked="" type="checkbox"/> <b>Commercial Registered Agent:</b> HARRY PAUL MARQUIS, CHARTERED Name <input type="checkbox"/> <b>Noncommercial Registered Agent</b> (name and address below) <b>OR</b> <input type="checkbox"/> <b>Offiie or Position with Entity</b> (name and address below) Name of Noncommercial Registered Agent <b>OR</b> Name of Title of Office or Other Position with Entity Street Address City Nevada Zip Code Mailing Address (if different from street address) City Nevada Zip Code		
<b>3. Dissolution Date:</b> (optional)	Latest date upon which the company is to dissolve (if existence is not perpetual):		
<b>4. Management:</b> (required)	Company shall be managed by: <input checked="" type="checkbox"/> <b>Manager(s)</b> <b>OR</b> <input type="checkbox"/> <b>Member(s)</b> (check only one box)		
<b>5. Name and Address of each Manager or Managing Member:</b> (attach additional page if more than 3)	1) SCOTT ACTON Name 10286 EARLY MORNING AVENUE LAS VEGAS NV 89135 Street Address City State Zip Code 2) Name Street Address City State Zip Code 3) Name Street Address City State Zip Code		
<b>6. Effective Date and Time:</b> (optional)	Effective Date: Effective Time:		
<b>7. Name, Address and Signature of Organizer:</b> (attach additional page if more than 1 organizer)	I declare, to the best of my knowledge under penalty of perjury, that the information contained herein is correct and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State. HARRY PAUL MARQUIS, CHARTERED <input checked="" type="checkbox"/> HARRY PAUL MARQUIS, CHARTERED Name Organizer Signature 400 SOUTH FOURTH STREET THIRD FL LAS VEGAS NV 89101 Address City State Zip Code		
<b>8. Certificate of Acceptance of Appointment of Registered Agent:</b>	I hereby accept appointment as Registered Agent for the above named Entity. <input checked="" type="checkbox"/> HARRY PAUL MARQUIS, CHARTERED 10/1/2014 Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity Date		

This form must be accompanied by appropriate fees.

Nevada Secretary of State NRS 86 DLLC Articles  
Revised 7-26-13

CC000112

30-0001  
Case No.: A-16-740689-B

AA 2599



**INITIAL/ANNUAL LIST OF MANAGERS OR MANAGING MEMBERS AND STATE  
BUSINESS LICENSE APPLICATION OF:**

CASINO COOLIDGE LLC

NAME OF LIMITED-LIABILITY COMPANY

ENTITY NUMBER

E0503672014-7

FOR THE FILING PERIOD OF

OCT, 2014

TO

OCT, 2015

USE BLACK INK ONLY - DO NOT HIGHLIGHT

**\*\*YOU MAY FILE THIS FORM ONLINE AT [www.nvsilverflume.gov](http://www.nvsilverflume.gov)\*\***

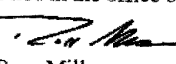
- ☐ Return one file stamped copy. (If filing not accompanied by order instructions, file stamped copy will be sent to registered agent.)

**IMPORTANT:** Read instructions before completing and returning this form.

1. Print or type names and addresses, either residence or business, for all manager or managing members. A Manager, or if none, a Managing Member of the LLC must sign the form. **FORM WILL BE RETURNED IF UNSIGNED.**
2. If there are additional managers or managing members, attach a list of them to this form.
3. Return completed form with the fee of \$125.00. A \$75.00 penalty must be added for failure to file this form by the deadline. An annual list received more than 90 days before its due date shall be deemed an amended list for the previous year.
4. State business license fee is \$200.00. Effective 2/1/2010, \$100.00 must be added for failure to file form by deadline.
5. Make your check payable to the Secretary of State.
6. **Ordering Copies:** If requested above, one file stamped copy will be returned at no additional charge. To receive a certified copy, enclose an additional \$30.00 per certification. A copy fee of \$2.00 per page is required for each additional copy generated when ordering 2 or more file stamped or certified copies. Appropriate instructions must accompany your order.
7. Return the completed form to: Secretary of State, 202 North Carson Street, Carson City, Nevada 89701-4201, (775) 684-5708.
8. Form must be in the possession of the Secretary of State on or before the last day of the month in which it is due. (Postmark date is not accepted as receipt date.) Forms received after due date will be returned for additional fees and penalties. Failure to include annual list and business license fees will result in rejection of filing.

**ANNUAL LIST FILING FEE: \$125.00 LATE PENALTY: \$75.00 (if filing late)**

**BUSINESS LICENSE FEE: \$200.00 LATE PENALTY: \$100.00 (if filing late)**

Filed in the office of	Document Number
	20140697901-69
Ross Miller	Filing Date and Time
Secretary of State	10/01/2014 1:55 PM
State of Nevada	Entity Number
	E0503672014-7

(This document was filed electronically.)  
ABOVE SPACE IS FOR OFFICE USE ONLY

**CHECK ONLY IF APPLICABLE AND ENTER EXEMPTION CODE IN BOX BELOW**

- ☐ Pursuant to NRS Chapter 76, this entity is exempt from the business license fee. Exemption code:

**NOTE:** If claiming an exemption, a notarized Declaration of Eligibility form must be attached. Failure to attach the Declaration of Eligibility form will result in rejection, which could result in late fees.

**NRS 76.020 Exemption Codes**

- 001 - Governmental Entity
- 005 - Motion Picture Company
- 006 - NRS 680B.020 Insurance Co.

NAME SCOTT ACTON	MANAGER OR MANAGING MEMBER		
ADDRESS 10286 EARLY MORNING AVENUE , USA	CITY LAS VEGAS	STATE NV	ZIP CODE 89135
NAME	MANAGER OR MANAGING MEMBER		
ADDRESS	CITY	STATE	ZIP CODE
NAME	MANAGER OR MANAGING MEMBER		
ADDRESS	CITY	STATE	ZIP CODE
NAME	MANAGER OR MANAGING MEMBER		
ADDRESS	CITY	STATE	ZIP CODE

None of the managers or managing members identified in the list of managers and managing members has been identified with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a manager or managing member in furtherance of any unlawful conduct.

I declare, to the best of my knowledge under penalty of perjury, that the information contained herein is correct and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

**X** HARRY MARQUIS

Signature of Manager, Managing Member or  
Other Authorized Signature

Title

ORGANIZER

Date

10/1/2014 1:55:31 PM

Nevada Secretary of State List ManOrMem  
Revised: 8-8-13

CC000113

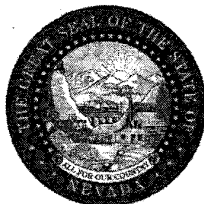
30-0002  
Case No.: A-16-740689-B

AA 2600

## STATE OF NEVADA

**ROSS MILLER**

Secretary of State

**SCOTT W. ANDERSON**Deputy Secretary  
for Commercial RecordingsOFFICE OF THE  
SECRETARY OF STATE**Commercial Recordings Division**202 N. Carson Street  
Carson City, NV 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138HARRY MARQUIS  
HARRY PAUL MARQUIS, CHARTERED  
400 SOUTH FOURTH STREET THIRD FLOOR  
LAS VEGAS, NV 89101**Job: C20141001-1893**

October 1, 2014

**Special Handling Instructions:****Charges**

Description	Document Number	Filing Date/Time	Qty	Price	Amount
Articles of Organization	20140697900-58	10/1/2014 1:55:20 PM	1	\$75.00	\$75.00
Initial List	20140697901-69	10/1/2014 1:55:43 PM	1	\$125.00	\$125.00
Business License 10/2014-10/2015	20140697901-69	10/1/2014 1:55:43 PM	1	\$200.00	\$200.00
Total					\$400.00

**Payments**

Type	Description	Amount
Credit	00162E 14100142342273	\$400.00
Total		\$400.00

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

LLC Charter(s):	1
File Stamped Copy(s):	2
Business License(s):	1

HARRY MARQUIS  
HARRY PAUL MARQUIS, CHARTERED  
400 SOUTH FOURTH STREET THIRD FLOOR  
LAS VEGAS, NV 89101

CC000114

**30-0003****Case No.: A-16-740689-B**

AA 2601

INITIAL/ANNUAL LIST OF MANAGERS OR MANAGING MEMBERS AND STATE  
BUSINESS LICENSE APPLICATION OF:

CASINOCOOLIDGE LLC

NAME OF LIMITED-LIABILITY COMPANY

ENTITY NUMBER

E0503672014-7

FOR THE FILING PERIOD OF OCT, 2014 TO OCT, 2015

USE BLACK INK ONLY - DO NOT HIGHLIGHT

\*\*YOU MAY FILE THIS FORM ONLINE AT [www.nvslverflume.gov](http://www.nvslverflume.gov)\*\*

- ☐ Return one file stamped copy. (If filing not accompanied by order instructions, file stamped copy will be sent to registered agent.)

**IMPORTANT:** Read instructions before completing and returning this form.

- Print or type names and addresses, either residence or business, for all manager or managing members. A Manager, or if none, a Managing Member of the LLC must sign the form. **FORM WILL BE RETURNED IF UNSIGNED.**
- If there are additional managers or managing members, attach a list of them to this form.
- Return completed form with the fee of \$125.00. A \$75.00 penalty must be added for failure to file this form by the deadline. An annual list received more than 90 days before its due date shall be deemed an amended list for the previous year.
- State business license fees \$200.00. Effective 2/1/2010, \$100.00 must be added for failure to file form by deadline.
- Make your check payable to the Secretary of State.
- Ordering Copies:** If requested above, one filestamped copy will be returned at no additional charge. To receive a certified copy, enclose an additional \$30.00 per certification. A copy fee of \$2.00 per page is required for each additional copy generated when ordering 2 or more file stamped or certified copies. Appropriate instructions must accompany your order.
- Return the completed form to: Secretary of State, 202 North Carson Street, Carson City, Nevada 89701-4201, (775) 684-5708
- Form must be in the possession of the Secretary of State on or before the last day of the month in which it is due. (Postmark date is not accepted as receipt date.) Forms received after due date will be returned for additional fees and penalties. Failure to include annual list and business license fees will result in rejection of filing.

ANNUAL LIST FILING FEE: \$125.00 LATE PENALTY: \$75.00 (if filing late) BUSINESS LICENSE FEE: \$200.00 LATE PENALTY: \$100.00 (if filing late)

CHECK ONLY IF APPLICABLE AND ENTER EXEMPTION CODE IN BOX BELOW

- ☐ Pursuant to NRS Chapter 76, this entity is exempt from the business license fee. Exemption code:

NOTE: If claiming an exemption, a notarized Declaration of Eligibility form must be attached. Failure to attach the Declaration of Eligibility form will result in rejection, which could result in late fees.

NRS 76.020 Exemption Codes

- 001 - Governmental Entity
- 005 - Motion Picture Company
- 006 - NRS 680B.020 Insurance Co.

NAME: RONALD B SPRAGUE MANAGER OR MANAGING MEMBER  
ADDRESS: 1200 FOURTH STREET, USA CITY: LAS VEGAS STATE: NV ZIP CODE: 89104

NAME: MANAGER OR MANAGING MEMBER  
ADDRESS: CITY: STATE: ZIP CODE:

NAME: MANAGER OR MANAGING MEMBER  
ADDRESS: CITY: STATE: ZIP CODE:

NAME: MANAGER OR MANAGING MEMBER  
ADDRESS: CITY: STATE: ZIP CODE:

None of the managers or managing members identified in the list of managers and managing members has been identified with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a manager or managing member in furtherance of any unlawful conduct.

I declare, to the best of my knowledge under penalty of perjury, that the information contained herein is correct and acknowledged that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

X RONALD B SPRAGUE

Signature of Manager, Managing Member or  
Other Authorized Signature

Title: MANAGER Date: 11/26/2014 2:20:11 PM

Nevada Secretary of State List Man or Mem  
Revised: 8-8-13

CC000115

30-0004  
Case No.: A-16-740689-B

AA 2602

## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State

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

OFFICE OF THE  
SECRETARY OF STATE

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

HARRY MARQUIS  
HARRY PAUL MARQUIS, CHARTERED  
400 SOUTH FOURTH STREET THIRD FLOOR  
LAS VEGAS, NV 89101

**Job: C20141126-2039**  
November 26, 2014

**Special Handling Instructions:****Charges**

Description	Document Number	Filing Date/Time	Qty	Price	Amount
Amended List	20140782140-69	11/26/2014 2:20:23 PM	1	\$125.00	\$125.00
Total					\$125.00

**Payments**

Type	Description	Amount
Credit	02604E 14112649573884	\$125.00
Total		\$125.00

**Credit Balance: \$0.00**

**Job Contents:**  
File Stamped Copy(s):

1

HARRY MARQUIS  
HARRY PAUL MARQUIS, CHARTERED  
400 SOUTH FOURTH STREET THIRD FLOOR  
LAS VEGAS, NV 89101

CC000116

**30-0005**  
**Case No.: A-16-740689-B**

AA 2603

**CERTIFICATE OF LIVEWORK MANAGER, LLC**

The undersigned David J. Mitchell and Barnet L. Liberman, as, respectively, the President and Treasurer and the Vice President and Secretary of LiveWork Manager, LLC, a Delaware limited liability company (the “**Company**”), the sole member of LiveWork, LLC, a Delaware limited liability company (“**LiveWork**”), do hereby certify as follows:

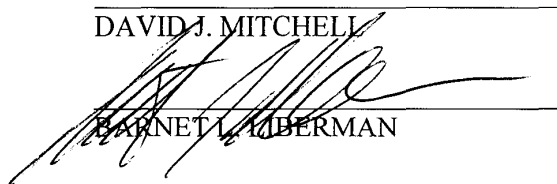
1. Attached hereto as Exhibits A, B, and C, respectively, are true, correct and complete copies of the Certificate of Formation, Operating Agreement (as amended and restated) and Certificate of Good Standing, of the Company, each of which is in full force and effect on the date hereof. Attached hereto as Exhibit D is a true and complete copy of the resolutions of the Managing Member of the Company, relating to (i) the authorization of the sale by Livework of an undivided sixty percent (60%) tenancy-in-common interest in certain premises located in Las Vegas, Nevada more fully described in the resolutions and (ii) the loan from Keybank National Association, to Livework, FC Vegas 20 LLC, a Nevada limited liability company, and FC Vegas 39 LLC, a Nevada limited liability company (together with Livework, collectively, the “**Borrower**”) in the principal amount of up to \$116,400,000.00 (the “**Loan**”), which Loan may be secured by a deed of trust covering the Property and by other assets of the Borrower.
2. Attached hereto as Exhibit E is a list of all of the officers of the Company; the signatures set forth opposite their respective names are their genuine signatures; and said officers are, on the date hereof, duly elected officers of the Company, holding the offices set forth opposite their respective names:

[The Remainder of this Page is Intentionally Left Blank.]

IN WITNESS WHEREOF, the undersigned have executed this Certificate as of the \_\_\_\_ day of June, 2007 on behalf of themselves individually, and on behalf of the Company.



\_\_\_\_\_  
DAVID J. MITCHELL



\_\_\_\_\_  
BARNETT L. LIBERMAN

304774-1-W

Mitch0162792

**34-0002**

**Case No.: A-16-740689-B**

AA 2605

**EXHIBIT A**

Certificate of Formation

304774-1-W

Mitch0162793

**34-0003**

**Case No.: A-16-740689-B**

AA 2606

# Delaware

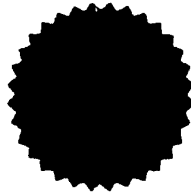
PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "LIVEWORK MANAGER, LLC", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF APRIL, A.D. 2005, AT 12:35 O'CLOCK P.M.

3955108 8100

050302737



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3812259

DATE: 04-14-05

Mitch0162794

34-0004

Case No.: A-16-740689-B

AA 2607



State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 12:58 PM 04/14/2005  
FILED 12:35 PM 04/14/2005  
SRV 050302737 - 3955108 FILE

## CERTIFICATE OF FORMATION

OF

## LIVEWORK MANAGER, LLC

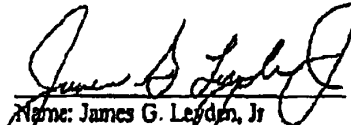
This Certificate of Formation of LiveWork Manager, LLC (the "LLC"), dated as of April 14, 2005, has been duly executed and is being filed by an authorized person to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. § 18-101, et seq.)

FIRST The name of the limited liability company is LiveWork Manager, LLC

SECOND The address of the registered office of the LLC in the State of Delaware is c/o RL&F Service Corp., One Rodney Square, 10th Floor, Tenth and King Streets, Wilmington, New Castle County, Delaware 19801.

THIRD The name and address of the registered agent for service of process on the LLC in the State of Delaware are RL&F Service Corp., One Rodney Square, 10th Floor, Tenth and King Streets, Wilmington, New Castle County, Delaware 19801

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.

  
Name: James G. Leyden, Jr.  
Authorized Person

RLP1-2267286-1  
ALP1-2264286-1

Mitch0162795

34-0005

Case No.: A-16-740689-B

AA 2608

**EXHIBIT B**

Operating Agreement (as amended and restated)

304774-1-W

Mitch0162796

**34-0006**

**Case No.: A-16-740689-B**

AA 2609

**FIRST AMENDMENT TO  
AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF  
LIVEWORK MANAGER, LLC**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF LIVEWORK MANAGER, LLC (this "First Amendment"), dated as of June 25, 2007 is made by LAS VEGAS LAND PARTNERS, LLC, a Delaware limited liability company as the sole equity member (the "Member"), and CARRIE TILLMAN and BETH PEOPLES, as the Special Members.

Preliminary Statement

A. The Member and the Special Members entered into that certain Amended and Restated Limited Liability Company Agreement of LiveWork Manager, LLC (the "Company") dated as of September 27, 2006 (the "Operating Agreement"; capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Operating Agreement).

B. The undersigned wish to acknowledge and confirm certain changes to the terms of, and the correction of certain other items in, the Operating Agreement.

In consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. Amendments. The Operating Agreement is hereby amended as follows:

(a) Sections 23(b), 23(c) and 36(c) of the Operating Agreement and the definition of "Pledge Agreement" in Schedule A to the Operating Agreement are each hereby deleted in their entirety.

(b) Section 27 of the Operating Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

"With the exception of the Lender under the Basic Documents while the Obligations remain outstanding, none of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member or a Special Member, and nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person, except as provided in Section 30."

(c) Schedule A of the Operating Agreement is hereby amended to provide that the defined terms set forth in the Operating Agreement shall have the following meanings:

NYK 990205-1.052498.0020  
304782-1-W

Mitch0162797

**34-0007**

**Case No.: A-16-740689-B**

AA 2610

“Co-Borrowers” means each of (i) FC Vegas 39, LLC, a New York limited liability company and (ii) FC Vegas 20, LLC, a Delaware limited liability company, each of which, together with LiveWork owns the Properties as tenants-in-common.

“Lender” means KeyBank National Association, a national banking association, as lender and as administrative agent for certain lenders who are parties to the Loan Agreement, together with their respective successors and assigns.

“Loan” means that certain loan, in the maximum principal amount of \$116,400,000.00 to be made by Lender to the Company and the Co-Borrowers, in accordance with the terms, conditions and provisions of the Loan Documents.

“Loan Agreement” means that certain Loan Agreement, dated the date hereof made by and among the Company, the Co-Borrowers, as borrowers, KeyBanc Capital Markets, as lead arranger, and Lender, as lender.

“Loan Documents” means the following documents and instruments, as the same may be amended from time to time:

- (i) Loan Agreement;
- (ii) Promissory Note, made by LiveWork and the Co-Borrowers in favor of Lender;
- (iii) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing given by LiveWork and the Co-Borrowers in favor of First American Title Insurance Company, as trustee, in trust for the benefit of Lender and covering the Mortgaged Property;
- (iv) Assignment of Leases and Rents, made by each of LiveWork and the Co-Borrowers in favor of Lender;
- (v) UCC-1 financing statements, each showing LiveWork and Co-Borrowers as debtor, and Lender, as secured party, and prepared for filing under Article 9 of the UCC;
- (vi) Guaranty made by each of Forest City Enterprises, Inc., an Ohio Corporation, David J. Mitchell, an individual and Barnet L. Liberman in favor of Lender;
- (vii) Manager’s Consent and Subordination of Management Agreement from LiveWork and the Co-Borrowers and Realty Management, Inc., in favor of Lender;
- (viii) Environmental and Hazardous Substances Indemnity Agreement from LiveWork and the Co-Borrowers in favor of Agent; and
- (ix) any other instruments or documents defined as “Loan Documents” in the Loan Agreement.

304782-1-W

Mitch0162798

**34-0008**

**Case No.: A-16-740689-B**

AA 2611

“Properties” means “the undivided forty percent (40%) tenancy-in-common interest in the Project (as defined in the Loan Agreement)”

2. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

3. Binding Effect. Except as otherwise provided in the Operating Agreement, this Amendment shall be binding upon and inure to the benefit of the Member, its distributees, heirs, legal representatives, executors, administrators, successors and assigns.

4. Ratification. Except as amended herein, all the terms, conditions and provisions set forth in the Operating Agreement are hereby ratified and confirmed and shall remain in full force and effect.

5. Further Assurances. The Member and the Special Members agree to execute, acknowledge and deliver any and all further instruments and other documents as any Member of the Company or counsel to the Company may determine to be necessary or desirable for the achievement of the purposes of this Amendment; provided that such instrument or other document does not adversely affect the rights and obligations of such Member in any material respect.

6. Governing Law. This First Amendment shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

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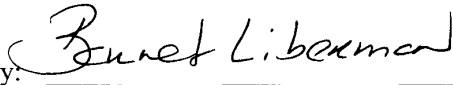
IN WITNESS WHEREOF, the parties have entered into this Second Amendment as of the day first written.

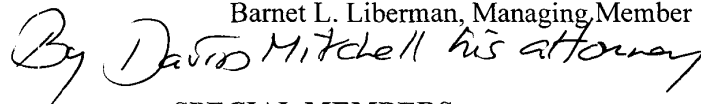
**MEMBER:**

LIVEWORK MANAGER, LLC

By: Las Vegas Land Partners, LLC, its sole member

By:   
David J. Mitchell, Managing Member

By:   
Barnet L. Liberman, Managing Member

By  his attorney in fact

**SPECIAL MEMBERS:**

CARRIE TILLMAN

BETH PEOPLES

IN WITNESS WHEREOF, the parties have entered into this Second Amendment as of the day first written.

**MEMBER:**

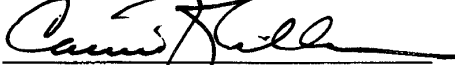
LIVEWORK MANAGER, LLC


By: Las Vegas Land Partners, LLC, its sole member

By: \_\_\_\_\_  
David J. Mitchell, Managing Member

By: \_\_\_\_\_  
Barnet L. Liberman, Managing Member

**SPECIAL MEMBERS:**

  
CARRIE TILLMAN

  
BETH PEOPLES

304754-1-W

Mitch0162801

34-0011

Case No.: A-16-740689-B

AA 2614

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT  
OF  
LIVEWORK MANAGER, LLC

This Amended and Restated Limited Liability Company Agreement (together with the schedules attached hereto, this "Agreement") of LIVEWORK MANAGER, LLC (the "Company"), is entered into by LAS VEGAS LAND PARTNERS, LLC as the sole equity member (the "Member"), and CARRIE TILLMAN and BETH PEOPLES, as the Special Members (as defined on Schedule A hereto). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

W I T N E S S E T H

WHEREAS, the Member formed the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. Section 18-101 et seq.), as amended from time to time (the "Act");

WHEREAS, the Member and Carrie Tillman and Beth Peoples executed that certain Limited Liability Agreement of the Company, dated as of April 14, 2005 (the "Operating Agreement");

WHEREAS, the Company is the sole member of LiveWork, LLC, a Delaware limited liability company ("LiveWork");

WHEREAS, the Operating Agreement contained specific terms and conditions pertaining to certain loans (the "Prior Loans") made by SFT I, Inc. ("Prior Lender") to the Company and to LiveWork which loans are more fully described in the Operating Agreement;

WHEREAS, on date hereof, each of the Company and LiveWork has repaid to Prior Lender the Loans and all obligations due in connection therewith;

WHEREAS, on the date hereof, LiveWork is borrowing a new loan with a new lender pursuant to certain new loan documents, all as more fully described in this Agreement; and

WHEREAS, the Member and Carrie Tillman and Beth Peoples desire to amend and restate the Operating Agreement in its entirety to delete certain provisions relating to the Prior Loans and Prior Lender, to add certain provisions relating to the new loan, and to make certain other changes to the terms and conditions of the Operating Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Member and Carrie Tillman and Beth Peoples hereby agree that the Operating Agreement of the Company is hereby amended and restated in its entirety and shall be replaced by this Agreement, and hereby agree as follows:

291354-3-W

Mitch0162802

34-0012

Case No.: A-16-740689-B

AA 2615



THE TRANSFER OF THE LIMITED LIABILITY COMPANY INTERESTS  
DESCRIBED IN THIS AGREEMENT IS RESTRICTED AS DESCRIBED HEREIN.

Section 1. Name.

The Company was formed under the name of LiveWork Manager, LLC, pursuant to a Certificate of Formation filed with the Secretary of State of the State of Delaware on April 14, 2005.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at 20 West 55<sup>th</sup> Street, 12<sup>th</sup> Floor, New York, New York 10019, (for mailing purposes, c/o Mitchell Holdings at such address) or such other location as may hereafter be determined by the Member.

Section 3. Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o RL&F Service Corp., One Rodney Square, in the City of Wilmington, County of New Castle, Delaware 19801.

Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is RL&F Service Corp., One Rodney Square, in the City of Wilmington, County of New Castle, Delaware 19801.

Section 5. Members.

(a) The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to the Operating Agreement.

(b) Subject to Section 9(j), the Member may act by written consent.

(c) Upon the occurrence of any event that causes the Member to cease to be a member of the Company (other than (i) upon an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), each person acting as an Independent Director pursuant to Section 10 shall, without any action of any Person and simultaneously with the Member ceasing to be a member of the Company, automatically be admitted to the Company as a Special Member and shall continue the Company without dissolution. No Special Member may resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, and (ii) such successor has also accepted its appointment as

Independent Director pursuant to Section 10; provided, however, the Special Members shall automatically cease to be members of the Company upon the admission to the Company of a substitute Member. Each Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. A Special Member, in its capacity as Special Member, may not bind the Company. Except for the matters and activities herein specified to be voted on or, approved by a Special Member and as required by any mandatory provision of the Act, each Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of each Special Member, each person acting as an Independent Director pursuant to Section 10 shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, each person acting as an Independent Director pursuant to Section 10 shall not be a member of the Company.

Section 6. Certificates.

James G. Leyden, Jr. is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an "authorized person" ceased, and the Member thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Act. The Member or an Officer shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in the State of Nevada and in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purposes.

(a) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, the sole purpose to be conducted or promoted by the Company is to engage in the following activities:

- (i) to act as the member of, and to acquire, own, hold, manage and otherwise deal with the entire limited liability company interest (such limited liability company interest, the "Interest") in, LiveWork, LLC, a Delaware limited liability company ("LiveWork");
- (ii) to cause LiveWork to enter into and perform its obligations under the Loan Documents;

- (iii) to sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with the Interest to the extent permitted under the Loan Documents; and
- (iv) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

(b) The Company, and the Member, or any Director or Officer on behalf of the Company, may enter into and perform their obligations under the Basic Documents and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any Member, Director, Officer or other Person notwithstanding any other provision of this Agreement, the Act or applicable law, rule or regulation. The foregoing authorization shall not be deemed a restriction on the powers of the Member or any Director or Officer to enter into other agreements on behalf of the Company.

Section 8. Powers.

Subject to Section 9(j), the Company, and the Board of Directors and the Officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. Management.

(a) Board of Directors. Subject to Section 9(j), the business and affairs of the Company shall be managed by or under the direction of a Board of one or more Directors designated by the Member. Subject to Section 10, the Member may determine at any time in its sole and absolute discretion the number of Directors to constitute the Board. The authorized number of Directors may be increased or decreased by the Member at any time in its sole and absolute discretion, upon notice to all Directors, and subject in all cases to Section 10. The initial number of Directors shall be five, of which two shall be Independent Directors pursuant to Section 10. Each Director elected, designated or appointed by the Member shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. Each Director shall execute and deliver the Management Agreement. Directors need not be a Member. The initial Directors designated by the Member are listed on Schedule D hereto.

(b) Powers. Subject to Section 9(j), the Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Section 7, the Board of Directors has the authority to bind the Company.

(c) Meeting of the Board of Directors. The Board of Directors of the Company may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the President on not less than one day's notice to each Director by telephone, facsimile, mail, telegram or any other means of communication, and special meetings shall be called by the President or Secretary in like manner and with like notice upon the written request of any one or more of the Directors.

(d) Quorum: Acts of the Board. At all meetings of the Board, a majority of the Directors (other than the Independent Directors) shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Except as otherwise expressly provided in this Agreement, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board (other than the Independent Directors) or committee as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee, as the case may be.

(e) Electronic Communications. Members of the Board, or any committee designated by the Board, may participate in meetings of the Board, or any committee, by means of telephone conference or similar communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in Person at the meeting. If all the participants are participating by telephone conference or similar communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(f) Committees of Directors.

- (i) The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the Directors of the Company. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.
- (ii) In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.
- (iii) Any such committee, to the extent provided in the resolution of the Board, and subject to, in all cases, Sections 9(j) and 10, shall have and may

exercise all the powers and authority of the Board in the management of the business and affairs of the Company. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

(g) Compensation of Directors; Expenses. The Board shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at meetings of the Board, which may be a fixed sum for attendance at each meeting of the Board or a stated salary as Director. No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

(h) Removal of Directors. Unless otherwise restricted by law, any Director or the entire Board of Directors may be removed or expelled, with or without cause, at any time by the Member, and, subject to Section 10, any vacancy caused by any such removal or expulsion may be filled by action of the Member.

(i) Directors as Agents. To the extent of their powers set forth in this Agreement and subject to Section 9(j), the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company. Notwithstanding the last sentence of Section 18-402 of the Act, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company.

(j) Limitations on the Company's Activities.

- (i) This Section 9(j) is being adopted to comply with certain provisions necessary to qualify the Company as a "special purpose" entity.
- (ii) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, for so long as any Obligation is outstanding, neither the Member, the Special Member nor the Company shall amend, alter, change any of Sections 1, 5(b), 5(c), 6, 7, 8, 9, 10, 14, 16, 20(b), 20(f), 21, 22, 23, 24, 25, 26, 27, 29, 30, 31 or 32 or Schedule A of this Agreement (to the extent that the terms defined in Schedule A are used in any of the foregoing sections) (the "Special Purpose Provisions"), or any other provision of this or any other document governing the formation, management or operation of the Company in a manner that is inconsistent with any of the Special Purpose Provisions, unless the Lender consents in writing and the Rating Agency Condition is satisfied. Subject to this Section 9(j), the Member and the Special Member (as applicable) reserve the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 32. In the event of any conflict between any of the Special Purpose Provisions and any other provision of

this or any other document governing the formation, management or operation of the Company, the Special Purpose Provisions shall control.

- (iii) Notwithstanding any other provision of this Agreement or any other document governing the formation, management or operation of the Company, and notwithstanding any provision of law that otherwise so empowers the Company, the Member, the Board, any Officer or any other Person, neither the Member nor the Board nor any Officer nor any other Person shall be authorized or empowered, nor shall they permit the Company to, and the Company shall not, without the prior unanimous written consent of the Member and the Board (including all Independent Directors), take any Material Action, provided, however, that the Board may not vote on, or authorize the taking of, any Material Action, unless there are at least two Independent Directors then serving in such capacity.
- (iv) The Board, the Member and the Special Members (as applicable) shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, the Board also shall cause the Company to and the Company and any other Person on behalf of the Company shall:
  - (A) not enter into any transaction of merger or consolidation, or liquidate or to the fullest extent permitted by law, dissolve itself (or suffer any liquidation or dissolution), or acquire by purchase or otherwise all or substantially all the business or assets of, or stock or other evidence of beneficial ownership of, any Person;
  - (B) except with respect to the Obligations under the Loan Documents, shall not guarantee or otherwise become liable on or in connection with any obligation of any other Person;
  - (C) not own any asset other than the Interest;
  - (D) not engage, directly or indirectly, in any business other than the ownership of the Interest and shall remain organized solely for the purpose of the ownership of the Interest;
  - (E) not enter into any contract or agreement with any affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third parties other than an Affiliate;
  - (F) not incur any indebtedness, secured or unsecured, direct or contingent (including any Contingent Obligation), other than the Permitted

Indebtedness (as defined in the Loan Agreement);

(G) not make any loans or advances to any third party and will not acquire, obligations or securities of its partners, members or shareholders;

(H) remain solvent and pay its own liabilities, Indebtedness (as defined in the Loan Documents) and obligations of any kind, including all administrative expenses, as the same shall become due; and shall pay all such liabilities, Indebtedness and obligations from its own separate assets;

(I) do all things necessary to preserve its existence, and shall not, nor will any Member amend, modify or otherwise change its certificate of formation or limited liability company agreement in a manner which adversely affects the Company's existence as a Single Purpose Entity;

(J) conduct and operate its business generally as presently conducted and operated subject to such operational changes as may be reasonably necessary or appropriate to maintain the Interest;

(K) maintain bank accounts separate from any other Person;

(L) maintain separate books and records and prepare separate financial statements which are not consolidated or combined with the financial statements of any other Person;

(M) not hold itself out to the public or any other Persons, as being other than, a legal entity separate and distinct from any other Person (including any Affiliate);

(N) file its own tax returns and shall not permit its financial results to be consolidated or combined with those of any other Person for financial reporting purposes, except to the extent that the financial results of the Company are, pursuant to the requirements of applicable law or GAAP required to be, and are, in fact, included in the consolidated financial statements of the Member, provided such consolidated financial statements indicate that the Company and the Member are separate legal entities with separate liabilities and assets; and shall not permit any of its funds to be distributed, loaned or otherwise transferred to any other Person;

(O) be at all times adequately capitalized for the normal obligations reasonably foreseeable in a business of its size and character and in light of the Company's contemplated business operations, provided, however that no Member is obligated to contribute capital to the Company in excess of the amounts specifically agreed to be contributed pursuant to Section 13 hereof;

(P) to the fullest extent permitted by law, not seek its dissolution or winding up, in whole or in part;

- (Q) not commingle its funds and assets with those of any other Person;
- (R) maintain its assets in such manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (S) not hold itself out to be responsible for the debts or obligations of any other Person;
- (T) do any act which would make it impossible to carry on its ordinary business;
- (U) not possess or assign the Interest for other than a business or company purpose;
- (V) not sell, encumber or otherwise dispose of, all or substantially all of the Interest;
- (W) not hold title to its assets other than in its own name;
- (X) maintain its books, records, resolutions and agreements as official records;
- (Y) observe all limited liability company formalities;
- (Z) not fail to correct any known misunderstandings regarding its separate identity;
- (AA) keep its assets separately identified, maintained and segregated (this restriction requires, among other things, that Company funds shall not be commingled with those of any Affiliate or any other Person, that no funds of the Company will be distributed, loaned or otherwise transferred to any Person except for returns of capital or distributions which are properly authorized by requisite partnership, corporate or limited liability company action and reflected in the books and records of all applicable parties) and shall maintain all accounts in its own name and with its own tax identification number, separate from those of any Affiliates or any other Person;
- (BB) not take any action if, as a result of such action, it would have been or would be required to register as an investment company under the Investment Company Act of 1940, as amended;
- (CC) allocate fairly and reasonably shared expenses, including shared office space and will continue to use separate stationary, invoices and checks will not have any obligation to indemnify its Members, directors, officers, representatives or Independent Directors, or if it has such an obligation, such obligation is fully subordinated to the Obligations and such indemnification obligations will not constitute a claim against such Person if cash flow in excess



of the Obligations is not sufficient to satisfy such indemnification obligations; .

To the fullest extent permitted by law, the Directors shall take into consideration the interests of the Company's creditors in connection with all limited liability company actions taken by them.

Section 10. Independent Directors.

As long as any Obligation is outstanding, the Member shall cause the Company at all times to have at least two Independent Directors who will be appointed by the Member. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, the Independent Directors shall consider only the interests of the Company and its creditors in acting or otherwise voting on the matters referred to in Section 9(j)(iii). No resignation or removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until such successor (i) shall have accepted his or her appointment as an Independent Director by a written instrument, which may be a counterpart signature page to the Management Agreement and (ii) shall have executed a counterpart to this Agreement as required by Section 5(c). In the event of a vacancy in the position of Independent Director, the Member shall, as soon as practicable, appoint a successor Independent Director. All right, power and authority of the Independent Directors shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement. Except as provided in the second sentence of this Section 10, in exercising their rights and performing their duties under this Agreement, any Independent Director shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Delaware. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

Section 11. Officers.

(a) Officers. The initial Officers of the Company shall be designated by the Member. The additional or successor Officers of the Company shall be chosen by the Board and shall consist of at least a President, a Secretary and a Treasurer. The Board of Directors may also choose one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person. The Board shall choose a President, a Secretary and a Treasurer. The Board may appoint such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The salaries of all Officers and agents of the Company shall be fixed by or in the manner prescribed by the Board. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the Board. Any vacancy occurring in any office of the Company shall be filled by the Board. The initial Officers of the Company designated by the Member are listed on Schedule E hereto.

(b) President. The President shall be the chief executive officer of the Company, shall preside at all meetings of the Board, shall be responsible for the general and active management of the business of the Company and shall see that all orders and resolutions of the

Board are carried into effect. The President or any other Officer authorized by the President or the Board shall execute all bonds, mortgages and other contracts, except: (i) where required or permitted by law or this Agreement to be otherwise signed and executed, including Section 7(b); (ii) where signing and execution thereof shall be expressly delegated by the Board to some other Officer or agent of the Company, and (iii) as otherwise permitted in Section 11(c).

(c) Vice President. In the absence of the President or in the event of the President's inability to act, the Vice President, if any (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Directors, or in the absence of any designation, then in the order of their election), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents, if any, shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(d) Secretary and Assistant Secretary. The Secretary shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings of the Board and record all the proceedings of the meetings of the Company and of the Board in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or shall cause to be given, notice of all meetings of the Member, if any, and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the President, under whose supervision the Secretary shall serve. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board (or if there be no such determination, then in order of their election), shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(e) Treasurer and Assistant Treasurer. The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Company as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and to the Board, at its regular meetings or when the Board so requires, an account of all of the Treasurer's transactions and of the financial condition of the Company. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(f) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, subject to Section 9(j), the actions of the Officers taken in accordance with such powers shall bind the Company.

(g) Duties of Board and Officers. Except to the extent otherwise provided herein, each Director and Officer shall have a fiduciary duty of loyalty and care similar to that of directors and officers of business corporations organized under the General Corporation Law of the State of Delaware.

Section 12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor the Special Members nor any Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member, Special Member or Director of the Company.

Section 13. Capital Contributions.

The Member has contribute the Properties to the Company. For sake of convenience and the avoidance of unnecessary transaction costs, the Properties were deeded directly by the Member (or an Affiliate owned by the Member) to LiveWork rather than first to the Company and then from the Company to LiveWork, but the Company shall treat the Member as having first contributed the Properties to the Company for all purposes of this Agreement. In accordance with Section 5(c), the Special Members shall not be required to make any capital contributions to the Company.

Section 14. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the written consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise Schedule B of this Agreement. The Member and the Special Members shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 15. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 16. Distributions.

Distributions of capital shall be made to the Member at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate Section 18-607 of the Act or any other applicable law or any Basic Document or would constitute a default under the Loan Documents.

Section 17. Books and Records.

The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Board. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company, and the Board on behalf of the Company, shall not have the right to keep confidential from the Member any information that the Board would otherwise be permitted to keep confidential from the Member pursuant to Section 18-305(c) of the Act. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Member.

Section 18. Reports.

(a) Within 60 days after the end of each fiscal quarter, the Board shall cause to be prepared an unaudited report setting forth as of the end of such fiscal quarter:

- (i) unless such quarter is the last fiscal quarter, a balance sheet of the Company; and
- (ii) unless such quarter is the last fiscal quarter, an income statement of the Company for such fiscal quarter.

(b) The Board shall use diligent efforts to cause to be prepared and mailed to the Member, within 90 days after the end of each fiscal year, an audited or unaudited report setting forth as of the end of such fiscal year:

- (i) a balance sheet of the Company;
- (ii) an income statement of the Company for such fiscal year; and
- (iii) a statement of the Member's capital account.

(c) The Board shall, after the end of each fiscal year, use reasonable efforts to cause the Company's independent accountants, if any, to prepare and transmit to the Member as promptly as possible any such tax information as may be reasonably necessary to enable the Member to prepare its federal, state and local income tax returns relating to such fiscal year.

Section 19. Other Business.

The Member, the Special Members and any Affiliate of the Member or the Special Members may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others notwithstanding any provision to the contrary at law or at equity. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement, regardless of whether any such other ventures are competitive with the business of the Company.

Section 20. Exculation and Indemnification.

(a) Neither the Member nor the Special Members nor any Officer, Director, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member or the Special Members (collectively, the "Covered Persons") shall, to the fullest extent permitted by law, be liable to the Company or any other Person that is a party to or is otherwise bound by this Agreement, for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 20 by the Company shall be provided out of and to the extent of Company assets only, and the Member and the Special Members shall not have personal liability on account thereof; and provided further, that so long as any Obligation is outstanding, no indemnity payment from funds of the Company (as distinct from funds from other sources, such as insurance) of any indemnity under this Section 20 shall be payable from amounts allocable to any other Person pursuant to the Basic Documents.

(c) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 20.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a

Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member and the Special Members to replace such other duties and liabilities of such Covered Person.

(f) Notwithstanding the foregoing provisions, any indemnification set forth herein shall be fully subordinate to the Loan and, to the fullest extent permitted by law, shall not constitute a claim against the Company in the event that the Company's cash flow is insufficient to pay its Obligations.

(g) The foregoing provisions of this Section 20 shall survive any termination of this Agreement.

Section 21. Assignments.

Subject to Section 23 and any transfer restrictions contained in the Loan Documents, the Member may pledge or assign in whole or in part its limited liability company interest in the Company. Subject to Section 23, if the Member transfers all of its limited liability company interest in the Company pursuant to this Section 21, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement and upon the registration of the limited liability company interest of the Company on the books of the Company maintained by the Board pursuant to Section 36. Such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding any other provision of this Agreement, any successor to a Member by merger or consolidation in compliance with the Basic Documents shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

Section 22. Resignation.

So long as any Obligation is outstanding, the Member may not resign, except as permitted under the Basic Documents and if the Lender consents in writing and the Rating Agency Condition is satisfied and if an additional member is admitted to the Company pursuant to Section 23. If the Member is permitted to resign pursuant to this Section 22, an additional member of the Company shall be admitted to the Company, subject to Section 23, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement and upon the registration of the limited liability company interest of the Company on the books of the Company maintained by the Board pursuant to Section 36. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

Section 23. Admission of Additional Members and Transfers of Indirect Interests.

(a) One or more additional members of the Company may be admitted to the Company with the written consent of the Member upon the registration of the limited liability company interest of the Company on the books of the Company maintained by the Board pursuant to Section 36; provided, however, that, notwithstanding the foregoing, no additional Member may be admitted to the Company pursuant to Sections 21, 22 or 23, other than pursuant to Section 24(a) or Section 5(c), and no transfer of any direct or to the fullest extent permitted by law indirect interest in the Company may be made that results in a Change in Control of the Company, except as may be expressly provided otherwise in the Loan Documents, unless (1) the Rating Agency Condition is satisfied and (2) the Lender consents in writing.

(b) Upon a foreclosure, sale or other transfer of the limited liability company interests in the Company pursuant to the Pledge Agreement, the holder of such limited liability company interests shall, upon the execution of a counterpart to this Agreement, automatically be admitted as member of the Company upon such foreclosure, sale or other transfer, with all of the rights and obligations of the Member hereunder, subject to the limitations on transferability of such interests as described in this Section 23. The Company acknowledges that the pledge of the limited liability company interest in the Company made by the Member in connection with the Pledge Agreement shall be a pledge not only of profits and losses of the Company, but also a pledge of all rights and obligations of the Member. Upon a foreclosure, sale or other transfer of the limited liability company interests of the Company pursuant to the Pledge Agreement, the successor Member may transfer its interests in the Company, subject to this Section 23. Notwithstanding any provision in the Act or any other provision contained herein to the contrary, the Member shall be permitted to pledge and, upon any foreclosure of such pledge in connection with the admission of the Lender as a member, to transfer to the Lender its rights and powers to manage and control the affairs of the Company pursuant to the terms of the Pledge Agreement. Upon the exercise of its rights under the Pledge Agreement, the Lender shall have, among its other powers, the right to appoint and remove Directors pursuant to the terms of Section 9 herein.

(c) Notwithstanding anything to the contrary contained herein, the Member shall not, without the prior written consent of the Lender, issue and shall not permit the issuance of any additional limited liability company interests of the Company other than its initial issuance of limited liability company interests issued on or prior to the date of this Agreement.

#### Section 24. Dissolution.

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner required under Section 5(c) or this Section 24(a) or permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company (other than (i) upon an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee

pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company or the Member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member or a Special Member or any additional member shall not cause the Member or Special Members or additional member, respectively, to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) Notwithstanding any other provision of this Agreement, each of the Member, the Special Members and any additional member waive any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of the Member, Special Members or additional member, or the occurrence of an event that causes the Member, Special Members or additional member to cease to be a member of the Company.

(d) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(e) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

**Section 25. Waiver of Partition; Nature of Interest.**

To the fullest extent permitted by law, each of the Member and the Special Members, and any additional member admitted to the Company hereby irrevocably waives any right or power that such Person might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to Section 16 hereof. The interest of the Member in the Company is personal property.

**Section 26. Tax Status.**



It is intended that the Company shall be a disregarded entity for federal, state, and local income tax purposes.

Section 27. Benefits of Agreement; No Third-Party Rights.

With the exception of the Lender with respect to the provisions of Sections 16, 23(b), and 23(c) of this Agreement, and with the exception of the Lender under the Basic Documents while the Obligations remain outstanding, (1) none of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member or a Special Member, and (2) nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person, except as provided in Section 30.

Section 28. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 29. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 30. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement, including, without limitation, the Special Purpose Provisions, constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member by the Independent Directors and the Lender, in accordance with its terms. In addition, the Independent Directors and the Lender (while the Obligations remain outstanding) shall be intended beneficiaries of this Agreement.

Section 31. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 32. Amendments.

Subject to Section 9(j), this Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member.

Notwithstanding anything to the contrary in this Agreement, so long as any Obligation is outstanding, this Agreement may not be modified, altered, supplemented or amended unless the Lender consents in writing and the Rating Agency Condition is satisfied except: (i) to cure any ambiguity or (ii) to convert or supplement any provision in a manner consistent with the intent of this Agreement and the other Basic Documents.

Section 33. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 34. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

Section 35. Effectiveness.

This Agreement shall be effective as of the date hereof.

Section 36. Limited Liability Company Interests

(a) Each limited liability company interest in the Company shall constitute a "security" within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware, and (ii) Article 8 of the Uniform Commercial Code of the State of New York and any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995.

(b) The limited liability company interests in the Company shall not be evidenced by certificates. The Board on behalf of the Company shall maintain books for the purpose of registering the issuance and transfer of limited liability company interests, and, upon any transfer of limited liability company interests in the Company, the Board on behalf of the Company shall notify the registered owner of any applicable restrictions on the transfer of limited liability company interests.

(c) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, for so long any Obligation is outstanding, neither the Member, the Special Member nor the Company shall

amend, alter, change any provision of Section 36 of this Agreement unless the Lender consents in writing.

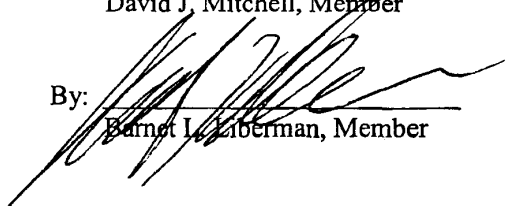
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the 27<sup>th</sup> day of September, 2006.

MEMBER:

LAS VEGAS LAND PARTNERS, LLC

By:   
David J. Mitchell, Member

By:   
Barnett L. Liberman, Member

SPECIAL MEMBERS:

\_\_\_\_\_  
CARRIE TILLMAN

\_\_\_\_\_  
BETH PEOPLES

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34-0032

Case No.: A-16-740689-B

AA 2635

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the 27<sup>th</sup> day of September, 2006.

MEMBER:

LAS VEGAS LAND PARTNERS, LLC

By: \_\_\_\_\_  
David J. Mitchell, Member

By: \_\_\_\_\_  
Barnet L. Liberman, Member

SPECIAL MEMBERS:

  
CARRIE TILLMAN

  
BETH PEOPLES

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Case No.: A-16-740689-B

AA 2636

## SCHEDULE A

### Definitions

#### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

"Act" has the meaning set forth in the preamble to this Agreement.

"Agent" means Guggenheim Corporate Funding, LLC, a Delaware limited liability company.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

"Agreement" means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

"Bankruptcy" means, with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (vii) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated or (viii) admits in writing its inability to pay its debts generally as such debts become due. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

"Basic Documents" means this Agreement, the Management Agreement, the Loan Documents, the Limited Liability Agreement of LiveWork and all documents and certificates contemplated thereby or delivered in connection therewith.

A-1

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Case No.: A-16-740689-B

AA 2637

"Board" or "Board of Directors" means the Board of Directors of the Company.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on April 14, 2005, as may be amended or amended and restated from time to time.

"Change in Control of the Company" means (a) a transfer resulting in a Person that owned less than 49% of the direct or indirect equity interests in the Company upon the closing of the Loan owning 49% or more of such equity interests after the transfer, (b) a transfer or transfers after the closing of the Loan that aggregate of 49% or more of the direct or indirect equity interests in the Company or (c) a change in the equity owners that Control the Company

"Company" means LiveWork Manager, LLC, a Delaware limited liability company.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

"Covered Persons" has the meaning set forth in Section 20(a).

"Directors" means the Persons elected to the Board of Directors from time to time by the Member, including the Independent Directors, in their capacity as managers of the Company. A Director is hereby designated as a "manager" of the Company within the meaning of Section 18-101(10) of the Act.

"Independent Director" means a natural Person who is not at the time of initial appointment, or at any time while serving as a director of the Company, and has not been at any time during the preceding five (5) years: (a) a stockholder, manager, director, officer, employee, partner, member, attorney or counsel of the Company, or an Affiliate of the Company; (b) a creditor, customer, supplier or other Person who derives any of its purchases or revenues from its activities with the Company or any Affiliate of the Company; (c) a Person controlling or under common control with any such stockholder, partner, member, creditor, customer, supplier or other person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, creditor, customer, supplier or other Person. A natural Person who satisfies the foregoing definition other than item (b) shall not be disqualified from serving as an Independent Director of the Company if such individual is an Independent Director provided by a nationally-recognized company that provides professional independent directors or analogous offices and that also provides other corporate services in the ordinary course of its business to the Company or any Affiliate of the Company, or, if such natural Person receives customary director's fees for serving subject to the limitation on fees set forth below. A natural Person who otherwise satisfies the foregoing shall not be disqualified from serving as an Independent Director of the Company if such individual is at the time of initial appointment, or at any time

A-2

291354-3-W

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Case No.: A-16-740689-B

AA 2638

while serving as an Independent Director of the Company, an independent director, member or manager of a "special purpose entity" affiliated with the Company (other than any Person which owns any direct or indirect equity interest in the Company) if such individual is an Independent Director provided by a nationally-recognized company that provides professional independent directors or managers if the Person serving as such independent Person does not derive more than 5% of his or her annual income from serving as an Independent Director of the Company or any affiliate of the Company. For purposes of this paragraph, a "special purpose entity" is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve a Person's separateness that are substantially similar to those of the Company, and provide, inter alia, that it: (a) is organized for the limited purpose of owning and operating one or more properties, being the general partner or a member of a borrower or, in a securitization context, the limited purpose of issuing mortgage or asset-backed securities; (b) has restrictions on its ability to incur indebtedness, dissolve, liquidate, consolidate, merge and/or sell assets; (c) may not file voluntarily a bankruptcy petition on its own behalf or on behalf of such entity without the consent of the independent director, manager or member; and (d) shall conduct itself and cause the itself to conduct itself in accordance with certain "separateness covenants," including, but not limited to, the maintenance of its and such entity's books, records, bank accounts and assets separate from those of any other person or entity.

"Lender" means Agent, together with certain other Lenders determined by Agent pursuant to the Loan Agreement, together with their respective successors and assigns.

"Loan" means that certain loan in the amount of \$124,279,000.00 to be made by Lender to the Company in accordance with the terms, conditions and provisions of the Loan Documents.

"Loan Agreement" means that certain Loan and Security Agreement dated September 29, 2006 by and between LiveWork and Lender.

"Loan Documents" means the following documents and instruments, as the same may be amended from time to time:

- (a) Loan Agreement;
- (b) Pledge Agreement;
- (c) UCC-1 financing statements, each showing LiveWork as debtor, and Agent, as secured party, and prepared for filing as a fixture filing;
- (d) UCC-1 financing statements, each showing LiveWork as debtor, and Agent, as secured party, and prepared for filing under Article 9 of the UCC;
- (e) Guaranty of Payment from the Company in favor of Agent;
- (f) Carve-out Guaranty from the Member, David J. Mitchell, an individual ("Mitchell") and Barnet L. Liberman, an individual ("Liberman"), in favor of Agent;

A-3

291354-3-W

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Case No.: A-16-740689-B

AA 2639



- (g) Assignment of Contracts, Agreements and Equipment Leases from LiveWork in favor of Agent;
- (h) Assignment of Licenses, Permits and Approvals from LiveWork in favor of Agent;
- (i) Assignment of Purchase Agreements from LiveWork in favor of Agent;
- (j) Assignment and Subordination of Management Agreement from LiveWork and RMI, Inc., in favor of Agent;
- (k) Environmental Indemnity Agreement from LiveWork, the Company, the Member, Mitchell and Liberman, in favor of Agent;
- (l) Pledge Agreement from the Member in favor of Agent;
- (m) Pledge Agreement by Liberman in favor of Agent, regarding 305 Second Avenue Associates;
- (n) Pledge Agreement by Liberman in favor of Agent, regarding Mounbatten Equities;
- (o) Warrant, made by the Company and acknowledged by LiveWork in favor of Agent; and
- (p) any other instruments or documents defined as "Loan Documents" in the Loan Agreement.

"Management Agreement" means the agreement of the Directors in the form attached hereto as Schedule C. The Management Agreement shall be deemed incorporated into, and a part of, this Agreement.

"Material Action" means to the fullest extent permitted by law to liquidate or dissolve the Company in whole or in part, consolidate, merge or enter into any form of consolidation with or into any Person, or convey, transfer or lease the assets of the Company substantially as an entity to any Person or permit any Person to consolidate, merge or enter into any form of consolidation with or into the Company, to file any insolvency, or reorganization case or proceeding, to institute proceedings to have the Company be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against the Company, to file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for the Company or a substantial part of its property, to make any assignment for the benefit of creditors of the

Company, to admit in writing the Company's inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

"Member" means Las Vegas Land Partners, LLC, as the initial member of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company; provided, however, the term "Member" shall not include the Special Members.

"Obligations" shall mean the indebtedness, liabilities and obligations of the Company under or in connection with the Loan Documents.

"Officer" means an officer of the Company described in Section 11.

"Officer's Certificate" means a certificate signed by any Officer of the Company who is authorized to act for the Company in matters relating to the Company.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

"Pledge Agreement" means that certain Pledge Agreement, made by the Company for the benefit of Lender with respect to pledged interests in LiveWork;

"Properties" means the "Mortgaged Property" as defined in, and described in greater detail, in the Loan Agreement.

"Rating Agency" has the meaning assigned to that term in the Loan Documents, or if no such defined term exists, means a nationally-recognized rating agency that is rating or that has rated the Loan or any pool of loans of which the Loan forms a part or any securities issued in connection with a securitization of the Loan or such pool of loans.

"Rating Agency Condition" means with respect to any action taken at any time after the loan evidenced and secured by the Loan Documents has been sold or assigned to a securitization trust, that each Rating Agency shall have notified the Company in writing that such action will not result in a reduction, withdrawal, downgrade or qualification of the then current rating by such Rating Agency of the Loan or any pool of loans of which the Loan forms a part, or of any of securities issued by such securitization trust.

"Special Member" means, upon such person's admission to the Company as a Member of the Company pursuant to Section 5(c), a person acting as Independent Director, in such person's capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

A-5

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Case No.: A-16-740689-B

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“Special Purpose Entity” means an entity, whose organizational documents contain restrictions on its purpose and activities and impose requirements intended to preserve the its separateness that are substantially similar to the Special Purpose Provisions of this Agreement.

“Special Purpose Provisions” shall have the meaning given in Section 9(j)(ii) of this Agreement..

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

SCHEDULE B

Member

<u>Name</u>	<u>Mailing Address</u>	<u>Capital Contribution</u>	<u>Membership Interest</u>
LAS VEGAS LAND PARTNERS, LLC	c/o Mitchell Holdings 41 West 60 <sup>th</sup> Street New York, New York 10022	the Properties	100%

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**34-0041**

**Case No.: A-16-740689-B**

AA 2644

SCHEDULE C

Management Agreement

September 29, 2006

LiveWork, LLC  
c/o Mitchell Holdings  
41 West 60<sup>th</sup> Street  
New York, New York 10022

Re: Management Agreement -- LiveWork Manager, LLC

Ladies and Gentlemen:

For good and valuable consideration, each of the undersigned Persons, who have been designated as directors of LiveWork Manager, LLC, a Delaware limited liability company (the "Company"), in accordance with the Amended and Restated Limited Liability Company Agreement of the Company, dated as of September 29, 2006 as it may be amended or restated from time to time (the "LLC Agreement"), hereby agree as follows:

1. Each of the undersigned accepts such Person's rights and authority as a Director under the LLC Agreement and agrees to perform and discharge such Person's duties and obligations as a Director under the LLC Agreement, and further agrees that such rights, authorities, duties and obligations under the LLC Agreement shall continue until such Person's successor as a Director is designated or until such Person's resignation or removal as a Director in accordance with the LLC Agreement. Each of the undersigned agrees and acknowledges that it has been designated as a "manager" of the Company within the meaning of the Delaware Limited Liability Company Act.

2. So long as any Obligation is outstanding, each of the undersigned agrees, solely in its capacity as a creditor of the Company on account of any indemnification or other payment owing to the undersigned by the Company, not to acquiesce, petition or otherwise invoke or cause the Company to invoke the process of any court or governmental authority for the purpose of commencing or sustaining a case against the Company under any federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Company or any substantial part of the property of the Company, or ordering the winding up or liquidation of the affairs of the Company.

3. THIS MANAGEMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

C-1

291354-3-W

Mitch0162832

34-0042

Case No.: A-16-740689-B

AA 2645

Initially capitalized terms used and not otherwise defined herein have the meanings set forth in the LLC Agreement.

This Management Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Management Agreement and all of which together shall constitute one and the same instrument.

C-2

291354-3-W

Mitch0162833

**34-0043**

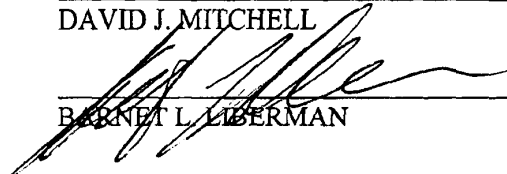
**Case No.: A-16-740689-B**

AA 2646

IN WITNESS WHEREOF, the undersigned have executed this Management Agreement  
as of the day and year first above written.



\_\_\_\_\_  
DAVID J. MITCHELL



\_\_\_\_\_  
BENNET L. LIBERMAN

\_\_\_\_\_  
CARRIE TILLMAN

\_\_\_\_\_  
BETH PEOPLES

C-3

291354-3-W

Mitch0162834

**34-0044**

**Case No.: A-16-740689-B**

AA 2647



IN WITNESS WHEREOF, the undersigned have executed this Management Agreement  
as of the day and year first above written.

\_\_\_\_\_  
DAVID J. MITCHELL

\_\_\_\_\_  
BARNET L. LIBERMAN

  
\_\_\_\_\_  
CARRIE TILGMAN

  
\_\_\_\_\_  
BETH PEOPLES

C-3

291354-3-W

Mitch0162835

34-0045

Case No.: A-16-740689-B

AA 2648

SCHEDULE D

DIRECTORS

1. DAVID J. MITCHELL
2. BARNET L. LIBERMAN
3. CARRIE TILLMAN
4. BETH PEOPLES

D-1

291354-3-W

Mitch0162836

**34-0046**

**Case No.: A-16-740689-B**

AA 2649

SCHEDULE E

OFFICERS

TITLE

David J. Mitchell

President

Barnet L. Liberman

Vice President

David J. Mitchell

Treasurer

Barnet L. Liberman

Secretary

E-1

291354-3-W

Mitch0162837

**34-0047**

**Case No.: A-16-740689-B**

AA 2650

**EXHIBIT C**

Certificate of Good Standing

304774-1-W

Mitch0162838

**34-0048**

**Case No.: A-16-740689-B**

AA 2651

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "LIVEWORK MANAGER, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIFTEENTH DAY OF JUNE, A.D. 2007.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



3955108 8300

070713484

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5761791

DATE: 06-15-07

Mitch0162839

34-0049

Case No.: A-16-740689-B

AA 2652

**EXHIBIT D**

Resolutions

304774-1-W

Mitch0162840

**34-0050**

**Case No.: A-16-740689-B**

AA 2653

## CONSENT OF THE SOLE MEMBER OF LIVEWORK MANAGER, LLC

The undersigned, being the sole member (the "**Sole Member**") of LIVEWORK MANAGER, LLC, a Delaware limited liability company (the "**Company**"), hereby consents to and authorizes the following actions to be taken by the Company, both in its own capacity and in its capacity as the sole member of LiveWork, LLC, a Delaware limited liability company ("**LiveWork**"):

RESOLVED, that the Company be, and hereby is, authorized to cause Livework to enter into that certain Agreement for Purchase and Sale (the "**Sale Agreement**") by and between Livework and Zoe Property, LLC, a Delaware limited liability company ("**Zoe**", together with Livework, collectively, the "**Seller**"), as seller, and Forest City Commercial Development, Inc., an Ohio corporation (the "**Buyer**"), as buyer, pursuant to which (i) Zoe will sell and convey to Livework all of Zoe's right, title, and interest in all real property owned by Zoe together with all improvements located thereon and certain other items of personal property used in connection therewith, in each case as more fully described in the Sale Agreement and (ii) Livework will sell and convey to FC Vegas 39, LLC, New York limited liability company ("**Vegas 39**"), and FC Vegas 20, LLC, a Nevada limited liability company ("**Vegas 20**", together with Vegas 39, collectively, the "**FC TIC Owners**") an aggregate undivided sixty percent (60%) tenancy in common interest in Livework's right, title, and interest in all real property owned by Livework (inclusive of all real property conveyed by Zoe to Livework) together with all improvements located thereon and certain other items of personal property used in connection therewith, in each case as more fully described in the Sale Agreement (collectively, the "**Property**"), upon the terms and subject to the conditions set forth therein, and that the terms and conditions of the Sale Agreement are hereby, authorized and approved by the Company, Livework and the Sole Member; and be it further

RESOLVED, that in connection with the foregoing the Company be, and hereby is, authorized to cause Livework to enter into that certain Tenancy-in-Common Agreement by and between Livework and FC TIC Owners under which Livework shall own, after the sale of the Property to Buyer, an undivided forty percent (40%) tenancy-in-common interest in the Property, and the FC TIC Owners shall own an aggregate undivided sixty percent (60%) tenancy-in-common interest in the Property; and be it further

RESOLVED, that the Company be, and hereby is, authorized, to cause Livework, together with the FC TIC Owners, in borrowing from Keybank National Association, the principal amount of up to \$116,400,000.00 (the "**Mortgage Loan**"), which Mortgage Loan may be secured by one or more mortgages covering the Property; and be it further

RESOLVED, that David J. Mitchell be, and hereby is, appointed as President of the Company, and Barnet L. Liberman be, and hereby is, appointed as Vice President of the Company; and be it further

304792-1-W

Mitch0162841

34-0051

Case No.: A-16-740689-B

AA 2654

RESOLVED, that each of David J. Mitchell, as President of the Company, Barnet L. Liberman, as Vice President of the Company, the Sole Member and any other officer of the Company, in each case acting alone, be, and hereby is, authorized to execute and deliver, in connection with the foregoing, one or more deeds, conveyance documents, credit agreements, loan agreements, note or notes, security instruments, and such other agreements, mortgages, assignments of leases and rents, pledge agreements, financing statements, affidavits, and such other certificates, affidavits, instruments, indemnities and other documents as are or may be necessary, appropriate or convenient in connection with the sale of the Property, the Mortgage Loan transaction described herein, and/or the foregoing resolutions; in each case, all in such form and containing such provisions as the officer or the Sole Member executing the same may deem advisable, such determination to be conclusively evidenced by the execution and delivery thereof by any such officer or the Sole Member, and to do such acts and things as may be necessary or, in the opinion of the officer or the Sole Member executing the same, are desirable or proper to carry out the transactions contemplated by the foregoing resolutions; such determination to be conclusively evidenced by such officer's signature; and be it further

RESOLVED, that all actions of any kind heretofore taken by the Company, Livework, the Sole Member and/or any representative thereof, in connection with the Sale Agreement and the matters contemplated by the foregoing resolutions are hereby confirmed, ratified and approved in all respects; and be it further

RESOLVED, that this consent may be executed in any number of counterparts, each of which, when taken together, shall constitute one and the same instrument.

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304792-1-W

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**34-0052**

**Case No.: A-16-740689-B**


AA 2655

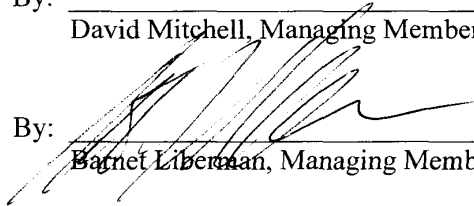


IN WITNESS WHEREOF, the undersigned has signed this consent as of the \_\_\_ day of June, 2007.

**SOLE MEMBER:**

LAS VEGAS LAND PARTNERS, LLC, a Delaware limited liability company

By:   
David Mitchell, Managing Member

By:   
Barnett Liberman, Managing Member

304792-1-W


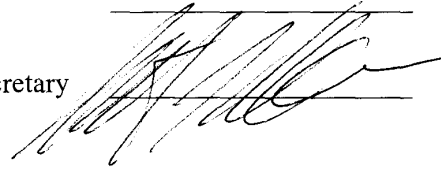
Mitch0162843

**34-0053**

**Case No.: A-16-740689-B**

AA 2656

**EXHIBIT E**

<u>Name of Officer</u>	<u>Title</u>	<u>Signature</u>
David J. Mitchell	President & Treasurer	
Barnet L. Liberman	Vice President and Secretary	

304774-1-W

Mitch0162844

**34-0054**

**Case No.: A-16-740689-B**

AA 2657

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF  
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT  
COPY OF THE CERTIFICATE OF FORMATION OF "WINK ONE LLC", FILED IN  
THIS OFFICE ON THE THIRD DAY OF APRIL, A.D. 2008, AT 4:35  
O'CLOCK P.M.



4529125 8100

080392578

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6499985

DATE: 04-03-08

MITDEF003331

38-0001  
Case No.: A-16-740689-B

AA 2658

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 04:35 PM 04/03/2008  
FILED 04:35 PM 04/03/2008  
SRV 080392578 - 4529125 FILE

## CERTIFICATE OF FORMATION

OF

WINK ONE LLC

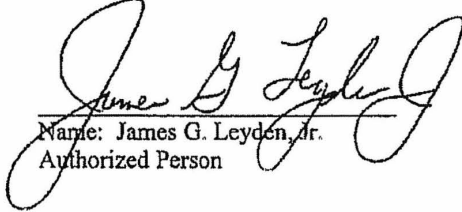
This Certificate of Formation of Wink One LLC (the "LLC"), dated as of April 3, 2008 is being duly executed and filed by James G. Leyden, Jr., as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is Wink One LLC.

SECOND. The address of the registered office of the LLC in the State of Delaware is c/o RL&F Service Corp., One Rodney Square, 10th Floor, Tenth and King Streets, Wilmington, New Castle County, Delaware 19801.

THIRD. The name and address of the registered agent for service of process on the LLC in the State of Delaware are RL&F Service Corp., One Rodney Square, 10th Floor, Tenth and King Streets, Wilmington, New Castle County, Delaware 19801.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.



Name: James G. Leyden, Jr.  
Authorized Person

RLFI-3269091-1

MITDEF003332

38-0002  
Case No.: A-16-740689-B

AA 2659

# Delaware

PAGE 1

## *The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "WINK ONE LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRD DAY OF APRIL, A.D. 2008.



4529125 8300

080392578

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6499986

DATE: 04-03-08

MITDEF003333

38-0003  
Case No.: A-16-740689-B

AA 2660