

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

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APPELLANTS' APPENDIX – VOLUME XX OF XXIX

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LLC, and Live Works Tic Successor, LLC*

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SURRENDER AND TERMINATION AGREEMENT

THIS SURRENDER AND TERMINATION AGREEMENT (this “*Agreement*”) is made and entered into as of this 18th day of December, 2014, by and between 305 LAS VEGAS LLC, a Delaware limited liability company (“*Landlord*”), as landlord, and CHARLESTON CASINO PARTNERS LLC, a Delaware limited liability company (“*Tenant*”), as tenant.

RECITALS:

A. Pursuant to the terms and provisions of that certain Lease Agreement dated May 2, 2007 (the “*Lease*”), Landlord leased to Tenant the land and improvements commonly known as 320 East Charleston Boulevard and 300 East Charleston Boulevard, Las Vegas, Nevada (the “*Premises*”).

B. Tenant now desires to surrender to Landlord all of Tenant’s right, title and interest in and to the Premises and terminate the Lease, and Landlord desires to accept said surrender and termination, on the terms and conditions of this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and upon the conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Surrender of Premises. Landlord hereby acknowledges and agrees that, all minimum rent, all percentage or additional rent and all other charges under the Lease have been paid by Tenant or waived by Landlord and that all obligations on the part of Tenant to be performed under the Lease have been performed or waived by Landlord. Tenant hereby surrenders to Landlord and Landlord hereby accepts the surrender from Tenant, of all of Tenant’s right, title and interest in and to the Premises and the Lease. Landlord further agrees to accept the Premises in its “as is” and “where is” condition and acknowledges and agrees that neither Tenant, nor its employees or agents, has made any representation or warranty regarding the condition of the Premises, including, without limitation, the presence or absence of asbestos or any hazardous or toxic substances or materials, and that no such representation or warranty shall be implied by law; provided, however, that Tenant hereby covenants and agrees that it shall not materially or intentionally damage the Premises during the period commencing on September 15, 2014 and ending on the date of this Agreement. In connection with said surrender, Tenant shall vacate the Premises on or prior to the date hereof and shall comply with all obligations set forth in the Lease regarding termination of the Lease. Landlord agrees that Tenant is not obligated to remove any additions or alterations to the Premises or restore the Premises to any condition which existed prior to the date of this Agreement. From and after the date of this Agreement, the Lease is hereby terminated and canceled and Landlord and Tenant shall have no further duties or obligations to one another in connection with the Premises or the Lease.

2. Release.

(a) Except for such obligations, rights or claims as may be created by or arise out of the terms and conditions of this Agreement, Tenant, on behalf of itself and its predecessors, successors, affiliates and assigns, and all other persons, firms and corporations claiming through Tenant, and each of them (collectively, the "*Tenant Releasing Parties*"), do hereby release Landlord and its predecessors, successors, affiliates, and assigns, and their respective members, officers, agents, contractors, representatives, employees and attorneys (collectively, the "*Landlord Released Parties*"), of and from any and all claims, demands, disputes, damages, liabilities, obligations, controversies, debts, costs, expenses, lawsuits, actions, causes of action and other rights to relief, both legal and equitable, of every kind and nature, whether now known or unknown, suspected or unsuspected, past or present, contingent or fixed (collectively, "*Claims*"), which the Tenant Releasing Parties, or any of them, now have, had, or at any time hereafter may have, against the Landlord Released Parties, or any of them, in connection with the Lease and/or the Premises.

(b) Except for such obligations, rights or claims as may be created by or arise out of the terms and conditions of this Agreement, Landlord, on behalf of itself and its predecessors, successors, affiliates and assigns, and all other persons, firms and corporations claiming through Landlord, and each of them (collectively, the "*Landlord Releasing Parties*"), do hereby release Tenant and its predecessors, successors, affiliates, and assigns, and their respective members, officers, agents, contractors, representatives, employees and attorneys (collectively, the "*Tenant Released Parties*"), of and from any and all Claims, which the Landlord Releasing Parties, or any of them, now have, had, or at any time hereafter may have, against the Tenant Released Parties, or any of them, in connection with the Lease and/or the Premises.

3. Waiver of Rent. Landlord and Tenant acknowledge and agree that the outstanding unpaid rent under the Lease as of September 15, 2014 was \$12,676,025.00, and has continued to accrue to the date hereof at the rate of \$6,958.27 per day. In consideration of Tenant's agreement to execute and deliver this Agreement to Landlord, Landlord has agreed to waive the payment of such amounts by Tenant.

4. Representations and Warranties.

(a) Tenant hereby makes the following representations and warranties to Landlord as of the date hereof:

(i) Tenant has the full power, authority and legal right to enter into and to perform and observe the provisions of this Agreement without the authorization and consent of any other party or entity; this Agreement has been duly and validly authorized and approved by all necessary corporate action on the part of Tenant and will not violate the terms and provisions of Tenant's bylaws or other organizational documents; and this Agreement has been duly and validly executed and delivered by Tenant and constitutes a valid, binding and enforceable obligation of Tenant. All authorizations and consents required from any other

person or entity to enable Tenant to enter into this Agreement and surrender the Premises and the Lease have been obtained.

(ii) Tenant has not assigned, sublet, transferred or conveyed, and agrees not to assign, sublet, transfer or convey, its interest in the Premises, the Lease or any claims or potential claims it may have against Landlord, except as set forth in the Lease.

(iii) Tenant hereby agrees to indemnify, defend (by counsel reasonably satisfactory to Landlord) and hold Landlord harmless from and against any claims, actions, causes of action, losses, liabilities, damages, costs and expenses (including, without limitation, attorneys' fees and costs) suffered or incurred by Landlord as a result of any breach of or inaccuracy in Tenant's representations and warranties contained in this Agreement.

(b) Landlord hereby makes the following representations and warranties to Tenant as of the date hereof:

(i) Landlord and its constituents have the full power, authority, and legal right to enter into and to perform and observe the provisions of this Agreement without the authorization and consent of any other party or entity; this Agreement has been duly and validly authorized and approved by all necessary partnership and corporate action on the part of Landlord and its constituents and will not violate the terms and provisions of Landlord's partnership agreement or other organizational documents or those of its constituents; and this Agreement has been duly and validly executed and delivered by Landlord and its constituents and constitutes a valid, binding and enforceable obligation of Landlord and its constituents. All authorizations and consents required from any other person or entity to enable Landlord and its constituents to enter into this Agreement and terminate the Lease have been obtained.

(ii) Landlord hereby agrees to indemnify, defend (by counsel reasonably satisfactory to Tenant) and hold Tenant harmless from and against any claims, actions, causes of action, losses, liabilities, damages, costs and expenses (including, without limitation, attorneys' fees and costs) suffered or incurred by Tenant as a result of any breach of or inaccuracy in Landlord's representations and warranties contained in this Agreement.

5. Invalidity of Provisions. If any provision of this Agreement is found to be invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of any such provision shall not affect the validity and enforceability of the remaining provisions hereof.

6. Attorney's Fees. If either party hereto commences an action against the other to enforce any of the terms hereof, or to obtain damages for any alleged breach of any of the terms hereof, or for a declaration of rights hereunder, the losing party shall pay to the prevailing party the prevailing party's reasonable attorneys' fees and costs incurred in connection with the prosecution of such action, whether or not such action proceeds to trial or appeal.

7. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York.

8. Further Assurances. Each of the parties hereto agrees to execute and deliver all such further documents and to take all such further actions as may be reasonably requested by any other party to effectuate fully the terms and provisions of this Agreement, provided such documents or actions do not materially limit, reduce or impair the rights of the party upon whom such request is made.

9. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signature pages to this Agreement may be given by facsimile or other electronic transmission, and such signatures shall be fully binding on the party sending same.

10. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

11. Brokers. Landlord and Tenant covenant and represent to each other that no other party is entitled to be paid a fee or commission in connection with the surrender and termination of the Lease contemplated herein. If any individual, corporation or entity shall assert a claim to a finder's fee, commission or other similar employment, arrangement or contract as a broker or a finder, then the party alleged to have retained such individual, corporation or entity shall defend, indemnify and hold harmless the other party from and against any such claim and all costs, expense, liability and damage that is incurred in connection with such claim or any action or proceeding brought thereon.

12. Successors and Assigns. All of the stipulations, promises and agreements contained herein by or on behalf of Tenant or Landlord shall bind their successors and assigns, whether so expressed or not, and shall inure to the benefit of Landlord and Tenant and their respective successors and assigns.

IN WITNESS WHEREOF, Landlord and Tenant have entered into this Agreement as of the date first above written.

LANDLORD:

305 LAS VEGAS LLC,
a Delaware limited liability company

By: 305 Second Avenue Associates, L.P.

By: Winthrop D. Chamberlin
Winthrop D. Chamberlin

By: Barnet L. Liberman
Barnet L. Liberman

TENANT:

CHARLESTON CASINO PARTNERS,
LLC, a Delaware limited liability company

By: David Mitchell, President
David Mitchell, President

By: BARNET L. LIBERMAN
BARNET L. LIBERMAN

RELEASE OF LEASE GUARANTY

THIS RELEASE OF LEASE GUARANTY (this "**Release**") is made and executed as of December 18, 2014, by **305 LAS VEGAS LLC**, a Delaware limited liability company ("**Landlord**"), and **HEARTLAND BANK**, a federal savings bank ("**Lender**"), for the benefit of **DAVID J. MITCHELL**, an individual resident of the State of New York ("**Mitchell**") and **BARNET L. LIBERMAN**, an individual resident of the State of New York ("**Liberman**").

WHEREAS, on May 2, 2007, Landlord and Charleston Casino Partners LLC, a Delaware limited liability company ("**Tenant**"), entered into that certain Lease Agreement for real property located at 320 East Charleston Boulevard and 300 East Charleston Boulevard, Las Vegas, Nevada, as more specifically described therein (the "**Lease**").

WHEREAS, on May 2, 2007, Mitchell and Liberman entered into the Personal Guaranty of Lease, by which Mitchell and Liberman guaranteed the Lease obligations of Tenant to both Landlord and Lender, as more specifically described therein (the "**Lease Guaranty**").

WHEREAS, on August 29, 2014, Landlord, Lender, Mitchell, and Liberman entered into that certain Settlement Agreement (the "**Settlement**"), which requires, among other things, that Lender and Landlord terminate the Lease Guaranty and obligations of Mitchell and Liberman thereunder on, or within a reasonable period of time after the date that is ninety-one (91) days following, the Closing Date (as defined in the Settlement) and so long as no Bankruptcy Event (as defined in the Settlement) has occurred.

NOW THEREFORE, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender hereby covenants and agrees as follows:

1. Mitchell hereby certifies that as of the date hereof, no Bankruptcy Event (as defined in the Settlement) has occurred with respect to Mitchell. Liberman hereby certifies that as of the date hereof, no Bankruptcy Event (as defined in the Settlement) has occurred with respect to Liberman, Landlord, or 305 Second Avenue Associates, L.P.

2. As of the date hereof, Landlord and Lender hereby discharge and release the Lease Guaranty.

3. Landlord, on its own behalf and on behalf of its past, present and future representatives, partners, operators, members, shareholders, officers, directors, agents, employees, servants, affiliates and related companies, heirs, successors and assigns (hereinafter referred to collectively as the "**Landlord Releasers**"), hereby waives, releases and forever discharges Mitchell and Mitchell's heirs, successors and assigns and Liberman and Liberman's heirs, successors and assigns (hereinafter referred to collectively as the "**Releasees**"), from and against all manner of actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, obligations, liabilities, costs, expenses, losses, damages, judgments, executions, claims and demands, of whatever kind and nature, in law or in equity, whether known or unknown, whether or not concealed or hidden, that any of the Landlord Releasers, jointly or severally, may have

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had, or now have or that may subsequently accrue against the Releasees arising out of or relating to the Lease Guaranty.

4. Lender, on its own behalf and on behalf of its past, present and future representatives, partners, operators, members, shareholders, officers, directors, agents, employees, servants, affiliates and related companies, heirs, successors and assigns (hereinafter referred to collectively as the "***Lender Releasors***"), hereby waives, releases and forever discharges the Releasees, from and against all manner of actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, obligations, liabilities, costs, expenses, losses, damages, judgments, executions, claims and demands, of whatever kind and nature, in law or in equity, whether known or unknown, whether or not concealed or hidden, that any of the Lender Releasors, jointly or severally, may have had, or now have or that may subsequently accrue against the Releasees arising out of or relating to the Lease Guaranty.

5. This Release may be executed in counterparts and delivered by pdf or facsimile and as such, shall constitute an original.

[Signature page(s) to follow]

IN WITNESS WHEREOF, this Release has been executed by the parties hereto as of the day and year first above written.

“Landlord”

305 LAS VEGAS LLC

a Delaware limited liability company

By: 305 Second Avenue Associates, L.P.,
A New York limited partnership,
its sole member

By: _____
Name: Barnet L. Liberman
Title: General Partner

By: _____
Name: Winthrop D. Chamberlin
Title: General Partner

“Lender”

HEARTLAND BANK

a federal savings bank

By:  _____
Name: Jason Penfield
Title: E.V.P

“Mitchell”

David J. Mitchell

“Liberman”

Barnet L. Liberman

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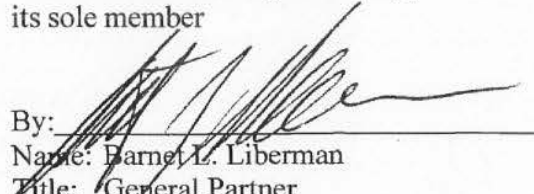
IN WITNESS WHEREOF, this Release has been executed by the parties hereto as of the day and year first above written.

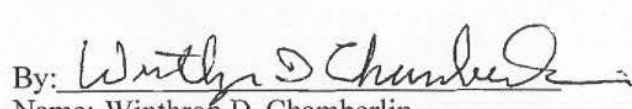
"Land lord"

305 LAS VEGAS LLC

a Delaware limited liability company

By: 305 Second Avenue Associates, L.P.,
A New York limited partnership,
its sole member

By: 
Name: Barnet L. Liberman
Title: General Partner

By: 
Name: Winthrop D. Chamberlin
Title: General Partner

"Lender"

HEARTLAND BANK


a federal savings bank

By: _____
Name:
Title:

"Mitchell"

David J. Mitchell

"Liberman"



Barnet L. Liberman

{3303/00135/1448030.DOCX}

Error! Unknown document property name.

Mitch1348819

AA 3520

IN WITNESS WHEREOF, this Release has been executed by the parties hereto as of the day and year first above written.

"Landlord"

305 LAS VEGAS LLC

a Delaware limited liability company

By: 305 Second Avenue Associates, L.P.,
A New York limited partnership,
its sole member

By: _____
Name: Barnet L. Liberman
Title: General Partner

By: _____
Name: Winthrop D. Chamberlin
Title: General Partner

"Lender"

HEARTLAND BANK

a federal savings bank

By: _____
Name: _____
Title: _____

"Mitchell"



David J. Mitchell

"Liberman"

Barnet L. Liberman

3c

Inst #: 201107180001907
Fees: \$16.00
N/C Fee: \$25.00
07/18/2011 01:34:58 PM
Receipt #: 847519
Requestor:
AM PM LEGAL SOLUTIONS
Recorded By: BJB Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

APNs# 139-34-311-001, 002, 003, 007, 008,
009, 010, 011, 012, 013, 014, 015,
016, 017, 018, 019, 020, 021, 022,
023, 024, 025, 026, 027, 028, 029,
030, 031 and 049
139-34-302-009
139-34-210-014, 015, 017 and 018

Recording Requested by and Return to:

Name Gregg R. Vermeys, Esq.
Greenberg Traurig, LLP

Address 3773 Howard Hughes Parkway, Suite 400N

City/State/Zip Las Vegas, NV 89169

**State of Delaware Certificate of Merger of Domestic
Limited Liability Companies
(Title on Document)**

This page added to provide additional information required by NRS 111.312 Sections 1-2 (Additional recording fee applies).

This cover page must be typed or printed clearly in black ink only.

**STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC LIMITED LIABILITY COMPANIES**

Pursuant to Title 6, Section 18-209 of the Delaware Limited Liability Act, the undersigned limited liability company executed the following Certificate of Merger:

FIRST: The name of the surviving limited liability company is

FC/LW Vegas, LLC,
and the name of the limited liability company being merged into this surviving limited liability company is L/W TIC Successor LLC.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent limited liability companies.

THIRD: The name of the surviving limited liability company is
FC/LW Vegas, LLC.

FOURTH: The merger is to become effective on February 28, 2011.

FIFTH: The Agreement of Merger is on file at 50 Public Square, #1360
Cleveland, OH 44113,
the place of business of the surviving limited liability company.

SIXTH: A copy of the Agreement of Merger will be furnished by the surviving limited liability company on request, without cost, to any member of the constituent limited liability companies.

IN WITNESS WHEREOF, said limited liability company has caused this certificate to be signed by an authorized person, the 28th day of February, A.D.,
2011.

By: Layton McCown
Authorized Person

Name: Layton McCown
Print or Type

Title: Exec VP and Asst. Sec on behalf of Member

MIT002969

AA 3523

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"L/W TIC SUCCESSOR LLC", A DELAWARE LIMITED LIABILITY COMPANY,

WITH AND INTO "FC/LW VEGAS, LLC" UNDER THE NAME OF "FC/LW VEGAS, LLC", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-EIGHTH DAY OF FEBRUARY, A.D. 2011, AT 3:01 O'CLOCK P.M.



4878892 8100M

110235111

You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 8593223

DATE: 03-01-11

MIT002970

AA 3524

1 WILLIAM L. COULTHARD, ESQ.
Nevada Bar No.: 001927
2 KEMP, JONES & COULTHARD, LLP.
3800 Howard Hughes Parkway, Seventeenth Floor
3 Las Vegas, Nevada 89169
Tel. (702) 385-6000

4 DAVID A. CARROLL, ESQ.
5 Nevada Bar No. 7643
Rice Silbey Reuther & Sullivan, LLP
6 3960 Howard Hughes Parkway, Suite 700
Las Vegas, Nevada 89169
7 Tel. (702) 732-9099
Attorneys for Defendants/Counterclaimants
8 *Revenue Plus, LLC and Russell Nype*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11
12 LAS VEGAS LAND PARTNERS, LLC;
13 LIVEWORK, LLC and ZOE PROPERTIES,
LLC,

14 Plaintiffs,

15 v.

16 RUSSELL L. NYPE; REVENUE PLUS,
LLC; JOHN DOES I through X; JANE
17 DOES I through X; DOE CORPORATIONS
I through X; and DOE PARTNERSHIPS I
18 through X,

19 Defendants.

20 RUSSELL L. NYPE; REVENUE PLUS,
21 LLC,

22 Counterclaimants,

23 v.

24 LAS VEGAS LAND PARTNERS, LLC;
DOES I through X; and ROE
25 CORPORATIONS I through X,

26 Counterdefendants.

Case No.: A551073

Dept. No.: IX

**DEFENDANTS/COUNTERCLAIMANTS
REVENUE PLUS AND RUSSELL
NYPE'S TENTH SUPPLEMENT TO
INITIAL DISCLOSURES PURSUANT
TO NRCP 26(e)(1)**

1 Pursuant to NRCP 26 (e)(1), Defendants/Counterclaimants, REVENUE PLUS AND
2 RUSSELL L. NYPE, (hereinafter collectively "Revenue Plus"), by and through their attorneys of
3 record, the law firms of KEMP, JONES & COULTHARD, LLP, and RICE SILBEY REUTHER
4 & SULLIVAN, LLP hereby supplement their witness disclosures and expert disclosures.

5 I.

6 **SUPPLEMENTAL DISCLOSURE OF WITNESSES**

7 Revenue Plus hereby discloses the following consultant/expert witness:

8 March D. Rich, CPA
9 Rich Wightman & Company
10 1301 S. Jones Boulevard
Las Vegas, Nevada 89146

11 Mr. Rich is a Certified Public Accountant who has served as a Expert Forensic
12 Accountant for Revenue Plus and Mr. Russell Nype in this litigation. If called upon to testify in
13 this matter, Mr. Rich would testify about the material he reviewed in this matter and the
14 conclusions/findings he has reached in this case. Mr. Rich has provided forensic accounting
15 support and assistance to Revenue Plus Expert, Kenneth W. Wiles, PhD, CFA. Mr. Rich's
16 Resume, Fee Schedule, and List of Cases wherein he has served as an Expert Witness is attached
17 hereto as Exhibit 1. (NYPE 002152-002154)

18 II.

19 **SUPPLEMENTAL DISCLOSURE OF EXPERT REPORT**

20 Revenue Plus and Mr. Russell Nype hereby disclose the Supplemental Expert Report
21 dated August 3, 2011 of Mr. Kenneth W. Wiles, PhD, CFA, Acceleron Group, LLC., attached
22 hereto as Exhibit 2. (NYPE 002155-2163)

23
24
25 ///

26 ///


27 ///

1 Defendant/Counterclaimant further reserves the right to amend and/or supplement his list
2 of witnesses and documents according to the Nevada Rules of Civil Procedure.

3 DATED this 3rd day of August, 2011.

4 KEMP, JONES & COULTHARD, LLP

5
6 By:



7 WILLIAM L. COULTHARD, ESQ.

8 Nevada Bar No. 001927

9 ERIC M. PEPPERMAN, ESQ.

10 Nevada Bar No. 011679

11 3800 Howard Hughes Parkway, Seventeenth Floor
12 Las Vegas, Nevada 89169

13 *Attorneys for Defendant/Counterclaimant*
14 *Russell Nype*
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1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 4th day of August, 2011, the foregoing **DEFENDANTS/**
3 **COUNTERCLAIMANTS REVENUE PLUS AND RUSSELL NYPE'S TENTH**
4 **SUPPLEMENT TO INITIAL DISCLOSURES PURSUANT TO NRCP 26(e)(1)** was served
5 on the following person(s) by mailing a copy thereof, first class mail, postage prepaid, to:

6 Oliver Pancheri, Esq.
Santoro, Driggs, Walch, Kearney,
7 Holley & Thompson
400 South Fourth Street, Third Floor
8 Las Vegas, Nevada 89101
Attorney for Plaintiffs/Counterdefendants

9 David A. Carroll, Esq.
10 Rice Silbey Reuther & Sullivan, LLP
3960 Howard Hughes Parkway, Suite 700
11 Las Vegas, Nevada 89169
Attorneys for Defendants/Counterclaimants
12 *Revenue Plus, LLC and Russell Nype*


13 
14 An Employee of Kemp, Jones & Coulthard, LLP
15
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EXHIBIT 1

Mark D. Rich
Certified Public Accountant
Certified in Financial Forensics

Rich, Wightman & Company
1301 S. Jones Blvd.
Las Vegas, Nevada 89146
(702) 878-0959

EDUCATION/CERTIFICATIONS:

Licensed by the State of Nevada as a Certified Public Accountant -July, 1981

Certified in Financial Forensics, CFF (AICPA designation)

BSBA - Accounting. University of Nevada, Las Vegas - May, 1979 (With Distinction)

PROFESSIONAL EXPERIENCE:

1-96 to Present	Rich, Wightman & Company, CPA's, Managing Partner
2-94 to 1-96	Mark Rich & Company, CPA's, Managing Partner
4-82 to 2-94	Mark D. Rich, CPA, P.C.
6-79 to 3-82	McGladrey Pullen, CPAs
9-77 to 5-79	Oesterle & Company

PROFESSIONAL MEMBERSHIPS:

Nevada Society of CPA's
Past: Elected to Board of Directors
Served on Financial Accounting Standards Committee
Served on Litigation Consulting Services Committee
Served on various other committees since 1981
American Institute of Certified Public Accountants
American Institute of Certified Public Accountants, Certified in Financial Forensics
Association of Certified Fraud Examiners
Institute of Internal Auditors
Participant in AICPA/Nevada Society Quality Review Program (Peer Review)
Phi Kappa Phi Honor Society
UNLV Alumni Association
UNLV Planned Estate Giving Advisors Council
Enrolled to Practice before Gaming Control Board
Served on Board of Directors of Habitat for Humanity (CFO)
Industry Partner in Institute of Real Estate Management (IREM)

SPECIALIZED AREAS OF INDUSTRY EXPERIENCE:

Construction
Real Estate and Development
Mortgage Banking
Retail
Gaming
Transportation
Professionals
Estate and Trust
Not-For-Profit/Charitable Organizations
Manufacturing
Wholesale Distributors

NYPE002152

ADDITIONAL TRAINING AND PROFESSIONAL COURSES:

Forensic Accounting and Fraud GCB
Certified Audit Preparation and Disclosure
Financial Statement Analysis
Estate Planning Utilizing Charitable Entities
Advanced Reviewed and Compiled Financial Statement Preparation
Forensic Accounting Conference
Forensic Electronic Data Analysis and Retrieval
Litigation Strategies
Fraud Detection and Calculations of Losses
Business Valuations
Construction Claims
Bankruptcy
Divorce
Damage Studies
Employee Theft Investigations
High Income Individual Tax Strategies
Estate Planning for High Income Individuals
Estate Planning for the Small Business Owner
Advanced Partnership Taxation
Individual Taxation
S-Corporation Taxation
Partnership Taxation
Trust Taxation
Estate Taxation
Advanced Reviewed and Compiled Financial Statement Preparation
Contractors Tax and Accounting Strategies
Gaming MICS

FIRM BILLING RATES EFFECTIVE MARCH 1, 2010:

Partner	\$325
Manager	\$190 - \$225
Supervisor	\$180 - \$200
Senior	\$ 95 - \$175
Staff	\$ 80 - \$125
Admin.	\$ 40 - \$ 75

SIGNIFICANT CASE HISTORY:

Type	Court	Status	Client	Attorney
Valuation	District	Report/Closed	Sahara Village	Friedman
Damage	District	Report/Settled	So. West	Galane
Damage	District	Report/Closed	Ins.	Galane
Bankruptcy	Federal	Valuation	Steel	Foley
Damage	District	Special Master/Closed	Brokerage	Massey
Estate	District	Report/Valuation	Ratner	Hunt
Estate	District	Report	Campbell	Sulley
Damages	District	Report/Closed	Fox	Gamble
Divorce	District	Settled	Brandise	Arnold
Damage	District	Report/Closed	Irish	McGarry
Management	District	Settled	Rita	Drizen
Bankruptcy	Federal	Closed	Nevco	Kane
Bankruptcy	Federal	Court Appt/Closed	Rojac	Kane
Valuation	District	Report/Settled	Defonseka	Mitchell
Damages	District	Settled	Covington	Mitchell
Damages	Federal	Closed	Dennett	J. P. Lee
Valuation	District	Settled	Fraizer	Frame
Divorce	District	Closed	Day & Night	Frame
Fraud	District	Closed	Soubry	Alverson
Tax Criminal	Federal	Closed	Roof	Kelesis
Tax Civil	Federal	Closed	Haught	Lieberman
Criminal	District	Closed	Fidelity	DA
Criminal	District	Closed	So NV Movers	DA
Criminal	District	Closed	RH & M	DA
Criminal	District	Closed	Acoustical	DA
Valuation	District	Report/Closed	Worthen	McGarry
Damages	District	Closed	LVGT	Frame
Valuation	District	Settled	Eastern NV	Hunt
Estate	District	Settled	Clark	Morris/Cook
Tax	Federal	Closed	Clark	Silets
Tax Criminal	Federal	Closed	Kloehn	Katz
Damage	District	Closed	Gilcrease	Cook
Damage	District	Closed	Yerramsetti	Cook
Estate	District	Report	Ward	Cook
Damage	Arbitration	Closed	National	Ellis
Damage	Arbitration	Report/Closed	Massanari	Albright
Estate	District	Report/Closed	Heatley	Lowe
Damage	District	Report/Settled	Sands	Morris
Estate	District	Report/Settled	Danner	Morgan
Damage	District	Report	Desert Land	Peterson
Tax Civil	Federal	Settled	Behnen	Aloi
Divorce	Family	Consultant	n/a	Kainen
Divorce	Family	Report	Keeter	LoBello
Divorce	Family	Report/Settled	Bloch	Ecker
Divorce	Family	Settled	Costello	Ecker
Divorce	Family	Consultant	Higgins	Kainen
Damage	District	Report/Forensic	CBC	Marquis
Divorce	Family	Report	McGill	Ecker/LoBello
Damage	District	Consultant	CSI	Hutchison
Damage	District	Consultant	Revenue Plus	Carroll
Recovery	Federal	Report/Forensic	FDIC	McCoy

NYPE002154

EXHIBIT 2



August 3, 2011

Mr. David Carroll, Esq.
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, Nevada 89169

RE: Supplemental Expert Report, Las Vegas Land Partners LLC, et al. v. Russell L. Nype, et al.

Dear Mr. Carroll,

In our preliminary report regarding Las Vegas Land Partners LLC, et al. v. Russell L. Nype, et al. dated February 23, 2009, we stated the following:

After a review of the relevant documents and pertinent facts of the case, the success fee for the initial capital raise is \$3,294,302.99, which equals \$82,357,574.67 multiplied by 0.04 or 4%, and any additional capital raised for the project from Forest City would also generate a success fee of four percent (4%) for equity capital raised and one percent (1%) for any debt capital raised.

We have recently reviewed:

- Plaintiffs' Motion for Summary Judgment;
- Defendant / Counterclaimant Revenue Plus, LLC and Russell L. Nype's Opposition to Plaintiffs' Motion for Summary Judgment & Countermotion for Summary Judgment on Real Estate Licensing Issue;
- KeyBank documents KEY000001 through KEY001116;
- Forest City documents FC000001 through FC001436;

- Forest City documents FCV00097 through FCV003690;
- FC Loan to LW total 12-08 thru 2-11;
- LVLP Holding LLC, Form 4797, Sales of Business Property, 2007; and
- Various schedules prepared by Mark Rich, CPA, which are attached as Exhibit A.

The forensic accounting analysis provided by Mr. Rich indicates that the total equity capital contribution provided by FC to LVLP through February 2011 was greater than the \$82,357,574.67 presented in our prior report. The total equity capital contribution identify by Mr. Rich through February 2011 is \$126,233,665.81. The revised value is based upon Mr. Rich's review of accounting records that were provided through discovery and not available until recently.

The revised success fee due to Mr. Nype based upon the total equity capital contribution provided by FC to LVLP is \$5,049,346.63, which equals \$126,233,665.81 multiplied by 0.04 or four percent. In addition, Mr. Rich identified \$16,624,822.00, which was a loan provided by FC to LVLP. The success fee due to Mr. Nype based upon the total debt capital provided by FC to LVLP is, therefore, \$166,248.22, which equals \$16,624,822.00 multiplied by 0.01 or one percent. The total success fee \$5,215,594.85, which equals the equity success fee of \$5,049,346.63 plus the debt success fee of \$166,248.22.

Any capital invested by Forest City, in addition to the \$126,233,665.81 equity capital raised for the project through February 2011 and the \$16,824,822.00, would also generate a success fee of four percent (4%) for equity capital raised and one percent (1%) for debt capital raised.

Please let me know if I may be of additional assistance or if you have any questions.

Best regards,



Kenneth W. Wiles, PhD, CFA
Managing Director
Acceleron Group, LLC

Exhibit A

Schedules provided Mark Rich from Rich Wightman & Company, LLC, Certified
Public Accountants:

- Consultant Memo;
- FC Contributions; and
- Key Bank Loan Analysis.

MEMORANDUM

TO: DAVID CARROLL, ESQUIRE; BILL COUTHARD, ESQUIRE
FROM: MARK RICH, CPA
SUBJECT: LAS VEGAS LAND PARTNERS ET AL.
DATE: 7/15/2011
CC:

LiveWork Proceeds from 6/22/07 acquisition:

1. LW received \$5,189,508.38 in cash from FC related to the 6/22/07 transaction (FCV00239).
2. The Heartland debt totaling \$7.1 million (\$5.4 and \$1.7) was paid off through escrow (FCV00238).
3. T-QHR, LLC debt totaling \$300,750 was paid off through escrow (FCV00238).
4. The Heartland and T-QHR Loans were not paid pro-rata 60/40 like Guggenheim (FCV00238).
5. The Guggenheim loan totaling \$ 101,287,952 was paid off through escrow (FCV00238).
6. LW net debt of \$62,768,702.45 was reduced as a part of the 6/22/07 transaction with FC (RWCO LW debt reduction w/s).
7. A simultaneous refinance with Key Bank required LiveWork to pay in reserves with Key Bank.
8. \$10,792,000 in acquisition proceeds was applied to LiveWork's required portion of reserves for the refinance of the Guggenheim loan (FCV000238 and see worksheet total).
9. LiveWork received \$82,357,575 enabling refinancing with KeyBank, fund reserves in excess of \$10,000,000, cash in excess of \$5 million and reduced overall debt in excess of \$62 million.
10. Funds held in reserve for Mr. Nype totaling \$430,068 (FCV000239).
11. "Warrant purchase" to Guggenheim paid through escrow totaled \$2 million (\$800,000 LW, \$1.2 million FC FCV000239).
12. The "warrant purchase" represented 3% project value (P00216, P09367).

NYPE002158

Breakdown of Equity Capital Contributed by FC on 6/22/07:

1. FC deposited cash of \$32,191,417 into the 6/22/07 closing (**FCV00237**).
2. FC contributed \$68,800,000 in borrowed funds into the 6/22/07 closing (**FCV000238**).
3. FC contributed approx. \$101 million total in cash and borrowed funds into the 6/22/07 closing.
4. Buyer charge reported on the closing statement of \$82,357,575 (**FCV000237**) agrees to the 4797 tax return (**P010963**). Amount is not separated by cash/borrowed funds.
5. FC deposited into escrow in excess of \$101 million and the transaction was recorded as an \$82 million sale. The difference was applied to various fees and reserves with Key Bank.

Financial Improvement of LVLP following transaction with FCE:

1. Following the transaction with FC, \$82,005,798 in debt was relieved and or paid down in 2007. Refer to **P010952** (2006 \$130,367,339 less 2007 \$48,361,601)
2. Partners' capital improved by \$7,480,659 following the transaction with FC.
3. Guggenheim note balance totaling \$122,372,765 was due fifteen months after closing, (January 23, 2008) (**P010871, P08920, P08926**)

Additional Equity Capital/Loans by FC after the 6/22/07 transaction:

1. Cumulatively, FCE has reported \$54,263,466 in contributed capital subsequent to 6/22/07 through February, 2011 (**FCV002157**).
2. Considering the loan balance of \$43,100,000 at May, 2010 (the month when costs sharing was changed to 90/10) (**FCV000189**), multiplied by LW's 40% is \$17,240,000. LW's new 10%. Total debt relieved is \$12,930,000 due to 90/10 arrangement.
3. Considering the above items the total contributed capital through February, 2011 is at least \$126,233,666.
4. FC's monthly portion considering the new 90/10 agreement is approximately \$270,000 per month for interest and estimated average project costs, through October, 2011 the amount would be \$2,160,000.
5. December 1, 2008 through February, 2011 a total of \$16,966,993 was paid by FCE on behalf of LW (**FCV00188-190** partial FC detail listing 12-08 to 2-11). These amounts related to LW's portion of interest, principal, bank fees and project expenses related to the project.

6. February 1, 2008 FC made a \$12,800,000 loan to LW, which was LW's portion of the principal pay down requirement on the Key Bank loan (FCV000191).

Unjust enrichment/Benefits LVLV, Due to FC Transaction:

Interest Savings:

1. Guggenheim first out term loan Libor plus 5%, second out term loan Libor plus 6.5% plus 3% in kind-(warrants) (P010871).
2. Key Bank Borrower's option of (a) Agent's Base Rate or (b) LIBOR + 325 basis points. Agent's Base Rate shall be defined as the greater of: a) Agent's Prime Rate + 150 basis points or (b) Federal Funds Rate + 150 basis points (FCV00495).
3. Taking the lowest interest savings rate of 1.75%, the annual interest savings on the \$114,000,000 loan is approximately \$2 million.

Cost of Financing and Fees Charged by FC vs. Guggenheim and Istar:

1. Servicing fee \$12,500 per quarter (P010871)
2. 2% closing fee \$1,416,582 and \$1,030,773 (P09660)
3. ARC Fee \$2,300,000 (P09660)
4. Guggenheim Legal \$250,000 (P09660)
5. Appraisal Fee \$30,000 (P09660)
6. Warrants \$2,000,000 (FCV00239)

The total cost of financing for the Guggenheim loan (\$7,027,355.00). Guggenheim fees per month, not including interest and quarterly servicing fee, for the 8 month loan period (\$ 878,419.38).

IStar terms, fees, payoff, refer to I-star (Discovery is continuing)

LVLV's distress and financial wherewithal:

Terms of Guggenheim Loan (P010871-P010881):

1. First out term loan Libor plus 5%, second out term loan Libor plus 6.5% plus 3% in kind (Bates P010871)
2. Required personal guarantees of \$12,484,960 (P09335, P09353).
3. A warrant assigned 3% of the project value to Guggenheim (expire in 10 years) P00216, P09367.
4. 15 month term loan? (P010871)

5. \$7,027,355.00 was the total cost of financing for a 15 month period, including the warrants of \$2 million.

Past due amounts:

1. 2006 tax installment still due at 6/22/07 (P00216)
2. Property tax penalties (P09661)

Distributions received by Mitchell and Liberman from LVLP Holdings, LLC:

Despite amounts owing to NYPE, Mitchell and Liberman took distributions:

1. Distributions in 2007 \$14,831,139 (P010951, line 19).
2. Distributions in 2008 \$312,500 (P010970, line 19a.)
3. Distributions in 2009 \$800,000 (P010985, line 19a.)

Entity Structure:

1. LVLP Holdings, LLC is the entity the taxes are filed under and appears to be an error since the operating agreements shows Las Vegas Land Partners own LiveWork and Zoe. Note: We have no operating agreement for LVLP Holdings, LLC (P010953-P010955).
2. LiveWork, LLC reported the 60% transfer of interest to FC according to the closing statement? (FCV00237).
3. LVLP Holdings, LLC is the entity the taxes are filed under and appears to be an error since the operating agreements shows Las Vegas Land Partners own LiveWork and Zoe.

FC Capital Contributions

Reported by FCE on Amended and Restated Operating Agreement FCLW, LLC:

Initial Contributions (prior to 2/1/09)	\$	26,352,000.00	FCV002157
Preferred Initial Contributions (between 2/1/09-2/1/11)	\$	27,911,466.00	FCV002157
	\$	54,263,466.00	

(Note these amounts include capital contributed for debt paydown, see comments)

Index

Includes \$19,200,000 required principal paydown 2/1/08 (Key00713) and \$6,588,000 required principal paydown 1/09 (FCV000190) totaling \$25,788,000. The difference of \$564,000 most likely is project costs.

Capital Included in LVLP FC 6-2007 Closing:

Key Bank Loan	\$	68,880,000.00	FCV000237
Cash Deposits	\$	32,191,417.65	FCV000238
Prorations	\$	56,382.16	FCV000237
	\$	101,127,799.81	

Includes all principal paydowns, payments interest, project costs, expenses (FCV000190), LW and FC portions. Loan to LW changed to preferred capital contributions (FCV002157)

Calculated Capital Contributed as of February, 2011:

Contributions reported on Amended and Restated Operating Statement	\$	54,263,466.00	FCV002157
Capital Included in LVLP/FC 6-2007 closing	\$	101,127,799.81	From Above
FC Debt Repayment (includes reserves applied of \$11,938,000)	\$	(42,087,600.00)	RWCO Key Bank Loan Analysis
FC Debt Assumption due to 90/10 arrangement.	\$	12,930,000.00	FCV000189
Total Equity Capital to February, 2011	\$	126,233,665.81	

Additional Considerations:

Estimated 90% of future monthly costs \$170,000 most recent interest and \$100,000 project costs to October, 2011.	\$	2,160,000.00	(FCV000190)
February 1, 2008 FC made a loan to LW, which was LW's portion of the principal pay down requirement on the Key Bank loan .	\$	12,800,000.00	(FCV000191)

Footnote:

Included in Capital Contributions are amounts previously treated as Loans to LW from FCE	\$	16,624,822.00	
--	----	---------------	--

\$43,100,000 balance at 5/10 (month when costs sharing was changed to 90/10) (FCV000189), multiplied by LW's 40% is \$17,240,000. LW's new 10%. Total debt relieved is \$12,930,000 due to 90/10 arrangement.

Additional Key Bank Requirements

Key Bank required a contribution 2/08 of any amount appraised value was less than 70% of loan or 75% of loan if landswap was in place. KEY00713.

Key Bank required a contribution 1/09 of any amount appraised value was less than 70% of loan or 60% of loan if landswap was in place. KEY00714.

Key Bank required a contribution 7/09 of any amount appraised value was less than 70% of loan or 50% of loan if landswap was in place. KEY00714.

Key Bank required \$2,000,000 interest reserves maintained at August 31, 2009. KEY00852

Key Bank required \$2,000,000 as a second collateral LOC maintained at August 31, 2009. KEY00852

Key Bank required \$250,000 interest cash collateral maintained at August 31, 2009. KEY00852

NYPE002162

Key Bank Loan		Bates	Comments
Original Loan Balance Per Closing Statement for FCE and LW			
FCE	\$ 68,880,000.00	FCV000238	
LW	\$ 45,920,000.00	FCV000238	
Total	\$ 114,800,000.00		
Reserves			
FCE			
Key Bank Funds Held	\$ 2,208,000.00	FCV000238	
Loan Reserve	\$ 5,580,000.00	FCV000238	
Collateral Enhancement	\$ 4,800,000.00	FCV000238	
Withheld Funds	\$ 3,600,000.00	FCV000238	
	\$ 16,188,000.00		
LW			
Key Bank Funds Held	\$ 1,472,000.00	FCV000238	
Loan Reserve	\$ 3,720,000.00	FCV000238	
Collateral Enhancement	\$ 3,200,000.00	FCV000238	
Withheld Funds	\$ 2,400,000.00	FCV000238	
	\$ 10,792,000.00		
Total Reserves	\$ 26,980,000.00		
Total Reserves Remaining at August, 2009	\$ 4,250,000.00	KEY00852-853	
Applied Reserves	\$ 22,730,000.00		
Total Initial Funding Available	\$ 108,800,000.00	KEY00794	12/07 Ledger Comparison shows 65,280,000 which is 60% of this balance
Ending Total Mortgage Balance @ 12/10	\$ (42,200,000.00)	FCV002797	
Total Debt Paid Down	\$ 66,600,000.00		
Debt Paid Down by LW (includes reserves)	\$ (12,776,000.00)	Loan Worksheet FCV000191	assumed balance pay down at 11/08 as reflected in loan worksheet. (108,000,000-76,860,000*40%). Note: may have been paid down by FC on behalf of LW by loan of \$12,800,000 dated 2/1/08.
Debt Paid Down for Benefit of LW by FCE	\$ (11,736,400.00)	Loan Worksheet	
Debt Paid Down by FCE (includes reserves)	\$ 42,087,600.00		
FCE Reserves Available	\$ 16,188,000.00		
Latest known balance of required reserves	\$ (4,250,000.00)	KEY00852	
FCE Reserves Applied	\$ 11,938,000.00		
Earliest Combined Balance Recorded			
Principal Balance	Dec-08 \$ 76,860,000.00		
Loan Reserve Used for Interest	\$ 9,300,000.00		12/07 Ledger Comparison shows \$3,343,664 used and \$2,236,336 available in interest reserves (60%)
Drawn from Collateral Line of Credit and used for principal reduction June 30, 2009	\$ 4,000,000.00	KEY00812	
Principal Payment required for extension		KEY00812	

NYPE002163

Shelly Dempsey

From: Shelly Dempsey
Sent: Thursday, August 04, 2011 3:46 PM
To: opancheri@nevadafirm.com; rjenkins@nevadafirm.com
Cc: dcarroll@rsrslaw.com; gmccrea@rsrslaw.com; Bill Coulthard; Jeri Gressman
Subject: LVLP v. Russell Nype - Def/Counterclaimants' 10th Supplement to Initial Disclosures
Attachments: 10th Supplement.pdf; Exh 1.pdf; Exh 2.pdf

Dear Mr. Pancheri:

Attached please find Defendants/Counterclaimants Revenue Plus and Russell Nype's Tenth Supplement to Initial Disclosures Pursuant to NRCP 26(e)(1). The Supplement was also sent to you by U.S. Mail today. Please contact our office if you have any questions. Thank you.

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