IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID J. MITCHELL; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY LTD; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; AND LIVE WORKS TIC SUCCESSOR, LLC, Appellants, vs. RUSSELL L. NYPE; REVENUE PLUS, LLC; AND SHELLEY D. KROHN, Respondents.	Case No. 80693

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable ELIZABETH GONZALEZ, District Judge
District Court Case No. A-16-740689-B

RESPONDENTS' APPENDIX – VOLUME 3
(BATES RANGE) RA 000430 – RA 000594

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Undated	Plaintiffs' **Trial Exhibit 30003**	Volume 58, RA 11235 – RA 11245
Undated	Plaintiffs' **Trial Exhibit 30016**	Volume 58, RA 11246 – RA 11282

Undated	Plaintiffs' **Trial Exhibit 30017**	Volume 58, RA 11283 – RA 11293
Undated	Plaintiffs' **Trial Exhibit 30018**	Volume 59, RA 11294 – RA 11296
Undated	Plaintiffs' **Trial Exhibit 30019**	Volume 59, RA 11297 – RA 11398
Undated	Plaintiffs' **Trial Exhibit 30020**	Volume 59, RA 11399 – RA 11416
Undated	Plaintiffs' **Trial Exhibit 30021**	Volume 59, RA 11417 – RA 11437
Undated	Plaintiffs' **Trial Exhibit 30022**	Volume 59, RA 11438 – RA 11454
Undated	Plaintiffs' **Trial Exhibit 30023**	Volume 59, RA 11455 – RA 11470
Undated	Plaintiffs' **Trial Exhibit 30024**	Volume 59, RA 11455 – RA 11470
Undated	Plaintiffs' **Trial Exhibit 30025**	Volume 59, RA 11471 – RA 11483
Undated	Plaintiffs' **Trial Exhibit 30026**	Volume 59, RA 11484 – RA 11489
Undated	Plaintiffs' **Trial Exhibit 30027**	Volume 60, RA 11490 – RA 11499
Undated	Plaintiffs' **Trial Exhibit 30028**	Volume 60, RA 11500 – RA 11534
Undated	Plaintiffs' **Trial Exhibit 30029**	Volume 60, RA 11535 – RA 11562

Undated	Plaintiffs' **Trial Exhibit 30030**	Volume 60, RA 11563 – RA 11587
Undated	Plaintiffs' **Trial Exhibit 30032**	Volume 60, RA 11588 – RA 11603
Undated	Plaintiffs' **Trial Exhibit 30033**	Volume 60, RA 11604 – RA 11618
Undated	Plaintiffs' **Trial Exhibit 30034**	Volume 60, RA 11619 – RA 11624
Undated	Plaintiffs' **Trial Exhibit 30037**	Volume 60, RA 11625 – RA 11635
Undated	Plaintiffs' **Trial Exhibit 30038**	Volume 60, RA 11636 – RA 11639
Undated	Plaintiffs' **Trial Exhibit 30039**	Volume 60, RA 11640 – RA 11646
Undated	Plaintiffs' **Trial Exhibit 30045**	Volume 60, RA 11647
Undated	Plaintiffs' **Trial Exhibit 30046**	Volume 60, RA 11648
Undated	Plaintiffs' **Trial Exhibit 30047**	Volume 60, RA 11649
Undated	Plaintiffs' **Trial Exhibit 30048**	Volume 60, RA 11650
Undated	Plaintiffs' **Trial Exhibit 30049**	Volume 60, RA 11651 – RA 11654
Undated	Plaintiffs' **Trial Exhibit 30060**	Volume 60, RA 11655 – RA 11661
Undated	Plaintiffs' **Trial Exhibit 30061**	Volume 60, RA 11662 – RA 11665
Undated	Plaintiffs' **Trial Exhibit 30064**	Volume 61, RA 11666 – RA 11669

Undated	Plaintiffs' **Trial Exhibit 30065**	Volume 61, RA 11670 – RA 11673
Undated	Plaintiffs' **Trial Exhibit 30068**	Volume 61, RA 11674 – RA 11677
Undated	Plaintiffs' **Trial Exhibit 30069**	Volume 61, RA 11678 – RA 11698
Undated	Plaintiffs' **Trial Exhibit 30076**	Volume 61, RA 11699
Undated	Plaintiffs' **Trial Exhibit 30088**	Volume 61, RA 11700 – RA 11702
Undated	Plaintiffs' **Trial Exhibit 30099**	Volume 61, RA 11703 – RA 11704
Undated	Plaintiffs' **Trial Exhibit 30100**	Volume 61, RA 11704 – RA 11705
Undated	Plaintiffs' **Trial Exhibit 30112**	Volume 61, RA 11706 – RA 11720
Undated	Plaintiffs' **Trial Exhibit 30113**	Volume 61, RA 11721 – RA 11734
Undated	Plaintiffs' **Trial Exhibit 40011**	Volume 61, RA 11735 – RA 11736
Undated	Plaintiffs' **Trial Exhibit 40012**	Volume 61, RA 11737 – RA 11738
Undated	Plaintiffs' **Trial Exhibit 40013**	Volume 61, RA 11739 – RA 11740
Undated	Plaintiffs' **Trial Exhibit 40015**	Volume 61, RA 11741 – RA 11747
Undated	Plaintiffs' **Trial Exhibit 40016**	Volume 61, RA 11748 – RA 11789

Undated	Plaintiffs' **Trial Exhibit 40044**	Volume 61, RA 11790
Undated	Plaintiffs' **Trial Exhibit 40053**	Volume 61, RA 11791
Undated	Plaintiffs' **Trial Exhibit 50026**	Volume 62, RA 11792 – RA 12065
Undated	Plaintiffs' **Trial Exhibit 50029**	Volume 62, RA 12066 – RA 12077
Undated	Plaintiffs' **Trial Exhibit 50030**	Volume 62, RA 12078 – RA 12087
Undated	Plaintiffs' **Trial Exhibit 50031**	Volume 62, RA 12088 – RA 12132
Undated	Plaintiffs' **Trial Exhibit 50032**	Volume 62, RA 12133 – RA 12145
Undated	Plaintiffs' **Trial Exhibit 50033**	Volume 62, RA 12146 – RA 12153
Undated	Plaintiffs' **Trial Exhibit 50039**	Volume 62, RA 12154 – RA 12183
Undated	Plaintiffs' **Trial Exhibit 50041**	Volume 63, RA 12184 – RA 12264
Undated	Plaintiffs' **Trial Exhibit 60003**	Volume 63, RA 12265 – RA 12266
Undated	Plaintiffs' **Trial Exhibit 60017**	Volume 63, RA 12267 – RA 12269
Undated	Plaintiffs' **Trial Exhibit 60018**	Volume 63, RA 12270 – RA 12272
Undated	Plaintiffs' **Trial Exhibit 60041**	Volume 63, RA 12273 – RA 12283

Undated	Plaintiffs' **Trial Exhibit 60042**	Volume 63, RA 12284
Undated	Plaintiffs' **Trial Exhibit 60043**	Volume 63, RA 12285 – RA 12289
Undated	Plaintiffs' **Trial Exhibit 60044 – Part 1**	Volume 64, RA 12290 – RA 12533
Undated	Plaintiffs' **Trial Exhibit 60044 – Part 2**	Volume 65, RA 12534 – RA 12634
Undated	Plaintiffs' **Trial Exhibit 60063**	Volume 65, RA 12635 – RA 12646
Undated	Plaintiffs' **Trial Exhibit 70002**	Volume 65, RA 12647 – RA 12649
Undated	Plaintiffs' **Trial Exhibit 70004**	Volume 65, RA 12650
Undated	Plaintiffs' **Trial Exhibit 70006**	Volume 65, RA 12651 – RA 12671
Undated	Plaintiffs' **Trial Exhibit 70007**	Volume 65, RA 12672 – RA 12674
Undated	Plaintiffs' **Trial Exhibit 70011**	Volume 65, RA 12675 – RA 12683
Undated	Plaintiffs' **Trial Exhibit 70012**	Volume 65, RA 12684 – RA 12687
Undated	Plaintiffs' **Trial Exhibit 70018**	Volume 65, RA 12688
Undated	Plaintiffs' **Trial Exhibit 70019**	Volume 65, RA 12689
Undated	Plaintiffs' **Trial Exhibit 70020**	Volume 65, RA 12690
Undated	Plaintiffs' **Trial Exhibit 70025**	Volume 65, RA 12691 – RA 12714

Undated	Plaintiffs' **Trial Exhibit 70026**	Volume 65, RA 12715 – RA 12733

DATED this 28th day of October 2021.

JOHN W. MUIJE & ASSOCIATES

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, I have caused a true and correct copy of the foregoing RESPONDENTS' APPENDIX – VOLUME 3 to be served by electronic service by the Supreme Court of Nevada Electronic Filing System to the following:

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/s/ Melanie Bruner
As an agent for and on behalf of
JOHN W. MUIJE & Associates

SR
JOHN W. MUIJE & ASSOCIATES
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC, Does I through X; DOES I through X, DOE CORPORATIONS I through X; and DOES PARTNERSHIPS I through X;

Plaintiffs,

vs.

DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTYY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE OWRKS TIC SUCCESSOR, LLC; CASINO COOLIDGE, LLC; DOES I through III, and ROE CORPORATIONS I through III, inclusive,

Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

STATUS REPORT REGARDING THE MITCHELL DEFENDANTS' COMPLIANCE WITH THIS COURT'S ORDER RE: DISCOVERY SANCTIONS

COMES NOW Plaintiffs, RUSSELL L. NYPE ("Nype") and REVENUE PLUS, LLC ("RP") (Nype and RP are, collectively, "Plaintiffs"), by and through their attorney of record, JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE & ASSOCIATES, and hereby

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submit their *Status Report Regarding the Mitchell Defendants' Compliance with this Court's Order Re: Discovery Sanctions* (the "Status Report").[1]

Plaintiffs submit this Status Report to keep the Court apprised of relevant, ongoing developments, and currently known failures on the Mitchell Defendants part with respect to their discovery obligations:

1. On September 20, 2019, this Court entered its *Order Re: Discovery Sanctions* (the "Sanctions Order");

2. The Sanctions Order required, among other things, that the Mitchell Defendants **fully, and completely comply with all of their obligations hereunder** as well as the requirements set forth in the Order of May 30, 2019, including their duty to fully and completely **supplement their discovery responses** and to **meticulously certify, in detail their compliance efforts and results** as set forth in said Order within two weeks of entry of this order[.]

(See Order at 8 (emphasis added).);

3. With respect to the certification required by the Sanctions Order, the Mitchell Defendants were required to do/state the following, under oath (the required sworn certification is hereafter referred to as the "Sworn Compliance Certifications"):

a. "that they and each defendant entity had fully and completely searched all available files and document repositories, both physical and electronically";
b. "set forth specifically the efforts undertaken and what was done to assure full compliance with [their] discovery obligations", including a description of "the research, investigation and search methods used";
c. that "said defendants have fully and completely complied with all of their discovery obligations, and produced all relevant and available documents"; and
d. "[a]s to any documentation not found or not produced", "explain in specific detail why such documentation . . . has not been produced." Id. at 8.

[1] In light of Las Vegas Land Partners, LLC ("LVLP") filing for bankruptcy on or about August 19, 2019, this Status Report does not pertain to LVLP. In that regard, all references to the "Mitchell Defendants" herein do not and shall not include LVLP.

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4. The Sanctions Order also required the Mitchell Defendants to pay to Plaintiffs the amount of $160,086.46, plus interest, in sanctions for their willful discovery failures. See id;

5. The Mitchell Defendants' deadline to be in full compliance with Sanctions Order was October 4, 2019;

6. The Mitchell Defendants were not in full compliance with the Sanctions Order by October 4, 2019; rather, on October 7, 2019, they filed a *Statement of Compliance and Motion for Additional Time for Further Production* (the "Motion for Additional Time") seeking additional time to get into compliance with the Sanctions Order;

7. On October 21, 2019, the Court granted the Motion for Additional Time, in part, providing the Mitchell Defendants an additional two weeks through and including November 4, 2019, To be in full compliance with the Sanctions Order.

8. On October 21, 2019, the day of the Hearing counsel for the Mitchell Defendants provided Plaintiffs' counsel with a drive containing approximately 220 gigabytes of information (the "1st Compliance Production").

9. The First Compliance production contained no bates-stamps, and the Mitchell Defendants did not submit the Sworn Compliance Certifications required by the Sanctions Order;

10. On November 4, 2019, the Mitchell Defendants delivered to Plaintiffs an additional drive containing another approximately 156 gigabytes of information (collectively with the 1st Compliance Production, the "Compliance Productions"). This production also did not include the Sworn Compliance Certifications;

11. Notwithstanding the foregoing, Plaintiffs are presently able to definitively state that the Mitchell Defendants **are not in full compliance with the Sanctions Order** (and were not as of November 4, 2019) as follows, because the Mitchell Defendants have:

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a. failed to pay their ($1,000) share of the $1,500 sanction awarded in the Court's May 30, 2019, order;

b. failed to pay the $160,000 sanction awarded in the Sanctions Order; and

c. failed to produce the Sworn Compliance Certifications required by the Sanctions Order;

12. Plaintiffs desire, however, to bring the currently known failures to the Court's attention, at this time, in case the Court feels that any further orders or proceedings are appropriate at present.

DATED this 7th day of November, 2019.

JOHN W. MUIJE & ASSOCIATES

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CERTIFICATE OF SERVICE

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 7th day of November, 2019, I caused the foregoing document, **STATUS REPORT REGARDING THE MITCHELL DEFENDANTS' COMPLIANCE WITH THIS COURT'S ORDER RE: DISCOVERY SANCTIONS**, to be served as follows:

__ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed as follows; and/or

_X_ by electronically filing and serving with the Clerk of the Court via the Odyssey E-File and Serve System; and/or

__ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid marked certified return receipt requested addressed as follows; and/or

__ Via E-Mail at the addresses listed below; and/or

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DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC, Does I through X; DOES I through X, DOE CORPORATIONS I through X; and DOES PARTNERSHIPS I through X;

Plaintiffs.

vs.

DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTYY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE OWRKS TIC SUCCESSOR, LLC; CASINO COOLIDGE, LLC; DOES I through III, and ROE CORPORATIONS I through III, inclusive,

Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

APPENDIX TO PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRCP 12(b)(2) and 12(b)(5), OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT

Hearing Date: December 23, 2019
Hearing Time: 9:00 a.m.

Exhibit	Description
1.	2015—03-26 Findings of Fact, Conclusions of Law and Decision – Case No. 07A551073
2.	2017—06-15 Declaration of Russell Nype as filed in Conjunction with Opposition to original Motion to Dismiss

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3.	2017—06-14 S Sworn Declaration Under Penalty of Perjury of Mark Rich as filed in Conjunction with Opposition to Original Motion to Dismiss
4.	2019—11-25 Plaintiff's Supplemental Expert Witness Report
5.	Declaration of John W. Muije In Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to NRCP 12(b)(2) and 12(b)(5), Or In The Alternative Motion for Summary Judgment
6.	Copy of: Magliarditi v. TransFirst Grp., Inc., Nevada Supreme Court Docket No. 73889, listed at 450 P.3d 911 in table format; 2019 Nev. Unpub. LEXIS 1156, at *17; 2019 WL 539470 (Oct. 21, 2019)

DATED this 12th day of December, 2019.

JOHN W. MUIJE & ASSOCIATES

By: _____

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CERTIFICATE OF SERVICE

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 12th day of December, 2019, I caused the foregoing document, **APPENDIX TO PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRCP 12(b)(2) and 12(b)(5), OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT,** to be served as follows:

__ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed as follows; and/or

_X_ by electronically filing and serving with the Clerk of the Court via the Odyssey E-File and Serve System; and/or

__ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid marked certified return receipt requested addressed as follows

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Casino Coolidge

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EXHIBIT "1"

ORIGINAL

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CLERK OF THE COURT

FCO
Judge Ronald J. Israel
Eighth Judicial District Court
Department XXVIII
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
(702)671-3631

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

LAS VEGAS LAND PARTNERS LLC; LIVEWORK, LLC; and ZOE PROPERTIES, LLC,

Plaintiffs,

vs.

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

Defendants.

CASE NO. 07A551073

DEPT NO. XXVIII

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

RUSSELL L. NYPE; REVENUE PLUS, LLC;

Counterclaimants,

vs.

LAS VEGAS LAND PARTNERS, LLC,

Counterdefendant.

I.

FINDINGS OF FACT

1. Plaintiff/Counterdefendant Las Vegas Land Partners, LLC, is a Delaware limited liability company.

2. Plaintiffs Live Work, LLC, and Zoe Properties, LLC (referred to collectively with Las Vegas Land Partners, LLC, as "LVLP") are Delaware limited liability companies.

3. All three LVLP entities are owned and controlled, directly or indirectly, by David Mitchell ("Mr. Mitchell") and Barnet Liberman ("Mr. Liberman").

4. Defendant/Counterclaimant Revenue Plus, LLC, is a New York limited liability company. Revenue Plus, LLC, is wholly owned and operated by Defendant/Counterclaimant Russell L. Nype ("Mr. Nype") (referred to collectively with Revenue Plus, LLC as "Nype").

5. At all relevant times, Mr. Nype, Mr. Mitchell and Mr. Liberman resided in the state of New York.

6. In 2005, Las Vegas Land Partners, LLC, and its affiliates owned an assemblage of five city blocks of prime real estate in downtown Las Vegas (the "Property").

7. Currently, the Property is bordered by Clark Avenue and Garces Avenue, on the north and south, respectively, and Casino Center Boulevard and Main Street, on the east and west, together with the present Las Vegas City Hall at 495 Main Street and a nearly 6.5-acre parcel in Symphony Park.

8. The parties met in 2005. LVLP and Nype discussed LVLP's desire to find a development partner to invest in the development of the Property.

9. Early in the process, Nype identified Forest City Enterprises ("Forest City") as a strong potential candidate.

10. Mr. Nype had been a vice president of marketing for Forest City for several years, beginning in or around 1989, and performed consulting services for Forest City through 2004.

11. Mr. Nype had close, meaningful relationships with the Ratner family—the controlling owners and decision makers at Forest City.

12. Mr. Nype had worked on numerous, high-density, urban developments at Forest City that were similar to LVLP's development project.

13. Mr. Nype understood Forest City's specific business model and what it would be looking for in a joint-venture project.

14. With LVLP's approval, Nype brought in Glenn Myles ("Mr. Myles") and his company, First Wall Street Capital International ("FWS"), in order to potentially expand the scope of possible development partners for LVLP.

15. "Las Vegas Land Partners, LLC, together with its affiliates," entered into a signed, written agreement with FWS, dated January 25, 2006, entitled "Non-Exclusive Agent/Financing Engagement Letter" (the "FWS Agreement"). (*See* Exhibit ("Ex.") 509-1 through 509-6.)

16. Nype was not a party to the FWS Agreement.

17. Nevertheless, Nype worked in conjunction with FWS to obtain a partner to help develop the Property with LVLP.

18. Mr. Nype and Mr. Myles attempted to negotiate a separate "Fee Share Agreement," pursuant to which Revenue Plus, LLC, was to receive 80% of any compensation received by FWS from a deal between LVLP and Forest City, and 50% of any compensation received from other potential development partners. No final "Fee Share Agreement" was ever executed.

19. The stated purpose of the FWS Agreement was for LVLP to engage FWS to act as an advisor to LVLP "in connection with its intent to find a joint venture and/or equity partner (the "Partner") for the redevelopment of the [LVLP] owned five city blocks in downtown Las Vegas."

///

///

20. Under the FWS Agreement, it was LVLP's "intention, in connection with the Partner, to redevelop the properties into new commercial, retail, office and condominium buildings (the "Project")." (Ex. 509-1.)

21. The FWS Agreement listed three potential development partners ("Identified Parties"), one of which was Forest City.

22. Nype was responsible for introducing the Project to Forest City, due to Mr. Nype's longstanding relationship with Forest City and its principals.

23. FWS had no relationship with or contacts at Forest City.

24. Beginning in or around the first part of 2006, Nype worked to generate interest from Forest City in the Project and to obtain meetings with Forest City for LVLP.

25. In the FWS Agreement, LVLP agreed to compensate FWS for its services by paying FWS a transaction fee "equal to four percent (4%) of all equity capital (including securities convertible into equity) and 1% of all debt capital" committed for the development project by an "Identified Party" named in the FWS Agreement "or an affiliate of an Identified Party." This transaction fee was to be paid "in cash promptly at each closing of each transaction."

26. In addition to the transaction fee, the FWS Agreement provides that LVLP will make an "LOI Payment" to FWS once an Identified Party issues a bona fide letter of intent to LVLP, LVLP executes the letter of intent, and the Identified Party and LVLP proceed with an investment transaction.

27. In addition to any other fees LVLP may owe under the FWS Agreement, LVLP agreed to "reimburse FWS for all of its reasonable out-of-pocket expenses, as pre-approved by [LVLP], (including but not limited to travel costs . . .) incurred from time to time during the term hereof in connection with the services to be provided under this Agreement, promptly after invoicing [LVLP] therefore." *Id.*

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///

28. As a result of a dispute related to their "Fee Share Agreement" negotiations, in April of 2006, Mr. Myles terminated FWS's relationship with Nype and any potential fee share arrangement.

29. Thereafter, Mr. Myles engaged in no further communications with Nype or LVLP and had no more involvement in the Project.

30. As a result, Nype sent FWS a letter on or about May 12, 2006, explaining that their relationship was over and that FWS was no longer involved in the Project due to Mr. Myles' complete lack of communication, involvement or performance.

31. LVLP wished to continue working with Nype, not FWS, and LVLP and Nype worked cooperatively thereafter to extricate themselves from FWS.

32. Mr. Mitchell asked Mr. Nype to proceed with a scheduled meeting with Forest City, regarding the Project, in Las Vegas, from May 21 – May 24, 2006.

33. Mr. Mitchell told Mr. Nype they would work out the terms of an agreement between LVLP and Nype after returning to New York.

34. The meeting with Forest City in Las Vegas went very well, and LVLP and Nype returned to New York on or about May 25, 2006, anticipating a proposed letter of intent from Forest City.

35. On or about June 1, 2006, LVLP sent FWS a letter withdrawing its offer to engage FWS pursuant to the FWS Agreement on the basis that FWS had never signed (i.e., accepted) the FWS Agreement. (Ex. 527-2.)

36. LVLP was anxious to get to a letter of intent and to complete the transaction with Forest City, and it needed Nype's assistance to do so.

37. Mr. Mitchell and Mr. Liberman confirmed at trial (through live testimony and deposition testimony) LVLP's intent to continue working with Nype, to close a transaction with Forest City, after LVLP had ended its relationship with FWS.

38. On June 2, 2006, Nype sent LVLP a letter requesting reimbursement of expenses for Nype's trip to Las Vegas, "[p]er our agreement." (Ex. 541-1.)

39. LVLP and Forest City began negotiating the terms of a letter of intent ("LOI") on June 1, 2006.

40. Forest City rejected the potential transaction on June 8, 2006, due to certain LVLP demands.

41. Nype was ultimately able to resuscitate the deal, in part through his outreach to Forest City's Chairman, James Ratner.

42. LVLP acknowledged Nype's role in resuscitating the deal, and expressed this in emails to Mr. Nype. (*See, e.g.*,Ex. 575-1.)

43. In late June 2006, as LVLP and Forest City were attempting to finalize an LOI, Nype sought to obtain an executed engagement letter from LVLP to memorialize, in writing, the Nype Contract adopting the terms of the FWS Agreement.

44. Around this same time, LVLP paid Nype's expenses from the trip Nype took to Las Vegas to meet with Forest City, thus indicating that LVLP had entered into the Nype Contract based upon the terms of the FWS Agreement.

45. No ongoing negotiations between the parties with regard to the terms of the Nype Contract took place between June 1, 2006, and June 29, 2006.

46. On or around June 30, 2006, LVLP began to offer a different agreement. Nype never agreed to these terms.

47. From June 1, 2006, until the end of November 2006, Nype continued to advise and assist LVLP in finalizing its letter of intent with Forest City, and in working with Forest City during the due diligence phase.

- Nype continued to perform valuable services for LVLP, at LVLP's request, and LVLP continued to request and encourage these services from June 2006-November 2006. (*see, e.g.*, Ex. 619-1.)
- On August 1 and August 14, 2006, Nype made two trips to Las Vegas with LVLP related to the Project, and he was reimbursed $2,059.00 by LVLP, pursuant to Section

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4 (the "Expenses" provision) of the adopted terms of the FWS Agreement. (*See* Ex. 626; Ex. 509-2.)

- In August 2006, Nype assisted in resolving a conflict between Forest City and LVLP in which Forest City was on the verge of pulling out of the transaction with LVLP.
- On September 8, 2006, LVLP specifically told Mr. Nype that he had worked hard to bring LVLP together with Forest City and that he should be paid for those efforts. (Ex. 619.)
- LVLP did not draft a written agreement reflecting modified payment terms until September 28, 2006, at which time LVLP sent Nype a written agreement that was identical to the FWS Agreement—with the exception of only the payment terms. (Ex. 621-2.)
- LVLP also stated that the attached written agreement was "cleaned up to reflect [the parties'] current understanding" (Ex. 621-2.)
- LVLP continued throughout this time to refer to Nype as LVLP's "representative" and to LVLP as Nype's "client." (Ex. 621-1; Ex. 635-1). On October 4, 2006, Mr. Liberman told Nype that he and Mr. Mitchell were working hard to save Nype's commission. (Ex. 625-1.)
- As late as November 2006, LVLP was still contacting Nype for assistance in communicating with Forest City. (Ex. 635.)

48. On June 29, 2006, LVLP received Forest City's executed copy of the LOI with LVLP.

49. The LOI states that, other than Mr. Nype, LVLP did not employ, retain, consult or deal with any other brokers or agents. (Ex. 597-1 through 597-6.)

50. LVLP praised and encouraged Nype throughout 2006, confirming that LVLP found Nype's services advantageous and beneficial to it.

51. LVLP continued to acknowledge throughout 2006 that LVLP owed Nype payment for the services Nype provided in furtherance of the Project.

52. LVLP benefitted from Nype's work. Among other things, it received months of Nype's services, which Nype performed at LVLP's request. Moreover, at the initial closing, Forest City invested approximately 101 million dollars into the Project. At least $10,500,000 in cash went directly to Mr. Mitchell and Mr. Liberman's entity, Plaintiff Live Work, LLC. LVLP saved millions of dollars in interest payments on the Project's existing loan financing, and Mr. Mitchell and Mr. Liberman were relieved, at that time, of more than $19,484,000.00 in personal guarantees.

53. The expert testimony of Dr. Kenneth Wiles ("Dr. Wiles") established that Nype also benefitted LVLP by helping it to survive the recession in 2008. Without Nype's work to bring Forest City to the table, financial conditions at that time would have made it extremely difficult for LVLP to obtain replacement financing.

54. The evidence does not support a finding that Mr. Nype misrepresented the status of his contractual relationship with FWS.

55. The evidence also does not support a finding that LVLP relied upon any representation from Mr. Nype regarding his contractual status with FWS. LVLP made a business decision to end its relationship with FWS and to enter into an agreement with Nype.

56. The evidence does not support a finding that LVLP relied upon Mr. Nype's representations regarding his licensing status. Rather, LVLP and its principals, Mr. Mitchell and Mr. Liberman, are sophisticated business people that made their own business decision to enter into an agreement with Nype, regardless of Nype's or FWS's licensing status.

57. The evidence does not support a finding that Mr. Nype had a conflict of interest that precluded him from fairly representing LVLP's interests with regard to the transaction with Forest City.

58. There is no evidence that Nype shared confidential information with Forest City that LVLP had instructed Nype to keep confidential.

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59. There is no evidence that Mr. Nype and Mr. Myles intended to form a partnership or joint venture or to create a fiduciary relationship. No fiduciary duties between Mr. Nype and Mr. Myles arose or were breached.

60. LVLP failed to demonstrate that Nype committed any misconduct that caused LVLP harm.

61. The preponderance of the evidence at trial supports a finding that Nype did not act for the purpose of furthering a sale or lease of real property such that Nype was required to possess a real estate license under NRS Chapter 645 to recover the compensation Nype seeks.

62. At all relevant times, Nype acted for the purpose of furthering a business relationship between LVLP and Forest City as indicated in the FWS Agreement and in the LOI. (*See also* Ex. 621 (describing Nype's services).)

63. LVLP and Forest City always had control over the structure their business relationship would take, and Nype was excluded from structure determinations.

64. LVLP did not engage Nype to work as a real estate agent. Neither Mr. Mitchell nor Mr. Liberman testified that they intended to sell the Property that they hired Nype to help sell or lease the Property, that they instructed Nype to assist in selling or leasing the Property, or that Nype's duties included selling and/or leasing the Property.

65. The evidence at trial supports a finding that, throughout Nype's performance, neither Nype nor LVLP intended that the negotiations with Forest City would conclude with a real estate sale. For example:

- Mr. Nype specifically testified that LVLP repeatedly told him that it did not wish to sell its real estate, which testimony was undisputed.
- Peter Gelb, a former managing director of FWS, testified that LVLP's transaction with Forest City was not a sale of property.

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- During the original negotiations over the FWS Agreement, Mr. Nype explained to FWS that LVLP is "hiring us as an agent to help [them] find a partner for [its] developments." (Ex. 506-1.)
- The FWS Agreement did not state that Nype was to assist with the sale of real property. Rather, it stated that Nype was to "act as an advisor to [LVLP] in connection with its intent to find a joint venture and/or equity partner . . . " by "introduc[ing] [LVLP] to principals of the Identified Parties" and "assist[ing] [LVLP] in presenting the Project to the Identified Parties and perform such other services as mutually agreed to by [Nype and LVLP] with a view to assisting [LVLP] in closing a Transaction." (Ex. 509-1). The definition of "Transaction" in the FWS Agreement does not include the sale of real estate, but instead is defined as "rais[ing] equity and/or debt capital from the Partner[.]"
- The LOI does not mention the sale of real estate, instead stating that the "Structure" of the transaction between Forest City and LVLP will be the formation of a limited liability company. (Ex. 584.)
- LVLP's admissions confirmed that the LOI did not involve or contemplate a sale of real estate, rather the LOI contemplated the formation of a partnership to develop the Property and outlined possible terms of a future joint venture agreement between LVLP and Forest City. (Ex. 709, ¶¶13 - 17.)
- Mr. Mitchell admitted that that the LOI involved a capital investment, not the sale of real estate. (Ex. 709, ¶¶13 - 17.)

66. The preponderance of the evidence at trial supports a finding that the concept of accomplishing LVLP's and Forest City's development partnership through a sale of real property was raised for the first time by David LaRue, of Forest City, to LVLP, in or around mid November 2006, when Mr. LaRue proposed a tenancy-in-common structure for tax reasons. Among other evidence, David LaRue's testimony and David Mitchell's own admissions support this finding. (*See also* Ex. 709, ¶¶13 – 17.)

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67. The final structure of the transaction was determined by LVLP and Forest City, without Nype's involvement or knowledge.

68. Nype had no involvement with LVLP's and Forest City's negotiations regarding the sale of a portion of the property to Forest City via a tenancy-in-common. (*See e.g.*, Ex. 709, ¶ 15.)

69. Nype had no knowledge that Forest City and LVLP intended that their transaction be accomplished through a sale of real property until, at the earliest, February 2007. At that time, Nype was no longer performing services for LVLP; and Nype is only seeking compensation for services performed through November of 2006.

70. LVLP began freezing Nype out of the transaction in or around October of 2006.

71. Nype did not perform any activities related to leasing, negotiating leases, or soliciting lessees for LVLP. Rather, Nype's services in this regard were limited to advising LVLP to focus its efforts on securing lease commitments and to communicating with Forest City regarding the potential for, and status of, leasing opportunities.

72. The few, sporadic points in time in which Mr. Nype appeared to believe that the development partnership might be accomplished through a sale of real property, or that his services required a real-estate license, do not alter the weight of the evidence supporting the above findings.

73. Nype seeks compensation for services performed after June 1, 2006, beginning at the LOI stage, at which time the parties contemplated and were working toward the formation of a limited liability company. Accordingly, it is irrelevant what was contemplated in the March 2006 executive summary or discussed in April 2006, pre-LOI communications with Forest City. Moreover, the executive summary contains conflicting language regarding the nature of the transaction (to which Mr. Nype testified that the executive summary was not for the purpose of selling real estate). And Mr. Nype's mistaken belief, for a few days in April 2006, that the development partnership would be accomplished through the sale of real

property, was immediately corrected by Mr. Mitchell, who reiterated to Mr. Nype that LVLP did not wish to sell its real estate, and further instructed Mr. Nype not to involve himself with the structure of the transaction. Mr. Nype's testimony in this regard was undisputed by LVLP.

74. Mr. Nype's mistaken belief, at points in June 2006, that he may have needed a real-estate license or that he may have been performing real estate brokerage services is also irrelevant. These are legal conclusions that Mr. Nype was not equipped to make. Moreover, Mr. Nype was unclear about the precise structure the transaction would take, and he was immediately corrected by Mr. Mitchell, who told him that the transaction was not a real estate deal, that he did not need a real estate license, and that he was not performing real-estate-brokerage services. Mr. Nype's testimony in this regard was also undisputed by LVLP.

75. Even if the evidence in question has marginal relevance regarding Mr. Nype's state of mind, Mr. Mitchell's contrary admissions and Mr. LaRue's testimony that a land sale was not intended or contemplated until mid November 2006, at the earliest, as well as the preponderance of the other evidence at trial, supports the finding that Nype was not acting for the purpose of furthering a land sale from June through November 2006.

76. Nype did not sell or offer to sell a security in Nevada or elsewhere.

77. The LOI contemplated the mutual formation of an LLC structure. No contract to sell or dispose of the interest in the contemplated, to-be-formed LLC ever existed. The only contract of sale that LVLP and Forest City entered into was the Agreement of Purchase and Sale based upon a tenancy-in-common structure (*See Ex. 665).*

78. Under the LOI structure Nype worked towards, interests in an LLC were not being sold, disposed of or purchased; ownership in the newly-formed LLC was not going to change hands.

79. The LLC structure was first proposed by Forest City in early June 2006, in an initial letter of intent draft. Forest City composed the first drafts of the LOI and emailed

them from California and Ohio to LVLP in New York. LVLP executed the final LOI in New York.

80. No evidence at trial established that Mr. Nype performed securities transactions as part of his business often enough such that he could be considered "engaged in the business" of effecting transacting in securities.

81. Mr. Nype testified that he had never worked as a securities broker, previously worked to accomplish a transaction in securities, held himself out to the public as a securities broker, worked in the capital raising industry, or worked to facilitate a business relationship between two companies.

82. No evidence at trial established that Nype had the ability to make the formation of the new LLC happen. Nype had no control over the ultimate structure of the transaction. The evidence at trial also did not establish that Nype ever held himself out to Forest City or LVLP as having such ability.

83. The undisputed evidence at trial establishes that in any business relationship that LVLP and Forest City might have formed, Forest City was always going to have an active, managerial level role in the redevelopment of the Property. There is no evidence that Forest City was going to be a passive investor that would rely solely, or even substantially, on LVLP's, rather than its own, efforts to obtain a profit on its investment. To the contrary, under the LOI, Forest City was going to have a 75% ownership interest in the newly-formed LLC. (*See* Ex. 597-2.) Forest City would be the "Managing Partner" and LVLP would be the "Minority Partner." *Id.* Moreover, the ultimate relationship that was formed provided Forest City with extensive management authority and responsibilities. (See Ex. 663). LVLP and Forest City always intended that the profits would come from their joint efforts, with Forest City taking the lead role.

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Any finding of fact that is determined to be a conclusion of law shall be deemed accordingly.

II.

CONCLUSIONS OF LAW

1. Each party bears the burden to prove its claims and defenses by a preponderance of the evidence.

2. LVLP was unjustly enriched by the performance and services provided by Nype after June 2006.

3. "Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is '"acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof."'" *Certified Fire Protection, Inc.*, 283 P.3d at 257 (quotations omitted).

4. "'[B]enefit in the unjust enrichment context can include 'services beneficial to or at the request of the other,' 'denotes any form of advantage,' and is not confined to retention of money or property." *Id.* (quoting *Restatement of Restitution* § 1 cmt. b (1937)).

5. Throughout 2006, Nype used his unique personal and professional relationship with Forest City to attract Forest City to the Project and to secure Forest City as a development partner for LVLP.

6. The services Nype provided LVLP after June 1, 2006, were beneficial to LVLP and were done at LVLP's request.

7. Nype was a significant, contributing factor in Forest City's investment in the Project.

8. Among other benefits, as a result of the development partnership, LVLP: (1) obtained a deep-pocketed, nationally-recognized development partner; (2) was able to survive the "Great Recession"; (3) saved millions of dollars in interest payments on the

Project's existing loan financing; (4) shared liability on its debt financing with a multi-billion dollar company; and (5) Messrs. Liberman and Mitchell were able to extinguish more than $19,484,000 in personal loan guarantees.

9. Messrs. Liberman and Mitchell continue to have an ownership interest in the Project, which, under certain circumstances, can be increased back to 40%.

10. Moreover, LVLP received the benefit of approximately six months of Nype's services—without payment.

11. It would be inequitable for LVLP to retain the benefit of Nype's services without payment of the value thereof.

12. For purposes of damages, "[q]uantum meruit [] is 'the usual measurement of enrichment in cases where nonreturnable benefits have been furnished at the defendant's request, but where the parties made no enforceable agreement as to price.'" *Certified Fire Protection, Inc.*, 283 P.3d at 257 (quoting *Restatement (Third) of Restitution and Unjust Enrichment* § 49 cmt. f (2011)).

13. "[T]he unclean hands doctrine precludes a party from attaining an equitable remedy when that party's 'connection with the subject-matter or transaction in litigation has been unconscientious, unjust, or marked by the want of good faith.'" *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 275, 182 P.3d 764, 766 (2008) (citations omitted).

14. The unclean hands doctrine does not apply unless the misconduct is "connected with the matter in litigation so that it has in some manner affected the equitable relations subsisting between the parties and arising out of the transaction." *Gravelle v. Burchett*, 73 Nev. 333, 341, 319 P.2d 140, 144-45 (1957).

15. "In determining whether a party's connection with an action is sufficiently offensive to bar equitable relief, two factors must be considered: (1) the egregiousness of the misconduct at issue, and (2) the seriousness of the harm caused by the misconduct." *Las Vegas Fetish & Fantasy Halloween Ball, Inc.*, 124 Nev. at 276, 182 P.3d at 767. "Only

when these factors weigh against granting the requested equitable relief will the unclean hands doctrine bar that remedy." *Id.*

16. Here, the factors of egregious misconduct and serious harm are both lacking and thus Nype committed no misconduct precluding him from obtaining equitable relief.

17. As a matter of law, the unclean hands doctrine does not bar Nype's equitable claims.

18. Moreover, even if the statute of frauds did apply, the Nype Contract is still enforceable because the exceptions of full performance and estoppel apply. *See Edwards Indus., Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1032, 923 P.2d 569, 574 (1996) ("Full performance by one party may also remove a contract from the statute of frauds.").

19. Nype performed no real-estate services between June 1, 2006, and November 2006, for which Nype seeks to recover.

20. The services that Nype performed between June 1, 2006, and November 2006, when Nype was excluded from the transaction, were for the purpose of furthering the business relationship between Forest City and LVLP.

21. Under NRS 645.270, an unlicensed person cannot sue to collect compensation for the performance of the acts of a real estate broker:

> A person, limited-liability company, partnership, association or corporation engaged in the business or acting in the capacity of a real estate broker or a real estate salesperson within this State may not commence or maintain any action in the courts of this State for the collection of compensation for the performance of any of the acts mentioned in NRS 645.030 without alleging and proving that the person, limited-liability company, partnership, association or corporation was a licensed real estate broker or real estate salesperson at the time the alleged cause of action arose.

22. "NRS 645.270 applies only to those whose actions fall within NRS 645.030's definition of real estate broker." (Nevada Supreme Court's Sept. 26, 2013, Order of Reversal & Remand ("Order") at 1.)

23. NRS 645.030(1)(a), in relevant part, defines a "real estate broker" as follows:

> [A] person who . . . [s]ells, exchanges, options, purchases, rents or leases, or negotiates or offers, attempts or agrees to negotiate the sale, exchange, option, purchase, rental or lease of, or lists or solicits prospective purchasers, lessees or renters of, any real estate or the improvements thereon[.]

24. Any person who "does, offers or attempts or agrees to do, engages in, or offers or attempts or agrees to engage in" any one of these acts is considered a real estate broker and is required to be licensed under Nevada law. See NRS § 645.260.

25. NRS 645.030's definition of real estate broker focuses on "the nature of the action, not the nature of the ultimate outcome." (Order at 4 (emphasis in the original).) "[O]nly persons who act for the purpose of furthering a sale, lease, or rent contract for real property fall within the definition of real estate broker and are subject to NRS 645.270." Id.

26. "[A] person who is not a licensed real estate broker may recover a commission where the work was not done to further or procure the sale of an interest in land but nevertheless resulted in a land sale contract." Id. at 5.

27. "[T]he licensing requirement will not preclude payment of a commission unless the services rendered fall within acts outlined in NRS 645.030," and "this determination rests on the individual circumstances of the services." Id. at 4-5.

28. Accordingly, this Court must focus on the actual services Nype rendered pursuant to the Nype Contract, and on the purpose of those services, in determining whether NRS 645.270 applies.

29. LVLP failed to meet its burden of proving, by a preponderance of the evidence that Nype acted for the purpose of furthering a sale or lease of real property.

30. The preponderance of the documentary and testimonial evidence establishes that Forest City, LVLP and Nype did not anticipate or intend a sale of real estate at any time between June 1, 2006, and November 2006.

31. Neither the FWS Agreement nor the LOI mention or anticipate a sale of real property.

32. The LOI contemplates the mutual formation of an LLC.

33. Mr. Mitchell admitted that the LOI involved investment and development, not a sale of real estate.

34. It was undisputed at trial that Nype had no involvement in the negotiations between LVLP and Forest City regarding the sale of a percentage of the property.

35. Nype did not act for the purpose of furthering a land sale.

36. The few, sporadic points in time in which Nype appeared to mistakenly believe that the transaction might be accomplished through a sale of real property are insufficient to overcome the weight of the evidence that Nype did not act for the purpose of furthering a land sale.

37. Nype's advice to LVLP to focus its efforts on securing lease commitments, and Nype's communications with Forest City regarding the status of lease commitments, does not constitute acting for the purpose of furthering a real-estate transaction under NRS 645.270.

38. NRS 645.270 only precludes suits to collect compensation for the performance of the acts of a real estate broker. Nype is not suing to collect compensation for the purported real estate broker's act of offering to perform leasing services. Moreover, Nype never performed or contracted to perform any such offered, leasing services.

39. NRS 645.270 does not apply to preclude Nype from collecting compensation in this matter.

40. LVLP bears the burden to prove, by a preponderance of the evidence, that Nype was required to possess a securities license under Nevada or federal law.

41. Under NRS 90.840(1), "[n]o person subject to this chapter who makes or engages in the performance of a contract in violation of this chapter[,] . . . may obtain relief on the contract." (emphasis added).

42. Under NRS 90.830, entitled "Scope of chapter[,]" NRS 90.310 only "applies to a person who sells or offers to sell a security . . . if (a) [a]n offer to sell is made in this State; or (b) [a]n offer to purchase is made and accepted in this State."

43. An "offer to sell" "includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value." NRS 90.280(1).

44. An "offer to purchase" "includes every attempt or offer to obtain, or solicitation of an offer to sell, a security interest in a security for value . . . ." NRS 90.280(2).

45. "[A]n offer to sell or to purchase is made in this State, whether or not either party is present in this state, if the offer: (a) originates in this state; or (b) is directed by the offeror to a destination in this State and received where it is directed, or at a post office in this State, if the offer is mailed." NRS 90.830(3).

46. Under NRS 90.310(1) "[i]t is unlawful for any person to transact business in this State as a broker-dealer . . . unless licensed or exempt from licensing under this chapter."

47. NRS 90.220 defines a "broker-dealer" as "any person engaged in the business of effecting transactions in securities . . . ."

48. Even if it did, there is no evidence that a contract to sell or dispose of an interest in the LLC existed.

49. Nype did not sell or offer to sell a security within the meaning of NRS 90.280.

50. The creation and apportionment of member units in a new LLC does not constitute an offer to sell a security within the meaning of NRS 90.280.

51. Even if Nype offered to sell a security within the meaning of NRS 90.280, Nype made no offer to sell a security in Nevada.

52. No offer to purchase a security was made and accepted in Nevada. Forest City's purported offer to purchase a security (via drafts of the LOI) did not originate in Nevada nor did Forest City direct its purported offer to Nevada. Even if the executed LOI constitutes an accepted offer of purchase, LVLP executed the LOI, i.e., "accepted" the offer, in New York—not Nevada.

53. Accordingly, under NRS 90.830(1), Nype was not subject to NRS 90.310's licensing requirement. As such, Nype did not engage in the performance of a contract in violation of NRS 90.310; and Nype may obtain relief in this matter. *See* NRS 90.840(1).

54. Even if NRS 90.310's licensing requirement applied, Nype did not violate NRS 90.310 because Nype does not meet NRS 90.220's definition of a "broker-dealer." Nype was not "engaged in the business of effecting transactions in securities." *See S.E.C. v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 12 (D.D.C. 1998); *Marble v. Clein*, 347 P.2d 830, 832 (Wash. 1959); *Matter of Las Vegas Hilton Hotel Fire Litig.*, 101 Nev. 489, 492-93, 706 P.2d 137, 139 (1985); *In re Slatkin*, 525 F.3d 805, 817 (9th Cir. 2008).

55. Under federal law, "LLC membership interests are not 'securities' unless they meet the four criteria of an 'investment contract' set forth in *Securities and Exchange Commission v. W.J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946)." *Keith v. Black Diamond Advisors, Inc.*, 48 F. Supp. 2d 326, 332 (S.D.N.Y. 1999). Under *Howey*, "'[a]n investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person [1] invests his money in [2] a common enterprise and is led to [3] expect profits solely from the efforts of the promoter or a third party.'" *Koch v. Hankins*, 928 F.2d 1471, 1476 (9th Cir. 1991) (emphasis added) (alterations in the original) (quoting *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-299 (1946)).

56. "An investment satisfies this third element [of the *Howey* test] when the efforts made by those other than the investor are the ones which affect significantly the failure or success of the enterprise." *Reeves v. Teuscher*, 881 F.2d 1495, 1499 (9th Cir. 1989) (emphasis added). "Where profits are to come substantially from the efforts of others . . . a security will be present. On the other hand, where profits are to come from the joint efforts of partners . . ., a security usually will not be present.'" *Consol. Mgmt. Grp., LLC v. Dep't of Corporations*, 162 Cal. App. 4th 598, 610, 75 Cal. Rptr. 3d 795, 805 (2008) (quoting *II Loss et al., Securities Regulation (4th ed. 2007) Coverage of the Securities Act of 1933*, pp. 985–986, fns. omitted).

57. Any relationship between Forest City and LVLP contemplated Forest City having an active, managerial-level role in the redevelopment of the Property, such that Forest City would not be a passive investor that would rely solely, or even substantially on

LVLP's, rather than its own, efforts to obtain a profit. Accordingly, as the third-element of the *Howey* test is lacking, the LLC structure under the LOI did not involve a "security" under federal law; therefore, Nype was not required to have a federal securities license.

58. Accordingly, LVLP has failed to prove that either Nevada or Federal law required Nype to possess a securities license in order to recover for his services.

59. Mr. Nype was uniquely qualified to facilitate a business relationship with Forest City because of his close, personal relationships with Forest City's key decision makers and his insider's knowledge of how Forest City operated. In addition, Nype facilitated a transaction that LVLP had attempted to develop for years, without success.

III.

DECISION

The testimony is uncontradicted that Mr. Mitchell and his partner, Mr. Liberman, intended to compensate Mr. Nype. Mr. Mitchell clearly stated in his testimony that Mr. Nype provided services throughout the entire negotiation period eventually resulting in the tenants in common ("TIC") agreement.

Mr. Nype and Mr. Mitchell both lack credibility when it comes to their monetary interests. There is no question that Mr. Nype was working with FWS when the initial introduction was made, which ultimately resulted in the TIC agreement between the parties. Both Mr. Nype and Mr. Mitchell each wanted the FWS/LVLP agreement to be dead for their individual economic interests. On June 9, 2005, the deal between Forest City and LVLP was essentially dead; however, it was revived immediately prior to June 29, 2005, with the efforts of Mr. Nype.

FWS and LVLP litigated their agreement in court; however, there was no

determination as a settlement was reached. Mr. Nype clearly backed out of his agreement with FWS when he became concerned that FWS did not have a real estate license. His testimony regarding obtaining some information from an unknown lawyer regarding this issue is clearly not credible. It was only relevant in that it led to FWS and Nype terminating whatever agreement they had and Mr. Mitchell attempting to terminate whatever agreement he had with FWS on behalf of LVLP. It is also important to note that Mr. Nype continued working on the project on behalf of Mr. Mitchell until he was excluded from negotiations in approximately November 2006.

Mr. Nype claims that Mr. Mitchell, on behalf of LVLP, orally agreed to the same terms as in the FWS agreement and only later sought to change the terms of that agreement. Although the oral contract theory is plausible, Defendant/Counterclaimant Nype does not meet the burden of proof of preponderance of the evidence on that cause of action given both key players' unreliable testimony.

The second cause of action, quantum meruit, is proven by a preponderance of the evidence. Mr. Mitchell's own testimony was that Mr. Nype deserved compensation for the efforts he put in reaching this agreement. Mr. Nype's initial introduction was done pursuant to the LVLP/FWS agreement and therefore FWS might be entitled to compensation but that is not for this Court to decide. Taking the totality of almost six weeks of testimony, 50% of the compensation is attributable to the initial introduction (done by Nype as an agent of FWS). Under the quantum meruit theory of recovery, Mr. Nype is entitled to the four percent (4%)/one percent (1%) referred to throughout the trial but that must be reduced by 50% for work which was done by Nype while he was associated with FWS.

Defendants' expert, Mr. Wills, testified that four percent (4%)/one percent (1%) was reasonable under the circumstances and that a finder's fee for hard money could be as high as 5 – 10%. Mr. Hygins testified for the Plaintiff/Counterdefendant that 0.6% was a reasonable fee and, that at most, one to one and a half percent (1 – 1 ½%) for a finder's fee for hard money is reasonable. Mr. Hygins' testimony was not credible as he opined that refinancing approximately $89,000,000.00 in loans and getting the personal guarantees removed from Mr. Mitchell and Mr. Liberman had little to no value. The testimony was that Mr. Mitchell and Mr. Liberman, the owners of LVLP, had tried for almost two years to obtain a partner in order to develop this property and that considerable loans were becoming due, which could have resulted in the loss of the property. In addition, Mr. Hygins opined that the refinancing at a lower interest rate based on Forest City's net worth was also of little benefit. Lastly, Mr. Hygins testified that LVLP and Forest City's renegotiating the partnership agreement in 2009 would override the unjust enrichment theory, as LVLP effectively owned no further interest in the project. Although this may be the overall effect of the current financial agreement, it prevented the loss of the property by requiring Forest City to make all payments on the loans freeing LVLP of any encumbrances.

As previously stated, the benefits Mr. Mitchell and Mr. Liberman received from being relieved of their personal guarantees given the financial recession and/or depression in Las Vegas was enormous.

Lastly, Mr. Hygins testified that Forest City obtaining the $100,000,000.00 loan based on their credit was of no benefit since LVLP was still a creditor on the note; however, it is clear that Forest City was the only entity that had assets should the note become due, given

the fact that the property was no longer worth even a third of the amount of the loan.

Mr. Wills testified at trial as to a range of damages. This Court, based on the evidence, finds damages in the amount of $5,217,595.00 reduced by 50% attributable to work done by Nype while he was associated with FWS.

Any conclusion of law that is determined to be a finding of fact shall be deemed accordingly.

The Court hereby FINDS in favor of Defendants/Counterclaimants RUSSELL L. NYPE and REVENUE PLUS, LLC, and against Counterdefendant LAS VEGAS LAND PARTNERS, LLC., on Nype's claims in the total amount of TWO MILLION SIX HUNDRED EIGHT THOUSAND SEVEN HUNDRED NINETY-SEVEN DOLLARS and FIFTY CENTS ($2,608,797.50).

The Court FURTHER FINDS in favor of Defendants/Counterclaimants RUSSELL L. NYPE and REVENUE PLUS, LLC, and dismisses, with prejudice, Plaintiffs Las Vegas Land Partners, LLC, LIVEWORK, LLC, and ZOE PROPERTIES, LLC's claims for declaratory relief, implied indemnity, equitable indemnity, and equitable estoppel. Any of the parties' claims not explicitly adjudicated herein are dismissed, with prejudice.

DATED this 26 day of March, 2015.

DISTRICT JUDGE RONALD J. ISRAEL

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of March, 2015, I e-served a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION as follows:

Matthew Dushoff, Esq.
KOLESAR & LEATHAM
All e-service recipients listed in Wiznet/Odyssey (See attached list)

Joshua H. Reisman, Esq.
REISMAN SOROKAC
All e-service recipients listed in Wiznet/Odyssey (See attached list)

Sandra Jeter, Judicial Executive Assistant
07A551073
Certificate of Service

EXHIBIT "2"

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Facsimile: 702- 386-9135
E-Mail: jmuije@muijelawoffice.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC, DOES I through X; DOES I through X; DOE CORPORATIONS I through X; and DOES PARTNERSHIPS I through X, Plaintiffs, vs. DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC SUCCESSOR, LLC; CASINO COOLIDGE LLC; DOES I through III, and ROE CORPORATIONS I through III, inclusive, Entity Defendants.	CASE NO: A-16-740689-B DEPT NO: XV

DECLARATION OF RUSSELL NYPE

STATE OF MAINE)
) ss:
COUNTY OF YORK)

Your declarant being first duly sworn upon oath declares under penalty of perjury as follows:

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1. My name is Russell Nype and I am one of two named Plaintiffs in the present case pending against Las Vegas Land Partners LLC, and its various principals, subsidiaries, affiliates, and associated companies.

2. Myself, and my wholly-owned company, Revenue Plus LLC, find ourselves as Plaintiffs in this case only after being involuntarily hailed to court as defendants in Nevada by Las Vegas Land Partners LLC, and two of its associated entities, Live Work, LLC and Zoe Properties, LLC.

3. Indeed, early in the litigation in the first case, the Nevada litigation was stayed and litigation efforts proceeded in New York where in fact LVLP's principals, myself, and Revenue Plus were all operating.

4. Neither Revenue Plus nor I have ever maintained a regular office in the State of Nevada.

5. Neither Revenue Plus nor I have ever had full-time employees operating in residing in the State of Nevada.

6. Most of the negotiations and underlying transactions which led to my judgment in the first case occurred in New York, Ohio, or outside the State of Nevada, and many were indeed conducted remotely by telephone, fax, and email.

7. Other than Revenue Plus being a participant in the transaction between Las Vegas Land Partners and Forest City Enterprises, with regard to what ultimately turned into a joint venture between those two entities, as well as the affiliates and associated companies of LVLP, Revenue Plus, LLC has done virtually no business whatsoever nor had any presence whatsoever in the State of Nevada.

8. When forced to defend ourselves in the litigation brought by LVLP and its associated companies, after significant expense and effort, we were ultimately able to prevail and obtain a judgment against LVLP on the counterclaim we brought.

9. LVLP owns or owned, either directly or through associated entities multiple valuable parcels of real property, both developed and undeveloped all in Las Vegas, NV.

10. Having obtained a counterclaim judgment against LVLP, and given the fact that LAS VEGAS LAND PARTNERS LLC's primary activities were focused on the Las Vegas, Nevada area, what choice did Revenue Plus or I have but to come to Nevada to attempt to enforce our judgment!?

11. Indeed, during the course of the first litigation, it was represented to me that the principals of Las Vegas Land Partners had boasted that they would undertake steps to assure that any judgment or award against them on my counterclaim would ultimately prove uncollectible.

12. Only after obtaining the judgment, and beginning serious post-judgment discovery and collection efforts, did it become readily apparent to myself that Las Vegas Land Partners LLC had structured its business affairs and finances so as to render itself without meaningful cash flow, without liquid assets, and effectively insolvent.

13. The aforesaid determination is based upon knowledge gained primarily from the post-judgment document production which commenced in September, 2015, and which continues through this day.

14. In working with my attorneys, and accountants, and reviewing the documents that LVLP has been forced to produce, it has become readily apparent that LVLP continues to conceal

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important documents, make only partial production, and not comply with its discovery obligations, despite the existence of an order compelling discovery.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

RUSSELL NYPE

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R:\J Files\Nype vs Las Vegas Land Partners,J3792H\2016—05 - Alter Ego SUIT\Pleadings\6.13.17 Declaration of Russell Nype.wpd

EXHIBIT "3"

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC, DOES I through X; DOES I through X; DOE CORPORATIONS I through X; and DOES PARTNERSHIPS I through X, Plaintiffs, vs. DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC SUCCESSOR, LLC; CASINO COOLIDGE LLC; DOES I through III, and ROE CORPORATIONS I through III, inclusive, Entity Defendants.	CASE NO: A-16-740689-B DEPT NO: XV

SWORN DECLARATION UNDER PENALTY OF PERJURY OF MARK RICH

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

Your declarant being first duly sworn under oath, declares under penalty of perjury as follows:

1. My name is Mark Rich and I have been a Nevada licensed CPA since July, 1981, almost 36 years ago.

2. Attached hereto as Exhibit "A" and by this reference incorporated herein is my current updated CV setting forth my professional experience and training, as well as the history of various significant cases with which I have been involved.

3. As the Court can readily determine, *inter alia*, I have developed expertise in financial forensics, and have had training and background work in fraud investigations and examinations.

4. I have been involved in the efforts of Plaintiffs, Russell Nype and Revenue Plus, LLC (hereinafter collectively "Nype") to assist in analyzing Nype's original transactions with LVLP, the ultimate outcome of those transactions, and the financial considerations relevant to the same, even prior to the judgment in the original case.

5. In the context of the original case, although it took extraordinary efforts to obtain, we ultimately obtained multiple years of tax returns for LVLP as early as 2010, up to and including 2012.

6. Unfortunately, though we were provided copies of the source tax returns, we did not receive nor were we able to obtain various critical backup records relating to the same, such as general ledgers, check books, banking records, disbursement journals, etc.

7. The reason those documents are so critically important is that without understanding how the underlying transactions occurred, it is impossible to determine the exact course and effect of such transactions.

. . . .

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8. For example, when the IRS audits a taxpayer's return, the return itself tells very little: it is absolutely critical to an IRS audit or investigation that the underlying supporting financial records be present, so that the IRS may trace and follow cash flow, and determine the legal, and financial character and impact of various transactions.

9. In point of fact, despite herculean efforts on the part of Nype and his counsel, the various underlying financial records of LVLP, including most importantly the various financial records regarding it's affiliated and associated entities and subsidiaries, were never obtained pre-judgment.

10. In checking my records, and consulting with John W. Muije, collection counsel for Nype, the first wave of significant backup and underlying documents allegedly supporting the LVLP tax returns, including banking records and general ledgers, were not obtained until the Fall of 2015, commencing in September 2015 and initially spanning approximately three months thereafter.

11. Even those general ledgers and banking records were not complete, resulting in Nype having to file a Motion to Compel on information and belief, on or about August 31, 2016.

12. After several months of briefing and multiple hearings, on information and belief, the Court ultimately entered a Order Compelling Discovery, a true and correct copy of which is attached hereto as Exhibit "B".

13. I have been in regular touch with Nype and his various counsel as to the progress of obtaining documents subsequent to the motion to compel.

14. I am advised, informed and therefore believe and state that even after the order compelling production of documents, (Exh. "B"), which required significant financial

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information regarding the affiliates and associated entities, the records produced in multiple waves remain incomplete, with numerous deficiencies, gaps, and missing documents that should exist and should have been produced.

15 I am informed and believe by Nype and his counsel that a new Order to Show Cause and/or Motion to Compel predicated upon the deficiencies in compliance with Exhibit "B" is in the process of preparation and will be forthcoming in the near future.

16. Even the documents produced from January through March, 2017, are inherently contradictory and do not match the data reported on the tax returns.

17. As one key example, however, of the importance of having accurate and complete source records, attached hereto as Exhibit "C" and by this reference incorporated herein is a certification by LVLP's New Jersey CPA for the first time disclosing that various affiliated and associated entities are disregarded for tax and accounting purposes, and are all reported through LVLP's business tax return..

18. The partial and incomplete documentation produced in both the fall of 2015, and 2017, does show extensive co-mingling, a failure to keep separate and adequate accounting records for various affiliates and associated companies, a decided lack of concrete detail, and an absolute failure to account for and explain various cash flow entries.

19. Gain the incomplete documentation produced to date, we are unable to determine where LVLP's cash flow is coming from, or where the resulting cash flow is being applied.

20. On information and belief, the documentation available shows that LVLP, its affiliates and associated entities are shifting money between one entity and the other to pay bills and cover expenses as needed, and not in any coherent or recurring logical form.

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21. The data that has been provided does not even match the tax returns, for example, by failing to disclose substantial income.

22. Part of the data provided appears to account for, in part, the financial transactions and relationship between LVLP and its joint venture partner (the entity which Nype procured to provide financing for LVLP's projects), Forest City Enterprises.

23. The data available to date appears to show that arrangements were made with Forest City to utilize LVLP's share of revenue and cash flow to reduce debt and build equity, resulting in an absence of actual cash receipts by LVLP.

24. Despite what those records are showing, however, the tax returns are wholly silent and fail to disclose the accrual of any imputed income or equity with respect to the Forest City Joint Ventures, despite the fact that the joint venture documents suggest that LVLP's share of revenue is being used to pay down debt and build equity, which would legally result in the accrual of taxable income which the law requires to be accurately reported

25. What is critically important, however, is that only in the Fall of 2015 and continuing to the present, has LVLP actually started producing underlying source and financial documentation critically necessary to understand its many transactions, and the financial impact thereof.

26. In this regard, attached hereto as Exhibit "D" and by this reference incorporated herein is are several indices for the Fall 2015 production showing that only as of that date, years after the underlying transaction occurred, were general ledger and bank records relevant to the 2006 through 2014 transactions first produced.

. . . .

27. Indeed, the source documentation produced in the Fall of 2015 was virtually all outdated, and did not even include significant records for the bulk of 2014 or any for 2015.

28. Only with the Order Compelling discovery and the belated partial production which occurred early in 2017 did we first learn that the many transactions undertaken by LVLP have rendered it functionally insolvent, and unable to pay its own current bills, as evidenced in part by the fact that the individual principals of LVLP, including specifically David Mitchell, had been paying the substantial attorneys fees accrued by LVLP for and on its behalf. See Exhibit "E" attached hereto and by this reference incorporated herein as an example.

29. As noted hereinabove, the ledgers and bank records do not match and reconcile to the tax returns supplied.

30. The source documents in question, even with LVLP's accountant's explanation that multiple subsidiary and affiliate entities are consolidated, still do not account for or match what LVLP is reporting to the IRS!

31. Most importantly, however, until the Fall of 2015, at the earliest, the tax returns that had been produced showed an entity which theoretically had substantial positive equity, but in reality, based upon its general ledger and actual bank records, because functionally insolvent and unable to pay its own accruing bills.

32. Indeed, until the preliminary information was received in the Fall of 2015 as supplemented by the early 2017 production, LVLP, based on the tax returns and documentation it had previously supplied, continued to operate, appeared to have assets, appeared to be paying taxes as incurred, and continued to vigorously defend itself, as shown in part by Exhibit "E", all of which suggested that it was not insolvent.

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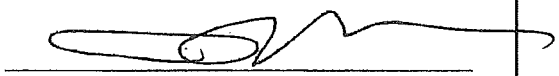
33. Once the reality of the underlying financial transactions first was discovered, however, starting in the Fall of 2015, it became readily apparent that contrary to its public fasade and appearances, LVLP's prior transactions had and did in fact render it functionally insolvent, and unable to respond to or pay the judgment awarded Nype.

FURTHER YOUR DECLARANT SAYETH NAUGHT.



MARK RICH

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EXHIBIT "A"

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, 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 (inactive)
Participant in AICPA/Nevada Society Quality Review Program (Peer Review)
Phi Kappa Phi Honor Society
UNLV Alumni Association Board Member/Membership Chair
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
Entertainment
Computer Tech
Transportation
Professionals
Estate and Trust
Not-For-Profit/Charitable Organizations
Manufacturing
Wholesale Distributors

ADDITIONAL TRAINING AND PROFESSIONAL COURSES:

AFCE International Global Fraud Conferences
Forensic and Fraud Interview Conference
AICPA Family Law Conference
Forensic Accounting and Fraud GCB
Certified Audit Preparation and Disclosure
Financial Statement Analysis
Yellow Book Audits and Controls
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

PUBLICATIONS:

National Business Institute: Real-Life Ethics for Nevada CPAs

FIRM BILLING RATES EFFECTIVE 2016:

Partner	$250-$350
Manager	$200-$250
Supervisor	$175-$200
Senior	$125-$175
Professional Staff	$ 70-$125
Admin.	$ 70

SIGNIFICANT CASE HISTORY:

Type	Court	Status	Client	Attorney
Damage	District/Deposition	Closed	So. West/MGM	Galane
Bankruptcy	Federal/Testified	Closed	Steel	Foley
Damage	District/Special Master	Closed	Brokerage	Massey
Damage	District/Testified	Closed	Irish	McGarry
Bankruptcy	Federal/Testified	Closed	Nevco	Kane
Bankruptcy	Federal/Testified	Court Appt	Rojac	Kane
Valuation	District	Closed	Defonseka	Mitchell
Damages	District	Settled	Covington	Mitchell
Valuation	District	Settled	Fraizer	Frame
Divorce	District	Closed	Day & Night	Frame
Fraud	District	Closed	Soubry	Alverson
Tax Criminal	Federal/Testified	Closed	Nevco	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	Closed	Worthen	McGarry
Damages	District/Deposition	Closed	LVGT	Frame
Valuation	District	Settled	Eastern NV	Hunt
Estate	District/Deposition	Settled	Clark	Morris/Cook
Tax	Federal/Deposition	Closed	Clark	Silets
Tax Criminal	Federal	Closed	Kloehn	Katz
Damage	District/Testified	Closed	Gilcrease	Cook
Damage	District	Closed	Yerramsetti	Cook
Estate	District	Closed	Ward	Cook
Damage	Arbitration/Testified	Closed	National	Ellis
Damage	Arbitration/Testified	Closed	Massanari	Albright
Estate	District/Report	Closed	Heatley	Lowe
Damage	District/Report	Closed	Sands	Morris
Estate	District/Report	Closed	Danner	Morgan
Damage	District/Testified/Repot	Closed	Desert Land	Peterson
Tax Civil	Federal/Deposition	Settled	Behnen	Aloi
Divorce	Family/Testified/Report	Closed	Keeter	LoBello
Divorce	Family/Deposition/Report	Closed	Bloch	Ecker
Divorce	Family	Settled	Costello	Ecker
Divorce	Family/ Consultant	Closed	Higgins	Kainen
Damage	District/Testified/Report	Closed	CBC	Marquis
Divorce	Family/Report	Closed	McGill	Ecker/LoBello
Damage	District/Consultant	Closed	CSI	Hutchison
Damage	District/Consultant	Closed	Revenue Plus	Carroll
Recovery	Federal/Report/Forensic	Closed	FDIC	McCoy/Morris
Consultant	District/Consultant	Closed	Forsman	Marquis
Damage	District/Report	Closed	Emerald	Carroll
Damage	District/Report	Closed	PT Corp.	Sylvester
Damage	District	Settled	Renown	Peterson
Damage	District/Consultant	Closed	MGM	Morris
Damage	District/Rebuttal	Closed	Harris/LVB	Marquis
Consulting	Various/Forensic	Pending	NV Attorney Gen	Various
Consulting	Federal/Testified/Consult	Closed	T. Hunt	Johnson
Damage	District/Depositon/Report	Closed	Hard Rock	Carroll
Damage	Arbitration/Testified/Rept	Closed	Dr. Life	Marquis
Damage	District/Rebuttal	Closed	NV Mutual/Trean	Brimmer
Damage	Arbitration/Testified/Rept	Closed	Lift Equp	Marquis
Damage	District/Deposition/Report	Closed	14 Rings	Gayan
Damage	District/Deposition/Report	Closed	IGT	Connelly
Damage	FINRA/Testified/Forensic	Closed	Matthews	Hubley
Damage	District/Report	Closed	Oasis	Carroll
Damage	District/Deposition	Report	Ellis	Gayan
Damage	District	Report	Findlay	Carroll

EXHIBIT "B"

DCRR
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Email: jmuije@muijelawoffice.com
Attorneys for Defendants/Judgment Creditors

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS LAND PARTNERS, LLC; LIVE WORK, LLC and ZOE PROPERTIES, LLC, Plaintiffs, vs. RUSSELL L. NYPE; REVENUE PLUS, LLC; DOES I through III, and ROE CORPORATIONS I through III, inclusive, Defendants.	CASE NO: A-07-551073 DEPT. NO: XXVIII **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS** DATE: October 14, 2016 TIME: 9:00 a.m.
RUSSELL L. NYPE; REVENUE PLUS, LLC Judgment Creditors, vs. LAS VEGAS LAND PARTNERS, LLC, Judgment Debtor.	

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DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION

Hearing Date: October 14, 2016

Hearing Time: 9:00 a.m.

Attorney for Judgment Creditor, Russell L. Nype; Revenue Plus, LLC):

JOHN W. MUIJE, ESQ., of the Law Offices of John W. Muije & Associates

Attorney for Judgment Debtor (Las Vegas Land Partners, LLC):

GARRY HAYES, ESQ., of the Law Offices of Hayes & Welsh.

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I.

FINDINGS

On October 14, 2016, a hearing was conducted with respect to Defendants/Judgment Creditors Motion to Compel Discovery & For Sanctions.

Having considered Defendant's Motion to Compel Discovery and For Sanctions, the Plaintiff's Opposition, and the Defendant's Reply In Support of its Motion to Compel, the Discovery Commissioner makes the following **Findings** with respect to the above-referenced Motion to Compel:

The Court finds that the Judgment Creditor's (hereinafter collectively referred to as "Nype") Motion to Compel consists of three separate components, each of which should be addressed in a slightly different fashion.

IT IS THE FURTHER FINDING of the Court that despite designating the discovery request as a notice of deposition, in essence what Nype has undertaken with regard to his attempt to schedule the deposition of the Person Most Knowledgeable of the Judgment Debtor (hereinafter referred to as LVLP), is an updated post-judgment examination of judgment debtor.

THE COURT FURTHER FINDS that although the Rules of Civil Procedure and a Notice of Deposition promulgated thereunder, arose subsequent to the enactment of Nevada's traditional debtor examination statute, i.e. NRS 21.270, that said statute has never been overruled, and requires that a judgment debtor be examined at the *situs* where they regularly reside.

THE COURT FURTHER FINDS that in the Court's experience, video conferencing arrangements, especially when there are substantial geographic distances involved, when properly coordinated, provide an effective, economical and appropriate alternative to out-of-state travel and live depositions.

THE COURT FURTHER FINDS, based on the second distinct issue raised by Nype in his Motion to Compel, that the attorney-client privilege should not apply to the issue as to the source

....

....

....

and amount of payments made by a litigant to various attorneys, based on the case law produced and referenced by Nype.

THE COURT FURTHER FINDS that the actual cancelled checks, all of which were represented to be located at the New York offices of LVLP, are relevant and important to post-judgment collections, and should be produced and made available as addressed hereinafter for inspection and copying.

THE COURT FURTHER FINDS that LVLP's earlier objection to production regarding information as to the identity, amounts, and source of funds for paying attorneys who have represented LVLP in these proceedings is not and should not be held to be privileged, and that the general ledger produced on or about September 1, 2016 provides partial information regarding the same.

THE COURT FURTHER FINDS that the anticipated production of documents sought is likely to be voluminous, and that it is appropriate that Judgment Creditor Nype pay the cost of reproducing the documents he seeks.

THE COURT FURTHER FINDS, subject to the above provisions, that Nype is clearly entitled to the documentation he has requested, especially with regard to the August, 2016, updates and supplementation requested, and that LVLP can and should produce all of the documentation sought, in accordance with NRCP Rule 34 and the specific requests and items enumerated in Nype's 2016 request for production of documents.

THE COURT FURTHER FINDS, however, that the obligation to produce records means to produce such records in accordance with NRCP Rule 34 as they are normally maintained, at its regular business offices in New York City, likely best done through the use of an independent copy service.

THE COURT FURTHER FINDS that in addition to the 2016 document request, LVLP can and should complete and supplement its production for the 2015 request, and should produce any non-completed documents for payment of attorneys fees for all periods addressed in the 2015 document production requests, as well as interim tax returns, bank statements, accounting statements, etc., not heretofore produced, including but not limited if in LVLP's possession, to all

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Phone: (702) 386-7002 Fax: (702) 386-9135

of the following for LVLP's subsidiaries:

(1) All "TIC" Accounting statements;

(2) All K-1's issued by said subsidiaries;

(3) All Bank statements for said subsidiaries.

The Court notes that LVLP has agreed to produce such documentation at its offices are in New York.

THE COURT FURTHER FINDS that K-1's related to the various "affiliates", subsidiaries, and entities in which LVLP has a beneficial interest are particularly relevant and can and should be produced.

THE COURT FURTHER FINDS, given the geographic distance mentioned in the Court's prior findings set forth hereinabove, that the most efficacious mechanism is for Nype to arrange an appropriately qualified litigation document service or copying service to go to the offices of LVLP, in the New York area, and copy and/or scan all of the documentation in place, and transfer those to electronic media, whether in the form of CD- Roms, DVD's, or flash memory sticks, differentiated indexed and cataloged according to the various designations and categories set forth on the files, folders, and document repositories as maintained by LVLP on the one hand, by categories and/or responding to the specific requests made by Nype on the other.

THE COURT FURTHER FINDS that once reproduction of the documents produced has been completed, and the images converted to electronic media, that said electronic media be provided to counsel for LVLP, i.e. Garry Hayes at his offices located at 199 N. Arroyo Grand Blvd., Ste 200, Henderson, Nevada 89074, and that Mr. Hayes shall have ten (10) working days (i.e. two weeks) from the date of receipt of the documentation within which to review the same and determine whether or not there may be an issue of privilege as to particular documents.

THE COURT FURTHER FINDS that to the extent Mr. Hayes in good faith believes the document to be privileged, he will need to prepare a detailed privilege log referencing specifically the document in question, identifying the same, and describing the nature of the redaction.

THE COURT FURTHER FINDS that once said review and redaction by Attorney Garry Hayes has occurred on behalf of LVLP, that Mr. Hayes shall promptly communicate said information

LAW OFFICES
JOHN W. MUIJE & ASSOCIATES
1840 E. SAHARA AVE. #106
LAS VEGAS, NEVADA 89104
Phone: (702) 386-7002 Fax: (702) 386-9135

LAW OFFICES
JOHN W. MUIJE & ASSOCIATES
1840 E. SAHARA AVE. #106
LAS VEGAS, NEVADA 89104
Phone: (702) 386-7002 Fax: (702) 386-9135

to the litigation document service or copying service employed by Nype, which will substitute redacted pages for the original images on their electronic media, while also making an appropriate copy of any privilege log, and only then provide the images to counsel for Nype, John W. Muije at his offices located at 1840 East Sahara Avenue, Suite 106, Las Vegas, Nevada 89104, i.e. the complete document production, (subject to redactions by Mr. Hayes with Mr. Hayes's privilege log as to any documents withheld or redacted).

THE COURT FURTHER FINDS that once that documentation has been provided to Mr. Muije, Nype may make arrangements for either a live physical sworn examination to occur in the New York City area, or in the alternative, may make arrangements for a video conferencing sworn examination/deposition, at Nype's option, to occur no sooner than two weeks subsequent to Nype's receipt of the subject documentation, and that said sworn examination should commence and continue until Nype has been afforded a reasonable opportunity to inquire as to the financial affairs of LVLP, not previously covered in the earlier examination, subject to any limitation under NRCP & EDCR, as well as ask relevant questions regarding the documentation so produced.

THE COURT FURTHER FINDS that there is no basis for sanctions against LVLP.

II.

RECOMMENDATIONS

IT IS HEREBY ACCORDINGLY RECOMMENDED that Defendant/Judgement Creditors' Motion be granted in part as to documentation still needing to be produced, which documents shall be produced in New York City as more specifically delineated herein;

IT IS FURTHER RECOMMENDED, however, that Defendant/Judgment Creditor's Motion be denied in part as to requiring the Judgment Debtor to appear and be deposed in Las Vegas, Nevada, under oath, and that the Court instead order said sworn examination to occur in New York City after completion of the document production process discussed herein.

IT IS FURTHER RECOMMENDED that the Court order production of all of the documentation sought by Judgment Creditor Nype as detailed in the above and foregoing findings, including specifically the full documentation sought in Plaintiff's 2016 document production request, and the above enumerated supplemental documents as to the 2015 requests.

IT IS FURTHER RECOMMENDED that the Court notes that LVLP has agreed to produce such documentation at its offices in New York.

IT IS THEREFORE RECOMMENDED that completion of the documentation production addressed hereinafter, the parties will arrange for a sworn examination of judgment debtor, i.e. the deposition of the Person Most Knowledgeable of LVLP, with the LVLP representative (believed to be a Mr. David Mitchell) required to appear at the offices of LVLP in New York City, New York, or at the offices of a court reporter or video conferencing service located in the same locale, for purposes of sworn testimony under oath.

IT IS FURTHER RECOMMENDED that Nype shall have the option to take said sworn debtor examination before an appropriately qualified court reporter, live and in person, through either Nevada or New York counsel, and that Nype's counsel may have present, at Nype's option, an appropriate forensic accountant and/or one paralegal to assist in the examination process.

IT IS ALSO FURTHER RECOMMENDED that Nype, in the alternative, may arrange to undertake such sworn examination through the use of video conferencing facilities, with LVLP's representative to appear at the video conferencing locale in the New York City area, while Nype's counsel and appropriate assistance may attend and participate through video conferencing arrangements from their base of operations in Las Vegas, Nevada.

IT IS FURTHER RECOMMENDED, based upon the above findings regarding the absence of attorney-client privilege in regard to documentation regarding the payment of attorneys fees, that all documentation requested by Nype but not previously produced, shall be produced, utilizing the logistical constraints recommended hereinafter, in the New York City area, and other related documentation showing the source of funds, the amount of payments, and the mechanisms utilized for and on behalf of LVLP in the payment of LVLP's attorneys fees.

....

....

....

....

....

LAW OFFICES
JOHN W. MUIJE & ASSOCIATES
1840 E. SAHARA AVE. #106
LAS VEGAS, NEVADA 89104
Phone: (702) 386-7002 Fax: (702) 386-9135

IT IS FURTHER RECOMMENDED that the logistical arrangements discussed in the above and foregoing findings be deemed appropriate, and that Nype be responsible for making said arrangements and paying for the copying and/or litigation document production services.

IT IS FURTHER RECOMMENDED that the mechanisms, logistics, and mechanical procedures which set forth in the above findings should be deemed appropriate, and should be implemented for purposes of the document production ordered hereby.

CONCLUDING RECOMMENDATIONS

Based upon all of the above and foregoing, the undersigned recommends a resolution of Nype's Motion to Compel as follows, partially granting and partially denying said motion.

1. The Motion to Compel in part, as to the appearance by the Judgment Debtor in Las Vegas, Nevada is denied, and it is instead ordered that said sworn examination under oath shall occur in the New York City area, after production of documents as discussed herein; and videoconferencing remains an option as discussed herein.

2. It is further recommended that claims of attorney-client privilege previously asserted by the Judgment Debtor, LVLP, be denied, the undersigned expressly finding and recommending that the items in question are not privileged, and should be produced, including all cancelled checks related to the payment of LVLP's attorneys fees; and 1

3. It is further recommended, pursuant to the Motion to Compel, that said motion be granted in part, as regards the document production, insofar as Nype's requests are well founded, appropriate, and relevant, and the documentation in question shall be produced by the Judgment Debtor in the New York City area, for copying and duplication at the Judgment Creditor's expense, in accordance with the logistical arrangements set forth hereinabove.

.... 1 To the extent that billing records are required
.... to be produced, such records may be redacted
to protect attorney-client privilege where necessary.

LAW OFFICES
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1840 E. SAHARA AVE. #106
LAS VEGAS, NEVADA 89104
Phone: (702) 386-7002 Fax: (702) 386-9135

LAS VEGAS LAND
v
NYPE
A551073
10/4/16 Hearing

4. Nype's request for sanctions is denied.

DATED this 20 day of ~~November~~ December, 2016.

DISCOVERY COMMISSIONER

Submitted by:

JOHN W. MUIJE & ASSOCIATES

By: _____
JOHN W. MUIJE, ESQ.
Nevada Bar No. 2419
~~1840~~ E. Sahara Avenue, Suite106
Las Vegas, Nevada 89104
Telephone No: (702) 386-7002
Facsimile No: (702) 386-9135
Email: jmuije@muijelawoffice.com
Attorneys for Defendants/Judgment Creditors

Approved as to form ~~and content~~ by:

HAYES & WELSH

By: _____
GARRY L. HAYES, ESQ.
Nevada Bar No. 1540
199 N. Arroyo Grande Blvd., #200
Henderson, Nevada 89074
Telephone: (702) 434-3444
Facsimile: (702) 434-3739
E-Mail: ghayes@nevlaw.com
Attorneys for Plaintiff/Counter-Defendant, LAS VEGAS LAND PARTNERS, LLC

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Phone: (702) 386-7002 Fax: (702) 386-9135

NOTICE

Pursuant to N.R.C.P. 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

The Commissioner's Report is deemed received three (3) days after mailing to a party or the party's attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's Office. E.D.C.R. 2.34(f).

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 20_____:

_____ Placed in the folder of counsel in the Clerk's Office on the _____ day of _____, 20_____.

✓ Electronically served counsel on Dec. 21, 20 14. Pursuant to N.E.F.C.R. Rule 9.

By: _____
Commissioner Designee

LAW OFFICES
JOHN W. MUIJE & ASSOCIATES
1840 E. SAHARA AVE. #106
LAS VEGAS, NEVADA 89104
Phone: (702) 386-7002 Fax: (702) 386-9135

CASE NAME: Russell L. Nype vs.
Las Vegas Land Partners, LLC
CASE NUMBER: A-07-551073

ORDER

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

____ The parties having waived the right to object thereto,

____ No timely objection having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

____ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

***

AND

IT IS HEREBY ORDERED the Discovery Commissioner's Report & Recommendations are affirmed and adopted.

____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner. (Attached hereto)

____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for

_____, _____, 20___, at _____ a.m.

DATED this 1 day of February, 2016.

DISTRICT COURT JUDGE

4

R:\J Files\Nype vs Las Vegas Land Partners,J3792\Pleadings\1.29.16 Discovery Commissioner's Report & Recommendation.wpd

EXHIBIT "C"

Subject: Fwd: Disregarded entities
Date: Friday, December 16, 2016 at 9:47:00 AM Pacific Standard Time
From: David Mitchell
To: Garry Hayes
Attachments: image001.jpg, ATT00001.htm, DISREGARDED ENTITIES.pdf, ATT00002.htm

DAVID MITCHELL
Mitchell Holdings LLC
801 Madison Avenue
New York NY 10065
USA
1212-486-4444
djm@mitchellholdings.com

Begin forwarded message:

From: Sam Spitz <sam@skecpa.com>
Date: December 16, 2016 at 12:45:50 PM EST
To: "David Mitchell (djm@mitchellholdings.com)" <djm@mitchellholdings.com>
Subject: Disregarded entities

Attached is a schedule we previously provided to you which lists all of the entities that are disregarded for tax purposes. All transactions were reported on LVLP tax return

Sam K. Spitz, Esq., CPA
sam@skecpa.com

LVLP HOLDINGS

LLC	Property	Date Acquired
GAVIAYANA COMPANY LLC	JUDGES	2004
EXCHANGE FOR CASA MITCHELL LLC	LAKES	2004
CASA MITCHELL LLC	WHEELER	2005
LAS VEGAS BONNEVILLE PARTNERS LLC	PRUDENTIAL	2004
AVA PROPERTY LLC	DOCTORS	2004
STELLA PROPERTY LLC	KREIGER	2005
ZOE PROPERTY LLC	777 PROPERTY	2005
ZOE PROPERTY LLC	QUEEN OF HEARTS	2006
AARON PROPERTY LLC	GRAGSON	2005
MARC PROPERTY LLC	GREGORY II	2005
LEAH LLC	COOLIDGE	2005 PARTIAL SALE 2007
ADRIAN PROPERTY LLC	MASON	2005
AQUARIUS OWNER LLC	EAST CHARLESTON	2006 SOLD 2007
LAS VEGAS LAND PARTNERS	BLAYLOCK	2006
MEYER PROPERTY LLC	DEVLIN	2006
??	BOOKSTORE	2006
LIVEWORK LLC	SPILATRO	2005
LIVEWORK LLC	DESERT MANOR	2005
LIVEWORK LLC	BIGELOW "DAISY"	2005
LIVEWORK LLC	BIGELOW	2005
LIVEWORK LLC	SUNSTATE	2005
LIVEWORK LLC	APACHE	2005
LIVEWORK LLC	TOWERS	2005
LIVEWORK LLC	GLENNEN	2005
LIVEWORK LLC	COLEMAN	2005
LIVEWORK LLC	BEESLEY	2006
LIVEWORK LLC	TRIOPOLY	2006
LIVEWORK LLC	LOGAN	2006
LIVEWORK LLC	CROMER	2007

EXHIBIT "D"

2015—08-11 1st document prod

01-2006 Signature Bank Statements.pdf
02-2007 Signature Bank Statements.pdf
03-2008 Signature Bank Statements.pdf
04-2009 Signature Bank Statements.pdf
05_October-December 2011 Signature Bank Statements.pdf
06_January-December 2012 Signature Bank Statements.pdf
07_January-December 2013 Signature Bank Statements.pdf
08_January-March 2014 Signature Bank Statements.pdf
09_2013 Federal and NY State Tax Returns.pdf
10_2012 Federal and NY State Tax Returns.pdf
11_2011 Federal and NY State Tax Returns.pdf
12_2010 Federal and NY State Tax Returns.pdf
13_2009 Federal and NY State Tax Returns.pdf
14_2008 Federal and NY State Tax Returns.pdf
15_2007 Federal and NY State Tax Returns.pdf
16_2006 Federal and NY State Tax Returns.pdf
17_2013 Federal and NY State Tax Returns.pdf
18_Management Agreements.pdf
19_Entity & Organizational Documents.pdf
Index to bind # 1.doc

2015---08-28 2d doc production

01_Closing Binder 01-11-2006.pdf
02_Sale of Livework to Forest City.pdf
03_Unanimous Consnet of The Members of LV Land Partners LLC.pdf
04_Demand Promissory Note 02-01-2008.pdf
05_Lav Land Partners and Regional Trans. Commission of S. NV.pdf
06_Certificate of Borrower Leah Property.pdf
07_Sale of Casino Center Property.pdf

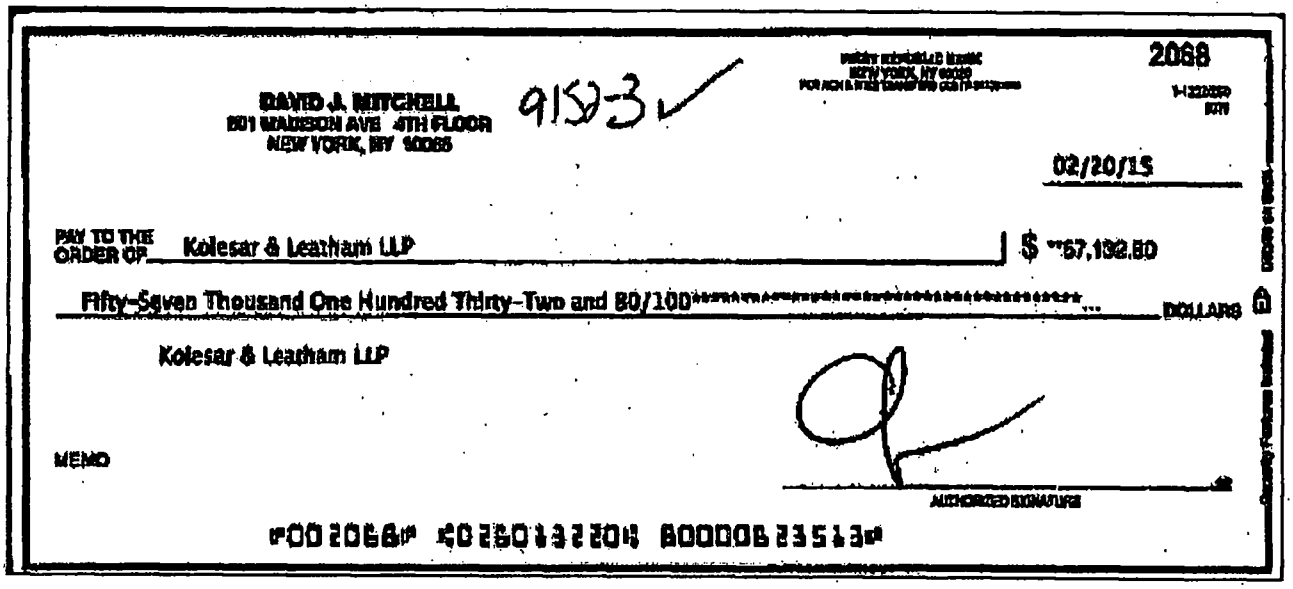
2015---09-01 3d doc production

PDF (Folder, Contains Tab01.pdf through Tab19.pdf)
Cromer Purchase Agreement (Final Executed).pdf
First Amendment to Parking Lot Contract.pdf
Guggenheim Corporate Funding, LLC.pdf
INDEX.pdf
Parking Lot Contract.pdf
Purchase Agreement (with Amendment & Assignment) - Tripoly.pdf
Queen of Hearts Executred Final Purchase Sale Agreement.pdf
2nd Letter Agreement Amending Logan Contract.doc
Book Store Property Contract.doc
Letter Agreement Amending Book Store Contract.doc
Letter Agreement Amending Logan Contract.doc
Logan Trust (Oregon) Contract of Sale (outside).doc

2015---10 - LVLP Supplemental Docs produced

2015—11-12 COPY OF LVLP TAX RETURN FOR 2014.pdf
lvlp3a.pdf
LVLP 2006 Ledger.pdf
LVLP 2007 Ledger.pdf
LVLP 2008 Ledger.pdf
LVLP 2009 Ledger.pdf
LVLP 2010 Ledger.pdf

EXHIBIT "E"



DAVID J. MITCHELL
801 MADISON AVE 4TH FLOOR
NEW YORK, NY 10065

9153

2068

02/20/15

PAY TO THE ORDER OF Kolesar & Leatham LLP $ **57,132.80

Fifty-Seven Thousand One Hundred Thirty-Two and 80/100********** DOLLARS

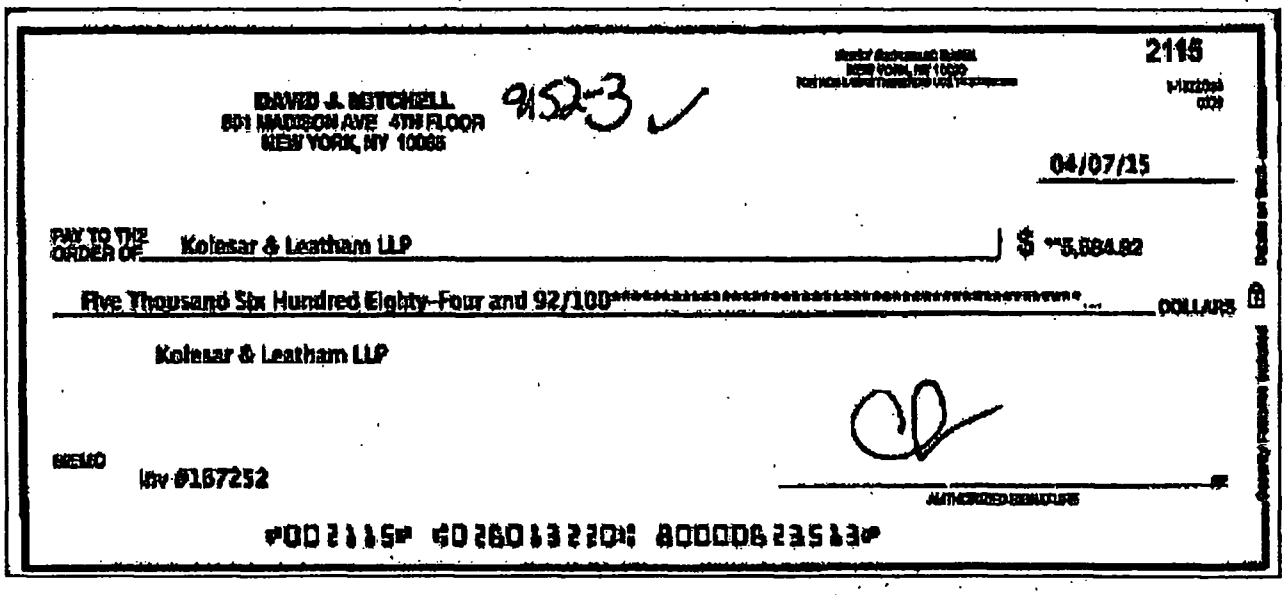
Kolesar & Leatham LLP

MEMO

AUTHORIZED SIGNATURE

⑈002068⑈ ⑆021300132⑆ 800008235513⑈

Check # 2068 Date 2/26/2015 Amount $57,132.80



DAVID J. MITCHELL
501 MADISON AVE 4TH FLOOR
NEW YORK, NY 10065

9523

2115

04/07/15

PAY TO THE ORDER OF Kolesar & Leatham LLP $ **5,684.92

Five Thousand Six Hundred Eighty-Four and 92/100********** DOLLARS

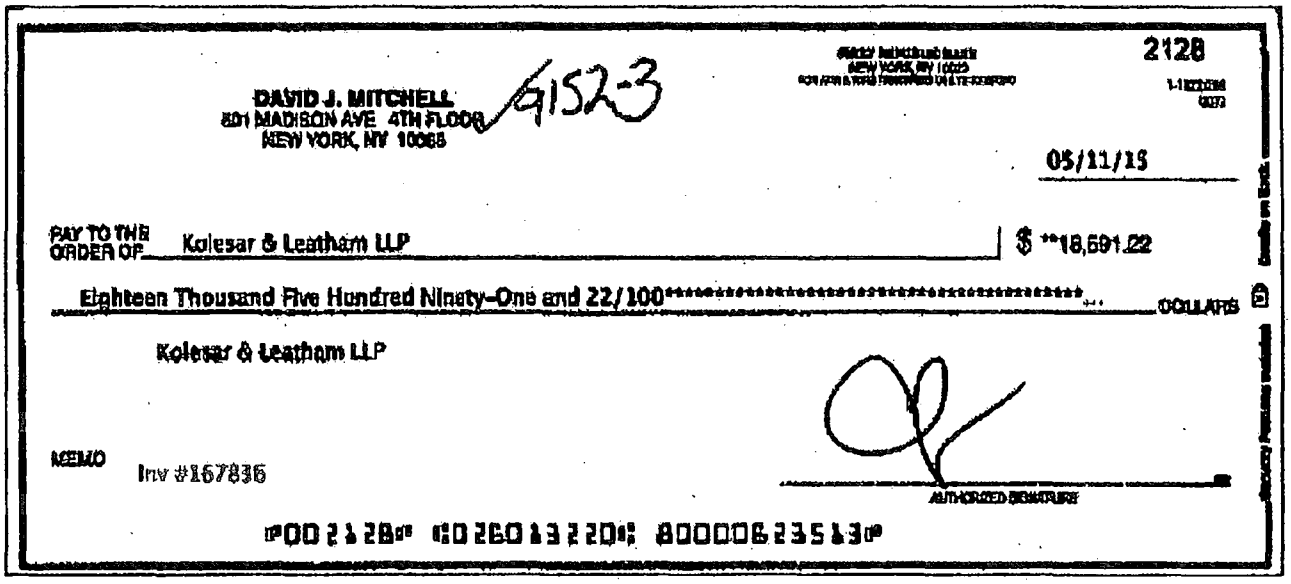
Kolesar & Leatham LLP

MEMO Inv 0167252

AUTHORIZED SIGNATURE

⑈002115⑈ ⑆026013220⑆ 8000086235 13⑈

Check # 2115 Date 4/14/2015 Amount $5,684.92



DAVID J. MITCHELL
501 MADISON AVE 4TH FLOOR
NEW YORK, NY 10065

6152-3

2128

05/11/15

PAY TO THE ORDER OF Kolesar & Leatham LLP $ **18,591.22

Eighteen Thousand Five Hundred Ninety-One and 22/100********** DOLLARS

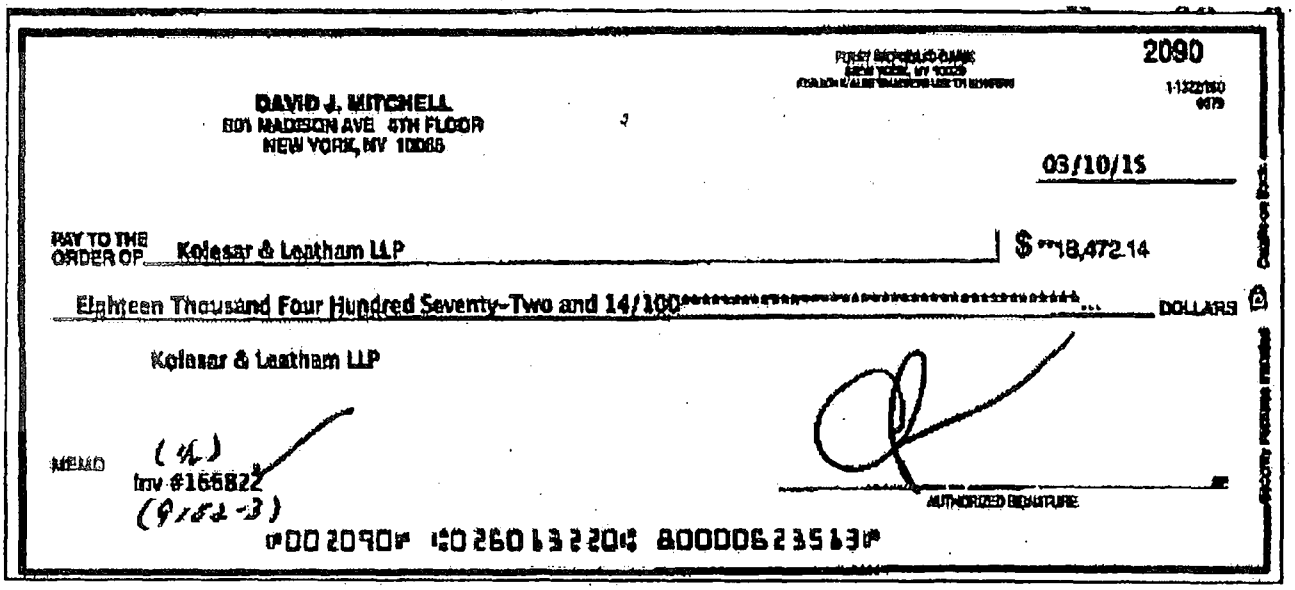
Kolesar & Leatham LLP

MEMO Inv #167836

AUTHORIZED SIGNATURE

⑈002128⑈ ⑆026013220⑆ 800006235613⑈

Check # 2128 Date 5/19/2015 Amount $18,591.22



DAVID J. MITCHELL
501 MADISON AVE 5TH FLOOR
NEW YORK, NY 10065

2090

03/10/15

PAY TO THE ORDER OF Kolesar & Leatham LLP $ **18,472.14

Eighteen Thousand Four Hundred Seventy-Two and 14/100********** DOLLARS

Kolesar & Leatham LLP

MEMO (4) Inv #166822 (9162-3)

AUTHORIZED SIGNATURE

⑈002090⑈ ⑆026013220⑆ 800006235630⑈

Check # 2090 Date 3/17/2015 Amount $18,472.14

Transaction Details Prepared for
David J Mitchell
Account Number
XXXX-XXXXXX-66003

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
APR27 2016	HAYES AND WELSH OP 899000002931176 - HENDERSON, NV	DAVID J MITCHELL	$335.45

Doing business as:
HAYES & WELSH OP
199 N ARROYO GRANDE BLVD STE 200
HENDERSON
NV
89074
UNITED STATES OF AMERICA (THE)
702.434.3444

Additional Information: GHAYES@LVLAW.COM
Reference: 320161190267761695
Category: Business Services - Legal Services

Transaction Details Prepared for
David J Mitchell
Account Number
XXXX-XXXXXX-66003

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
MAY24 2016	HAYES AND WELSH OP 889000002931176 - HENDERSON, NV	DAVID J MITCHELL	$12,500.00

Doing business as:

HAYES & WELSH OP

199 N ARROYO GRANDE BLVD STE 200

HENDERSON

NV

89074

UNITED STATES OF AMERICA (THE)

702.434.3444

Additional Information: GHAYES@LVLAW.COM

Reference: 320161460728742622

Category: Business Services - Legal Services

Transaction Details Prepared for
David J Mitchell
Account Number
XXXX-XXXXXX-66003

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
JUN20 2016	HAYES AND WELSH OP 899000002931176 - HENDERSON, NV	DAVID J MITCHELL	$12,500.00

Doing business as:

HAYES & WELSH OP

199 N ARROYO GRANDE BLVD STE 200

HENDERSON

NV

89074

UNITED STATES OF AMERICA (THE)

702.434.3444

Additional Information: GHAYES@LVLAW.COM

Reference: 320161730190593248

Category: Business Services - Legal Services

Transaction Details Prepared for
David J Mitchell
Account Number
XXXX-XXXXXX-66003

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
FEB1 2016	MARQUIS AURBACH COFFIN - LAS VEGAS, NV	DAVID J MITCHELL	$12,500.00

Doing business as:
MARQUIS AURBACH COFFING PC
10001 PARK RUN DR
LAS VEGAS
NV
89145
UNITED STATES OF AMERICA (THE)
702.382.0711

Additional Information: 702-382-0711
Reference: 320160330861139406
Category: Business Services - Legal Services

Transaction Details Prepared for
David J Mitchell
Account Number
XXXX-XXXXXX-66003

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
MAY2 2016	MARQUIS AURBACH COFFIN - LAS VEGAS, NV	DAVID J MITCHELL	$37,500.00

Doing business as:

MARQUIS AURBACH COFFING PC

10001 PARK RUN DR

LAS VEGAS

NV

89145

UNITED STATES OF AMERICA (THE)

702.382.0711

Additional Information: 702-382-0711

Reference: 320161240369539112

Category: Business Services - Legal Services

Transaction Details Prepared for
David J Mitchell
Account Number
XXXX-XXXXXX-93009

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
MAR21 2016	MARQUIS AURBACH COFFIN - LAS VEGAS, NV	DAVID J MITCHELL	$12,500.00

Doing business as:
MARQUIS AURBACH COFFING PC
10001 PARK RUN DR
LAS VEGAS
NV
89145
UNITED STATES
702.382.0711

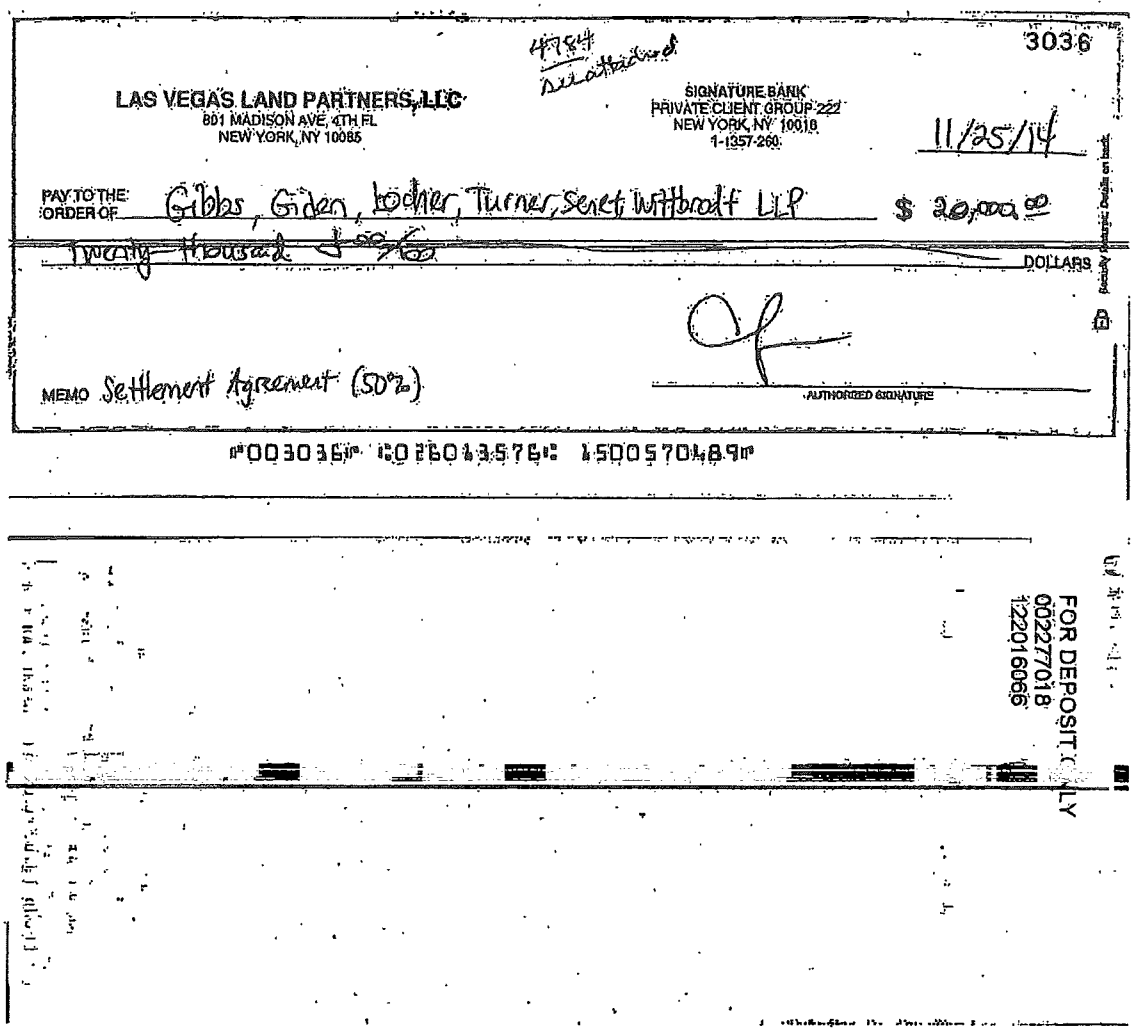
Additional Information: 702-382-0711
Reference: 320160820651585996
Category: Business Services - Legal Services

Transaction Details Prepared for
David J Mitchell
Account Number
XXXX-XXXXXX-93009

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
JUN27 2016	MARQUIS AURBACH COFFIN - LAS VEGAS, NV	DAVID J MITCHELL	$37,500.00

Doing business as:
MARQUIS AURBACH COFFING PC
10001 PARK RUN DR
LAS VEGAS
NV
89145
UNITED STATES
702.382.0711

Additional Information: 702-382-0711
Reference: 320161800307454991
Category: Business Services - Legal Services



LAS VEGAS LAND PARTNERS, LLC
801 MADISON AVE, 4TH FL
NEW YORK, NY 10065

SIGNATURE BANK
PRIVATE CLIENT GROUP 222
NEW YORK, NY 10018
1-1357-260

4784
Declined

3036

11/25/14

PAY TO THE ORDER OF Gibbs, Giden, Locher, Turner, Senet, Wittbrodt LLP $ 20,000.00

Twenty Thousand & 00/100 DOLLARS

MEMO Settlement Agreement (50%)

AUTHORIZED SIGNATURE

⑈003036⑈ ⑆026013576⑆ 1500570489⑈

FOR DEPOSIT ONLY
002277018
122016066

EXHIBIT "4"

JOHN W. MUIJE & ASSOCIATES
JOHN W. MUIJE, ESQ.
Nevada Bar No. 2419
1840 East Sahara Avenue, #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Facsimile: 702- 386-9135
E-Mail: jmuije@muijelawoffice.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC, DOES I through X; DOES I through X; DOE CORPORATIONS I through X; and DOES PARTNERSHIPS I through X,

Plaintiffs,

vs.

DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC SUCCESSOR, LLC; CASINO COOLIDGE LLC; DOES I through III, and ROE CORPORATIONS I through III, inclusive,

Entity Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

LAW OFFICES
JOHN W. MUIJE & ASSOCIATES
1840 E. SAHARA AVE. #106
LAS VEGAS, NEVADA 89104
Phone: (702) 386-7002 Fax: (702) 386-9135

PLAINTIFF'S SUPPLEMENTAL EXPERT WITNESS REPORT

COME NOW, Plaintiffs, RUSSELL L. NYPE AND REVENUE PLUS, LLC, by and through their counsel of record, JOHN W. MUIJE, ESQ., of the Law Offices of JOHN W. MUIJE &

....

....

....

ASSOCIATES, and pursuant to NRCP Rule 16.1 and NRCP 26(e)(1) hereby supplement the Initial Expert Witness Report of Mark D. Rich, CPA, CFF.

DATED this 25th day of November, 2019.

JOHN W. MUIJE & ASSOCIATES

By: /S? JohnW Muije
JOHN W. MUIJE, ESQ.
Nevada Bar No: 2419
1840 E. Sahara Ave #106
Las Vegas, NV 89104
Phone No: (702) 386-7002
Fax No: (702) 386-9135
Email: Jmuije@muijelawoffice.com
Attorneys for Plaintiffs

EXPERT WITNESS

1. MARK D. RICH, CPA, CFF
RICH, WRIGHTMAN & COMPANY, CPAs, LLC
1301 South Jones Boulevard
Las Vegas, Nevada 89146
Telephone: (702) 878-0959

Mark D. Rich, CPA, CFF will testify as to his professional opinions concerning this litigation matter, on behalf of Plaintiffs, in the above-captioned matter, as set forth in more detail in his report.

. . . .

. . . .

. . . .

. . . .

. . . .

LAW OFFICES
JOHN W. MUIJE & ASSOCIATES
1840 E. SAHARA AVE. #106
LAS VEGAS, NEVADA 89104
Phone: (702) 386-7002 Fax: (702) 386-9135

This Supplement consists of Mark Rich's

Expert Report of
January 11, 2019

Supplemented
November 22, 2019

as attached hereto, using Bates numbers RICH 2253 through RICH 2276.

DATED this 25th day of November, 2019.

JOHN W. MUIJE & ASSOCIATES

By: /S/ JohnW Muije
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CERTIFICATE OF MAILING

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 25th day of November, 2019, I caused the foregoing document, **PLAINTIFF'S SUPPLEMENTAL EXPERT WITNESS REPORT,** to be served as follows:

☐ By placing a copy of the same for mailing in the United States mail, with first-class postage prepaid addressed as follows; and/or

☒ By electronically filing with the Clerk of the Court via the Odyssey E-File and Serve System;

☐ By placing a copy of the same for mailing in the United States mail, with first-class postage prepaid marked certified return receipt requested addressed as follows:

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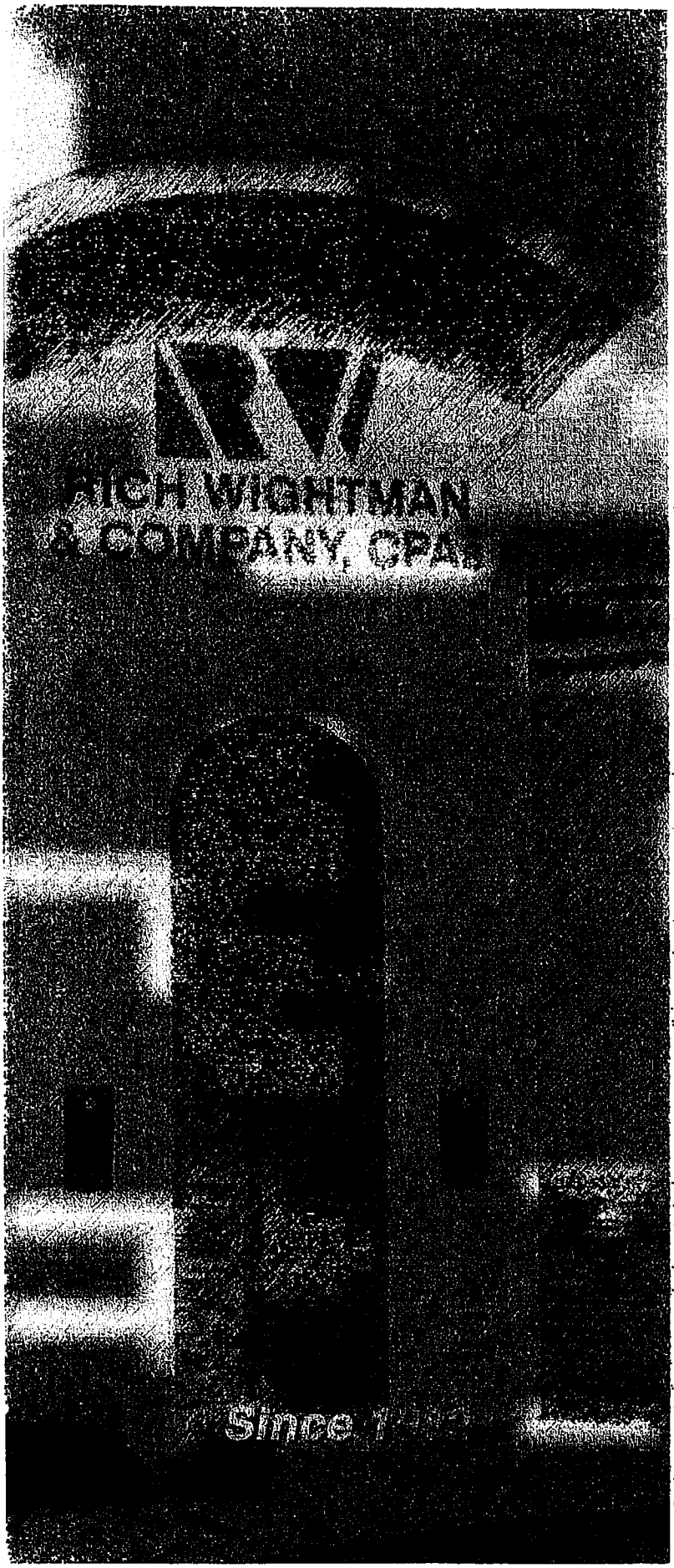
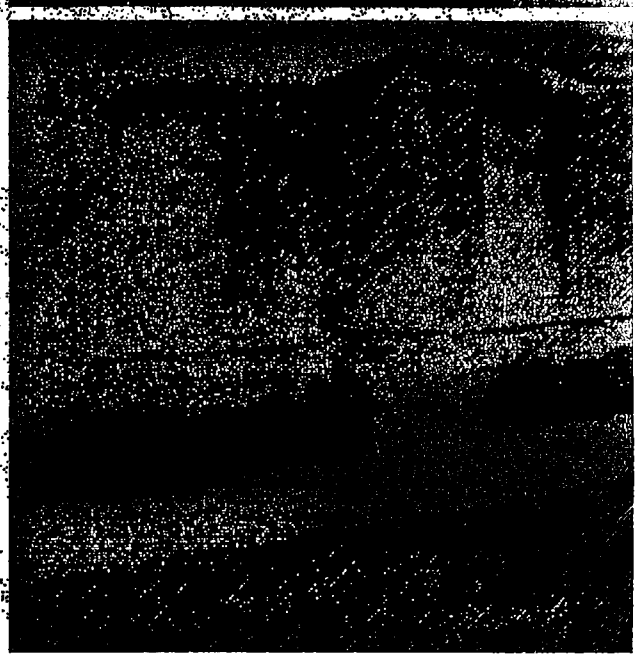


RICH
WIGHTMAN
& COMPANY
Certified Public Accountants



DISTRICT COURT

CLARK COUNTY, NEVADA

CASE NO: A-16-740689-B

RUSSELL L. NYPE; REVENUE PLUS, LLC,
DOES I through X; DOE CORPORATIONS I through X;
and DOES PARTNERSHIPS I through X,

VS.

DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVEWORK, LLC; LIVEWORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; 305 LAS VEGAS, LLC; L/W TIC SUCCESSOR, LLC; FC/LW VEGAS, LLC; CASINO COOLIDGE, LLC; DOES I through III and ROE CORPORATIONS I through III

Expert Report of

Rich, Wightman & Company, CPAs, LLC
Mark D. Rich, CPA, CFF

January 11, 2019

Supplemented
November 22, 2019

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I have been engaged to provide expert witness and litigation consultation services on behalf of the following Plaintiffs in this case, Russell L. Nype (hereinafter Nype) and Revenue Plus, LLC (hereinafter Revenue Plus); (hereinafter collectively Plaintiffs). Attached as Exhibit **RWCO 001** is a copy of my Curriculum Vitae, including case history, publications and billing rates. Attached as Exhibit **RWCO 002** is a copy of our engagement letter. The fees charged pursuant to our engagement letter are not contingent on our opinion or the outcome of this case. I am the founding partner of Rich, Wightman & Company, CPAs, LLC (hereinafter RWCO). I have over 37 years of experience practicing as a Certified Public Accountant (CPA) and providing litigation support services. I am also Certified in Financial Forensics (CFF) by the American Institute of Certified Public Accountants (AICPA). Over the course of my career, I have provided litigation consultations, performed forensic procedures, calculated damages, given testimony, and prepared reports related to various complex litigation issues in my fields of expertise.

As part of this engagement, we have been asked to analyze numerous financial and other data to determine if there is any merit pertaining to certain claims asserted by Plaintiffs against Defendants: David J. Mitchell (hereinafter Mitchell); Barnet Liberman (hereinafter Liberman); Las Vegas Land Partners (hereinafter LVLP); Meyer Property, LTD (hereinafter Meyer); Zoe Property, LLC (hereinafter Zoe); Leah Property, LLC (hereinafter Leah); Wink One, LLC (hereinafter Wink); LiveWork, LLC (hereinafter LiveWork); LiveWork Manager, LLC (hereinafter LiveWork Manager); Aquarius Owner, LLC (hereinafter Aquarius); LVLP Holdings (hereinafter LVLP Holdings); Mitchell Holdings, LLC (hereinafter Mitchel Holdings); 305 Las Vegas, LLC (hereinafter 305); L/W TIC Successor, LLC (hereinafter L/W TIC); FC/LW Vegas, LLC (hereinafter FC/LW); Casino Coolidge, LLC (hereinafter Coolidge); (hereinafter collectively as Defendants). The documents provided and analyzed for this engagement are those listed in Exhibit **RWCO 003** and supplemented at **RWCO 025.** It is important to note that Mitch0000001-1386964 were received on November 4, 2019. At the date of this supplemented report the documents related to Mitchell's 5th supplement are still under review. While certain of these documents may be referenced and included as exhibits within our report, they have not been attached in their entirety due to their copious nature. Additionally, Exhibits **RWCO 001-024** to the original report dated January 11, 2019, including amended exhibits supplemented on February 22, 2019, have not been changed and accordingly are not attached to this supplemented report.

CASE BACKGROUND

Based on our analysis of the documents provided, Plaintiff obtained a judgement (Eighth Judicial District Court in Clark County Nevada under Case No. A551073) against LVLP on or about April 10, 2015 in the amount of $2,608,797.50 plus costs of action in the amount of $140,665.63 related to prior business dealings with LVLP, its associate entities and its principals Liberman and Mitchell. Additionally, pre-judgement interest on awarded costs was calculated to be $23,927.48 and post-judgement interest to the date of this report is calculated to be approximately $1,695,126.40 Exhibit **RWCO 004**. In the initial case, Nype sought compensation from Defendants which he earned during the course of the parties' ongoing business dealings regarding the development of numerous Las Vegas real estate holdings and eventual sale to Forest City (hereinafter FC) in June 2007. Both during the initial proceedings and after defaulting on the obligation of compensation to Nype, Liberman and Mitchell created various affiliated and associated entities as a part of an asset protection scheme to defeat and avoid Plaintiff's rights under the judgement. Defendants also undertook actions related to multiple real property transfers and transferred millions of dollars to its principals Liberman and Mitchell which rendered LVLP insolvent and unable to pay its debts as they matured.

We have been asked to determine whether there is any merit to certain Plaintiff claims by providing our expert opinion based on the aforementioned evidence and other information obtained during our engagement that:

1. Defendants in concerted action developed and implemented a sophisticated scheme for the purposes of secreting, hiding and conveying away valuable assets that were available to satisfy Plaintiff's judgement against LVLP.
2. Defendants transferred millions of dollars in funds between themselves, including substantial distributions to principals Liberman and Mitchell during a time in which Plaintiff's claims were reasonably known.
3. Defendants' actions have effectively rendered LVLP insolvent and unable to pay its debts.
4. Defendants Liberman and Mitchell were and are the alter ego of their Defendant entities; Liberman and Mitchell did and still dominate, influence and control the Defendant entities; the individuality and separateness of the Defendants was and remains nonexistent; Defendant entities comingled funds, revenues, expenses, assets, liabilities and contributed capital; an injustice and fraud will result if the theoretical separateness of the Defendant entities is not disregarded.

SUMMARY CONCLUSION

Based on our analysis of the produced documents and the procedures performed, the evidence indicates that but for this legal action, Defendants would have been successful in secreting, hiding and conveying away valuable assets totaling at least $13,168,259.85 that were available to satisfy Plaintiff's judgement against LVLP.

The produced documents and procedures performed indicate that Defendants transferred millions of dollars in funds between themselves, including repayment of indebtedness and payment of substantial distributions to principals Liberman and Mitchell totaling at least $15,148,339 during a time in which Plaintiff's claims were reasonably known, thus rendering LVLP insolvent.

The produced documents and procedures performed also indicate that Defendants Liberman and Mitchell were and are the alter ego of their Defendant entities. We noted Liberman and Mitchell did and still dominate, influence and control the Defendant entities. We also noted the individuality and separateness of the Defendants was and remains nonexistent as evidenced by Defendant entities comingling of funds, revenues, expenses, assets, liabilities and contributed capital, thus making it virtually impossible to identify transactions by entity.

The produced documents are indicative of an ongoing accounting methodology whereby Defendants have used funds available to satisfy Plaintiff's judgement against Defendant entities by making specifically directed payments to preferred creditors totaling at least $6,989,408.55. Accordingly, the aforementioned diverted amounts that were constructively available to satisfy Plaintiff's judgement against LVLP totals at least $35,306,007.40.

It is our understanding discovery is ongoing and we anticipate receiving additional pertinent subpoenaed information to incorporate into our analyses. We expect such subsequent analyses will add to the quantified amount Defendants have been secreting, hiding and conveying away that would have been available to satisfy Plaintiff's judgement against LVLP.

DEFENDANT TRANSFERS

305 Las Vegas, LLC Note Payable Due To LiveWork, LLC

Based on the analyzed documents, we have identified an unpaid note and accrued interest owing to LiveWork, in excess of $13,168,259.85, Exhibit **RWCO 005**. The amount owed relates to a sale of property on May 2, 2007 to 305 consisting of Land, Building and Improvements located at 300 and 320 Charleston Blvd, Las Vegas, Nevada. It should be noted 305 is a single member Limited Liability Company currently owned by 305 Second Avenue Associates (hereinafter 305 Second Avenue). As a part of the $25,000,000 sale, LiveWork accepted a secured note in the amount of $5,000,000 as to which $700,000 was immediately repaid. The remaining $4,300,000 was to be paid to LiveWork in 36 equal monthly installments of $147,377, including interest at the rate of 14.7% per annum. The unpaid secured note including interest matured on May 2, 2010. At December 31, 2012 the Independent Auditors' Report of 305 Second Avenue reported the total amount in arrears on the note owing to LiveWork to be $6,980,518 as stated in Note 8 to the Financial Statements, Bates 305LV05821. The Auditors of 305 Second Avenue reported in their December 31, 2013 audit that "*No additional interest was accrued for 2013 because management anticipates that interest will not be paid to the lender*" and indicated the entire amount owing to LiveWork was in default as stated in Note 5 to the Financial Statements, Bates 305LV05836. The Auditors reported a "*Write-off Due to Live Work, LLC $6,980,518*" in the December 31, 2014 Statement of Cash Flows of 305 Second Avenue, Bates 305LV05848. Accordingly, the amounts owing to LiveWork on the sale to 305 no longer exist on the December 31, 2014 audited Balance Sheet of 305 Second Avenue, Bates 305LV05844.

The above referenced proceeds from the sale of property on May 2, 2007 by LiveWork to 305 have been traced to the 2007 tax return of LVLP Holdings and property records summarized in our parcel tracking analysis, Exhibit **RWCO 006.** Most importantly, the $6,980,518 secured note and accrued interest owing to LiveWork do not appear on the books and records used to prepare the tax returns of LVLP Holdings in 2012 and 2013, Exhibit **RWCO 007.**

On May 2, 2007, Charleston Casino Partners (hereinafter Charleston Casino) entered into a 49 year lease with 305 to lease the properties located at 300 and 320 Charleston. The Auditors of 305 Second Avenue reported in Note 9 of their December 31, 2014 audit that Charleston Casino did not pay accrued rent totaling $11,835,058 through December 31, 2012, as required under the terms of the lease. Additionally, no additional rent was accrued after that date. The Auditors also reported that the full amounts in arrears "*was charged to Bad Debts expense*". We determined from the tax return of 305 Second Avenue that Liberman is one of the General Partners. Furthermore, Note 11 of the December 31, 2013 audit report states "*One of the General Partners of Associates is also a principal of the lessee*", Bates 305LV05839.

The distinguishing factor between fraud and error is whether the underlying action is determined to be intentional. Based on the evidence produced, one or more principals of the Defendants represented to their Auditors the existence of a secured note owing to LiveWork, while at the same time the same principal(s) represented in the accounting records and tax returns of LVLP Holdings that the secured note did not exist. This act of omission in the accounting records and tax returns of LVLP Holdings is evidence of an intentional misrepresentation of a material fact by Defendant principals to conceal an asset from a judgement creditor.

We determined that the secured note owing to LiveWork could have been repaid if the rents owing by Charleston Casino would have been paid according to the long-term lease agreement. Similarly, numerous other remedies were also available to Defendants such as contributions of capital, loans, and sales of property. But for this legal action, Defendants would have been successful in secreting, hiding and conveying away valuable assets totaling $13,168,259.85 related to the LiveWork secured note that were available to satisfy Plaintiff's judgement against LVLP.

The Independent Auditors' Reports of 305 Second Avenue covering the audit periods 2012, 2013, and 2014 are included in Exhibit **RWCO 008**.

Casino Coolidge, LLC Property Purchase From Leah Property, LLC

Based on the analyzed documents, we have determined that on December 17, 2014 Coolidge, a Defendant entity managed by Principal Liberman, purchased property for $1,000,000 from Defendant entity Leah, a single member entity owned by LVLP. It should be noted that Coolidge was no longer owned by LVLP at the time of the sale. We determined that the property was originally purchased for $3,239,637. The transaction and related (loss) on the sale were recorded in the general ledger of LVLP Holdings using journal entries summarized at Exhibit **RWCO 009.**

The produced documents and procedures performed indicate that the transaction transferred millions of dollars between Defendants during a time in which Plaintiff's claims were reasonably known, thus rendering LVLP insolvent.

It is our understanding discovery is ongoing and we anticipate receiving additional pertinent subpoenaed information to incorporate into our analyses. We expect such subsequent analyses will add to the quantified amount Defendants have been secreting, hiding and conveying away that would have been available to satisfy Plaintiff's judgement against LVLP.

Distributions from LVLP Holdings to Liberman and Mitchell

Based on our analysis, it is evident from the produced documents that Liberman and Mitchell reported distributions totaling $15,148,339 on the LVLP Holdings tax returns from 2007 to 2016. It should be noted that a produced supporting schedule, Bates SPZ000437, does not agree with the tax return excerpts included in Exhibit **RWCO 010**.

We determined the net cash proceeds available for use as working capital arising from the initial sale to FC from LiveWork in June 2007 was $5,189,508.38, not including $430,068 withheld in the closing specifically for Plaintiff that was never paid by Defendants. Based on fragmentary accounting records, the net cash proceeds arising from the LiveWork sale to 305 in May 2007 was approximately $3,500,000.

We also found loan schedules in the produced documents reflecting accrued interest calculations, Bates SPZ000854 to 859, related to purported loans and repayments to/from Defendant entities by principals Liberman and Mitchell. We also found conflicting contributed capital/distribution schedules to/from Defendant entities by principals Liberman and Mitchell for the same amounts, Bates SPZ000861 to 868, Exhibit **RWCO 011**. It is evident from our procedures that there was a conscious attempt to recharacterize millions of dollars in capital contributions and distributions as loan activity in an attempt to conceal funds available to satisfy Plaintiff's judgement against Defendant entities.

The produced documents are indicative of an ongoing accounting methodology whereby Defendants have used funds available to satisfy Plaintiff's judgement against Defendant entities by making specifically directed payments to preferred creditors. We determined that capital contributions to LVLP Holdings are consistently followed by disbursements to creditors totaling a similar or same amount. We also determined that Defendant principal Mitchell contributed capital totaling at least $6,989,408.55 related to specific preferred creditors over the course of several years. Exhibit **RWCO 012** illustrates the methodology used for preferred payments to creditors by comparing capital contributions listed on the "David Mitchell-Amounts Paid" schedule, Bates SPZ000876 to 880, with deposits and subsequent disbursements listed in the cash account activity of the 2014 LVLP general ledger, Bates SPZ000900 to 909. Additional Defendant schedules reflecting similar disbursements can also be found at Bates MIT000734 to 744 and LVLP000113. It is important to note there is no evidence that such contributed capital has ever been designated or associated to a specific Defendant entity.

A lack of individuality and separateness of the Defendants caused all distributions and repayments of loans to principals Liberman and Mitchell to be virtually impossible to distinguish by their nature or associate by entity. Accordingly, the above referenced distributions and repayments are reflective of funds available to satisfy Plaintiff's judgement against LVLP during a time in which Plaintiff's claims were reasonably known. Additionally, the above actions have effectively rendered LVLP insolvent and unable to pay its debts.

Distributions/Repayment of Loans from Forest City Entities

As previously discussed, Nype sought compensation from Defendants which he earned during the course of the parties' ongoing business dealings regarding the development of numerous Las Vegas real estate holdings and eventual sale to FC in June 2007. More specifically, using two entities, FC Vegas 39, LLC (hereinafter FC39) and FC Vegas 20, LLC (hereinafter FC20), FC purchased an

aggregate 60% equity interest in certain parcels delineated and tracked in Exhibit **RWCO 013** for $82,357,574.67 and arranged refinancing through KeyBank. The original Final Settlement Statement can be found at Exhibit **RWCO 014**. As a part of the initial sale, LiveWork, FC39 and FC20 entered into Tenants In Common Agreements (hereinafter TIC) to set forth the respective rights and obligations with respect to the numerous parcels included in the transaction. Subsequent to the initial sale, LiveWork, FC39 and FC20 began to transfer the parcels into various other entities to develop, lease, and/or sell. Significant parcel transactions include the Regional Transportation Center (hereinafter RTC) and Las Vegas City Hall (hereinafter City Hall). Additionally, a block of parcels were transferred to FC/LW and subsequently sold. It should be noted that the RTC transaction includes a 40 year lease that provides rental revenue totaling over $106,000,000 through January 2048. See Exhibit **RWCO 015** for our reconstructed details of the parcels by transaction. We noted the FC TICs were later modified to effectively reduce Plaintiff entities' share from 40% to 10% in order to repay loans and advances made by FC, despite the fact that the original TIC already contemplated and provided for capital calls.

The produced documents and procedures performed indicate that Defendants transferred millions of dollars in funds between themselves, including repayment of indebtedness and payment of substantial distributions to principals Liberman and Mitchell during a time in which Plaintiffs' claims were reasonably known, thus rendering LVLP insolvent and able to meet FC capital requirements.

It is our understanding discovery is ongoing and we anticipate receiving additional pertinent subpoenaed information to incorporate into our analyses of the FC income, expenses and distributions. We expect such subsequent analyses will add to the quantified amount Defendants have been secreting, hiding and conveying away that would have been available to satisfy Plaintiff's judgement against LVLP.

DEFENDANT TRANSFERS Supplemented November 22, 2019

305 Las Vegas, LLC Note Payable Due To LiveWork, LLC

Subsequent to our report dated January 11, 2019, it was determined that Charleston Casino Partners LLC is owned by LVLP, Bates 305LV20156. We noted in our original report that Charleston Casino did not pay accrued rent and interest totaling $11,835,058 through December 31, 2012 as required under the terms of the lease, Bates 305LV05854. Accordingly, the lack of rental payments by Charleston Casino significantly contributed to foreclosure proceedings by Heartland Bank against 300, 320 and 330 Charleston Blvd, Las Vegas, Nevada which are held by 305. It should be noted that 300 and 320 Charleston Blvd, also known as Aquarius Plaza, secured LiveWork's Deed of Trust, Bates 305LV05989-5992. A settlement agreement was reached on August 29, 2014 between the lender Heartland Bank, the borrower 305 and the collective guarantors Mitchell, Liberman and 305 Second Avenue. As a part of the settlement, Heartland agreed to restructure their loans with an aggregate pre-settlement principal balance of $9,150,000. Terms of the restructure agreement included principal payments by the borrower and guarantors to the lender totaling $2,750,000, consisting of $750,000 from the borrower, and $750,000 from Liberman and $1,250,000 from Mitchell as guarantors. Heartland agreed to restate and reduce the principal balance to $4,500,000. Additionally, Liberman and 305 Second Avenue agreed to guarantee up to $2,000,000 of the reduced balance owed to Heartland Bank. See Bates 305LV05853, 305LV03293-3345.

LiveWork was not a party to the Heartland Bank settlement agreement. On May 31, 2013 Livework filed a civil complaint against 305 related to its $5,000,000 note due from 305 along with accrued interest from May 2, 2007. The complaint alleges that payments were never made on the note neither through the date of maturity on May 2, 2010 or to the date of the complaint. At the time of the complaint, the balance due on the note exceeded $10,000,000, including principal and interest. See Bates 305LV05962-5979. On September 15, 2014, the complaint was dismissed with prejudice. See Bates 305LV05980-5981. On September 15,2014, 305 Second Avenue wrote off the balance due to LiveWork, Bates 305LV06004-06008.

Casino Coolidge, LLC Property Purchase From Leah Property, LLC

Subsequent to the issuance of our report dated January 11, 2019, it was determined that Principals Mitchell and Liberman personally received net proceeds $91,934.47 and $250,000, respectively, arising from the sale of the Leah property to Coolidge, Bates CC000150.

Distributions/Repayment of Loans from Forest City Entities

Subsequent to the issuance of our report dated January 11, 2019, it was determined that LiveWork maintained an unrecorded US Bank account used primarily to account for rental operations related to the FC/LW parcels mentioned above. It should be noted there is no evidence that either FC/LW, LVLP or any defendant entity reported the activity of the bank account for 2011 and 2012. Fragmentary monthly management reports produced indicate that the 2011 and 2012 total revenues collected were $1,008,206 and $1,033,818, respectively. See Bates 305LV24599 and 25159. Additionally, the reconciled cash balance in the bank account at the end of 2011 and 2012 was $433,343 and $329,338, respectively. See Bates 305LV24603 and 25163, LVLP11-00006 and LVLP005242. There is only evidence of a distribution in the amount of $300,000 from the bank account recorded as "Other income" in the 2012 tax return of FC/LW. See Bates 305LV23295 and 25152, FCSUB0001516-1539. Bates for rental reports months of January, 2011, December, 2011, January, 2012 and December, 2012; 305LV23287-23375, 305LV24584-24644, 305LV24653-24713, 305LV25149-25213. Bates for LVLP 2011 and 2012 tax returns; LVLP11-00001-24, LVLP005238-5258. Bates for FC/LW 2011 and 2012 tax returns; LVLP005217-5245, FCSUB0001516-1539 (FC/LW 2011 and 2012 tax returns Bates LVLP005217-5269 contain duplicate bates). In November and December of 2015 the FC/LW properties were sold in two separate transactions. See Bates FATCOSUB_00025956-25957, 36642-36643. As a part of those transactions, FC/LW received cash in excess of $2,200,000. It should be noted there is no evidence that LVLP deposited any portion of those proceeds. Bates SPZ000506-522. Additionally, FC/LW received two separate notes and deeds of trust in the amounts of $2,450,250 and $3,384,612. Following the sale of its properties, FC/LW filed a 2015 tax return notifying the IRS of a "Final Return". See Bates FCSUB0001586-1614. It is important to note that the LVLP 2015 and 2016 Balance Sheets do not reflect any amounts due from the seller or FC/LW, nor does it record any activity such as interest income for the period January through December 2016 related to collections on the installment notes. SPZ0000532, 665, 682.

It was also determined there is no evidence that rents related to the RTC were properly reported in the records of LVLP or any other defendant entity. The scheduled RTC rents beginning in 2008 were well over $1,250,000 per year and have grown to $1,832,554 per year by 2019. See bates MIT002748 and 2725. There is only evidence of small sporadic amounts wired from BNY Mellon recorded in the records of LVLP. Similar to the FC/LW rental operations, it appears that only distributions received are recorded as income, while millions of dollars in actual RTC rental activity

are omitted from the records of LVLP. The LVLP 2013 and 2014 accounting records reflect income of only $587 and $605, respectively, related to the RTC rental activity flowing from its wholly owned Limited Liability Company Wink, the RTC parcel owner. See Bates SPZ000245 and 435. At the date of this report several attempts to subpoena the BNY Mellon records related to the RTC have been unsuccessful.

Evidence exists to indicate LVLP has established a method of operation whereby revenues and expenses are materially underreported by only recording distributions received from materially significant operating activities. This methodology serves to misstate the true size and nature of LVLP and related defendant entities' operating activities.

COMINGLING OF FUNDS BY DEFENDANTS

Based on our analysis of the produced documents and the procedures performed, the evidence indicates that Defendants have and continue to blatantly comingle funds and activities. Defendant entities under the name of "Las Vegas Land Partners, LLC" used the same bank accounts to deposit funds and disburse funds, including distributions to the principals Liberman and Mitchell from at least 2006 to 2015, making it virtually impossible to identify transactions by entity, Exhibit **RWCO 016.** Defendant entities use and have used the same general ledger to post all entries under the name of "Las Vegas Land Partners", making it virtually impossible to identify transactions by entity. Page 1 of General Ledgers for each year can be found at Exhibit **RWCO 017**. Defendant entities filed one tax return from its inception in 2005 to 2016 under the name of LVLP Holdings, making it virtually impossible to identify transactions by entity. It should be noted that the Defendant entities combined within the tax returns and identified by the tax preparer include approximately 14 separate single member entities, Exhibit **RWCO 018**. The comingling of activity also includes principals Liberman and Mitchell as evidenced by personal loans from various banks which are included in the LVLP records and general ledger, Exhibit **RWCO 019**. Additionally, Defendants used journal entries to post comingled transactions from at least 2006 to 2016, many of which reflect millions of dollars in transactions related to principals Liberman and Mitchell, making it virtually impossible to identify transactions by purpose and/or entity. Excerpts of LVLP Adjusting Journal Entries can be found at Exhibit **RWCO 020**. It should be noted that during 2016 and shortly after Plaintiff's judgement was obtained, Defendants entirely stopped using bank accounts and instead began using journal entries to post entries apparently transacted personally by principals Liberman and Mitchell, Exhibit **RWCO 021.**

Principal Liberman testified in his deposition of October 10, 2018 that he did not see a need to keep separate records between the Defendants. When asked, "*Given that they all appear to run through one ledger and one checkbook, how are you able to allocate income and expenses between those entities?*" he answered: "*I don't know why we would.*" Liberman goes on to answer "*Why would we? It all was part of--they were all derivative from one entity, and all the money came in and all of the money went out. Did it matter that I took a cab from one piece of property to another piece of property? No. I don't see why it mattered*", Exhibit **RWCO 022.**

The produced documents and procedures performed also indicate that Defendants Liberman and Mitchell were and are the alter ego of their Defendant entities. We noted Liberman and Mitchell did and still dominate, influence and control the Defendant entities. We also noted the individuality and separateness of Defendants was and remains nonexistent as evidenced by Defendant entities comingling of funds, revenues, expenses, assets, liabilities and contributed capital, thus making it virtually impossible to identify transactions by entity.

It is our understanding discovery is ongoing and we anticipate receiving additional pertinent subpoenaed information to incorporate into our analyses. We expect such subsequent analyses will add to the quantified amount Defendants have been secreting, hiding and conveying away that would have been available to satisfy Plaintiff's judgement against LVLP.

COMINGLING OF FUNDS BY DEFENDANTS Supplemented November 22, 2019

Subsequent to the issuance of our report dated January 11, 2019, it was determined from tax return schedules that 305 Second Avenue maintained intercompany accounts with Charleston Casino over a period of at least 3 tax years, Bates 305LV03521, 3629, 4150.

Subsequent to the issuance of our report dated January 11, 2019, it was determined that on July 17, 2012 a series of emails provide instructions from David Mitchell to no longer wire income into the Signature account, but instead to Heartland Bank into a 305 account, Bates 305LV25065-25066.

ACCOUNTING RECORDS

Historical Accountings:

As part of this engagement, we conducted significant analyses of the Defendant entities' historical accountings to determine if their respective accountings were performed separately, completely and accurately and whether they contained any fraudulent or improper accountings. Part of this analysis consisted of analyzing thousands of pages of financial documents including audited financial statements of a related entity, income tax returns, internal-management purpose financial statements, banking information, check registers and general ledger accounting records, among other documents.

We found that Defendant entities' records are fragmentary and incomplete, lacking supporting underlying documents and cannot be relied upon. We also noted the individuality and separateness of the accounting records is nonexistent as evidenced by Defendant entities comingling of funds, revenues, expenses, assets, liabilities and contributed capital, thus making it virtually impossible to identify transactions by entity.

Internal Controls:

The Committee on Sponsoring Organizations (COSO) defines internal controls as "*the process designed to provide reasonable assurance regarding the achievement of objectives in the following categories: a) reliability of financial reporting, b) effectiveness and efficiency of operations, and c) compliance with applicable laws and regulations.*" A company with strong and effective internal controls is one in which fraud is less likely to occur whereas a company with weak and ineffective internal controls is one in which fraud is more likely to occur. As part of our procedures we assessed the existence of accounting policies, procedures and internal controls and the effectiveness of such internal controls. After doing so, we noted that each of the entities have virtually no controls to govern payables, receivables, cash management, fixed assets, debts, month-end closings, revenues, operating expenses, contracts, and financial reporting to name a few. It is apparent that the accounting records include personal transactions, postings comingled from multiple entities, and unknown adjusting journal entries totaling millions of dollars each year. The LVLP general ledger simply represents a collection of transactions whose postings are controlled and directed by principals Liberman and Mitchell.

We determined that the accounting records of Defendants are materially inconsistent with regard to the Independent Auditors' Reports of the 305 Second Avenue payable to LiveWork in the amount of $6,980,518. But for this legal action, Defendants would have been successful in secreting, hiding and conveying away valuable assets totaling $13,168,259.85 related to the LiveWork amount due that should have been available to satisfy Plaintiff's judgement against LVLP.

Control Environment:

During the depositions of Liberman and Mitchell, we noted the overall Control Environment with regard to Defendant entities and specifically the collective *tone at the top of the organizations* or in other words, management's conveyed attitudes towards behavior, was cavalier regarding the importance of management maintaining individuality and separateness of each entity, the necessity of accurate postings, and ensuring retention of supporting records.

Accountant' Records

Our procedures included conducting significant analyses of the Defendant entities outside accountant Firm's data to determine if their respective accountings were performed separately, completely and accurately and whether they contained any fraudulent or improper accountings. We found that the records of the outside accounting Firm are similarly fragmentary and incomplete, lacking supporting underlying documents and cannot be relied upon. An example of the extreme condition of the accounting records is best illustrated by the "LVLP Holdings" schedule of "Unallocated contributions from partners" totaling $3,531,239.33, Exhibit **RWCO 023.**

We also noted the individuality and separateness of the accounting records was and remains nonexistent as evidenced by Defendant entities comingling of funds, revenues, expenses, assets, liabilities and contributed capital, thus making it virtually impossible to identify transactions by entity. It is apparent that the accounting records of the outside accountant also include personal transactions, postings of unknown adjusting journal entries totaling millions of dollars each year, resulting in a collection of transactions deemed appropriate by principals Liberman and Mitchell.

Additionally, the outside accounting Firm's records revealed the ongoing spoliation of critical accounting evidence covering a period of several years. As a result, detailed accounting records have been destroyed for 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012 by the accounting Firm of SKE Group, LLC (hereinafter SKE) and its principal Sam Spitz, CPA (hereinafter Spitz). Spitz claims that a provision in his engagement letters allows him to destroy records after a three (3) year period, Exhibit **RWCO 024.** Ultimately, it is the Defendant entities' principals Liberman and Mitchell who allowed the spoliation of documents by not retrieving them before they were destroyed.

It should be noted that Spitz's engagement letters indicate SKE's agreed upon work "*does not include any procedures designed to discover fraud, defalcations, or other irregularities, should any exist.*" Based on Spitz's deposition, it is evident that he simply followed the instructions of principals Liberman and Mitchell.

It is our understanding discovery is ongoing and we anticipate receiving additional pertinent subpoenaed information to incorporate into our analyses of SKE's records. We expect such subsequent analyses will add to the quantified amount Defendants have been secreting, hiding and conveying away that would have been available to satisfy Plaintiff's judgement against LVLP.

ACCOUNTING RECORDS Supplemented November 22, 2019

On August 7, 2019 the Superior Court of New Jersey entered an Order for Spitz to permit the Plaintiff's expert to conduct a forensic examination of his business server within 10 days of the Order's entry, Exhibit **RWCO 026**. Subsequently, Spitz made three appointments for the expert to conduct the examination, only to cancel the first two appointments scheduled for 9:30 am on August 15, 2019 and 9:30 am on August 19, 2019 due to a "family emergency" and the third appointment due to LVLP declaring bankruptcy later that same day on August 19, 2019. Following the bankruptcy filing, the Court ruled that the forensic examination must go forward and a fourth appointment was made for September 4, 2019 only to have access denied by Spitz. At the date of this report, the forensic examination of Spitz's business server has not taken place.

PUNITIVE DAMAGES:

Just as the court will make the ultimate determination as to Defendant's causation, it also has discretion in rendering punitive damages. To make this determination, the Court will need to ascertain Defendant's wealth and financial condition to adequately punish a wealthy wrongdoer and ensure that Defendant is capable of satisfying any rendered punitive damages.

We have been informed by Plaintiff's counsel that we are precluded from performing our analysis at this time but anticipate being able to do so in the future. As such, we anticipate supplementing this report to address this matter.

CONCLUSION:

Based on our analysis of the produced documents and the procedures performed, the evidence indicates that but for this legal action, Defendants would have been successful in secreting, hiding and conveying away valuable assets totaling at least $13,168,259.85 that were available to satisfy Plaintiff's judgement against LVLP.

The produced documents and procedures performed indicate that Defendants transferred millions of dollars in funds between themselves, including repayment of indebtedness, and payment of substantial distributions to principals Liberman and Mitchell totaling at least $15,148,339 during a time in which Plaintiff's claims were reasonably known, thus rendering LVLP insolvent.

The produced documents and procedures performed also indicate that Defendants Liberman and Mitchell were and are the alter ego of their Defendant entities. We noted Liberman and Mitchell did and still dominate, influence and control the Defendant entities. We also noted the individuality and separateness of Defendants was and remains nonexistent as evidenced by Defendant entities comingling of funds, revenues, expenses, assets, liabilities and contributed capital, thus making it virtually impossible to identify transactions by entity.

The produced documents are indicative of an ongoing accounting methodology whereby Defendants have used funds available to satisfy Plaintiff's judgement against Defendant entities by making specifically directed payments to preferred creditors totaling at least $6,989,408.55. Accordingly, the aforementioned diverted amounts that were constructively available to satisfy Plaintiff's judgement against LVLP totals at least $35,306,007.40.

It is our understanding discovery is ongoing and we anticipate receiving additional pertinent information to incorporate into our analyses. It is important to note that Mitch0000001-1386964 were received on November 4, 2019. At the date of this supplemented report the documents related to Mitchell's 5th supplement are still under review. We expect subsequent analyses will add to the quantified amount Defendants have been secreting, hiding and conveying away that would have been available to satisfy Plaintiff's judgement against LVLP.

This report, with attached exhibits, is intended solely for the above referenced matter and should not be used for any other purpose without prior written authorization. In the event that additional information is received we retain the right to supplement or amend our report.

Rich, Wightman & Company, CPAs, LLC

Mark D. Rich, CPA, CFF
Founding Partner

Exhibit RWCO 025

305LV06009-29164
MITCH00001-1632
FCSUB0002416-2716
FATCOSUB_00000001-00039373
MIT003771-004602
CC000001-150
MITDEF000001-003953
Mitch0000001-1386964

Exhibit RWCO 026

Snellings Law LLC
2001 Route 46
Waterview Plaza, Suite 206
Parsippany, NJ 07054
Tel: (973) 265-6100 / Fax: (973) 794-3336
Filing Attorney: Robert S. Snellings, Esq.
Email: rss@snellingslawllc.com
Attorney Identification No. 004872004
Attorneys for Sam K. Spitz, CPA and SKE Group, LLC

LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC, and ZOE PROPERTIES, LLC, Plaintiffs, vs. RUSSELL L. NYPE, REVENUE PLUS, LLC, DOES I through III, and ROE CORPORATIONS I through III, inclusive, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY DOCKET NO. MON-L-003827-18 CIVIL ACTION **ORDER**

This matter having come before the Court upon application by Robert J. De Groot, Esq., counsel to the Defendant-Judgment creditors, and the Court having considered any opposition filed by Sam Spitz, C.P.A., a non-party witness (Robert Snellings, Esq., appearing) and for good cause having been shown,

IT IS ON THIS 7 DAY OF August, 2019

ORDERED that Mr. Spitz must make SKE's server (located at 16 Village Court, Hazlet, New Jersey)(the "Server") available to "LitEgation," a company specializing in E-litigation and computer forensics, for duplication; IT IS FURTHER

ORDERED that Mr. Spitz shall make the Server available within 10 days of the entry of this Order; IT IS FURTHER

ORDERED that "LitEgation" shall create a hard drive image of the Server; IT IS FURTHER

ORDERED that, in creating the hard drive image of the Server, "LitEgation" shall utilize a process that ensures that the integrity of all data is maintained, chain of custody is established, and all relevant hash values are documented; IT IS FURTHER

ORDERED that, once the imaging is complete, "LitEgation" shall use a hash generation process to generate a source and target hash for the purpose of authenticating the copied hard drive. A copy of such document evidencing authentication shall be provided to the parties; IT IS FURTHER

ORDERED that "LitEgation" shall conduct a search of the active data located on the image of Server that is available, readily accessible and contains the search terms affixed hereto as "Schedule A."; IT IS FURTHER

ORDERED that the search shall be limited to active data created on or after January 1, 2007 to the present. ~~through February 8, 2018, the return date of the Subpoena Duces Tecum and Ad Testificandum directed to Mr. Spitz and SKE. Said search shall not include any residual, legacy or ambient data;~~ IT IS FURTHER

ORDERED that "LitEgation" shall prepare a report detailing the documents, files, folders and data found during the search of the image of the Server. A form of the report to be generated is affixed hereto as "Schedule B."; IT IS FURTHER

ORDERED that "LitEgation" shall forward this report to Robert Snellings, counsel for Mr. Spitz and Robert J. De Groot, Esq., counsel for the Judgment Creditors; IT IS FURTHER

ORDERED that only Robert J. De Groot, Esq., Oleg Nekritin, Esq., John Mujic, Esq. (counsel to the Judgment Creditors) and Mark Rich, C.P.A. (forensic accountant retained by the Judgment Creditors) and members of their respective offices are permitted to view this report; IT IS FURTHER

ORDERED that the document may only be used in connection with the matter of Las Vegas Land Partners, LLC et als. vs. Russell L. Nype, et als., Case No. A-07-551073, pending in the District Court, Clark County, Nevada ("Nevada Litigation") and any potential enforcement motions in the matter situated before this Court; IT IS FURTHER

ORDERED that neither LitEgation nor any representatives of the Defendant-Judgment Creditors are to access or view the actual documents containing the search terms without further Order from the Court or agreement with Mr. Spitz (Mr. Snellings, counsel); IT IS FURTHER

ORDERED that the Judgment Creditors and Mr. Spitz shall review the report generated by LitEgation and work in good faith to agree upon the documents or data that may be accessed; IT IS FURTHER

ORDERED that if the parties do not agree which data may be accessed, to contact the Court to assist the parties in resolving any disputes as to which data is accessible; IT IS FURTHER

ORDERED that any document or data that the parties agree for the Judgment Creditors to access may only be used in connection with the Nevada Litigation or any enforcement motion related to the matter situated in this Court; IT IS FURTHER

ORDERED that all documents or data on the image of the Server that the parties neither agree to access nor this Court orders to be accessed shall be destroyed by "LitEgation". A document certifying to such destruction shall be provided to the parties; IT IS FURTHER

ORDERED that the use of any document or data accessed will also be subject to a confidentiality agreement entered into between the parties; IT IS FURTHER

** Denied ~~ORDERED that Judgment Creditors shall reimburse Mr. Spitz and SKE for all attorneys fees and costs incurred in this matter by Mr. Spitz and SKE to date; IT IS FURTHER~~

** Denied ~~ORDERED that Judgment Creditors shall reimburse Mr. Spitz and SKE for all fees and costs associated with the subject "drive image" by "LitEgation" and related court proceedings, including but not limited to, attorneys fees, court costs and reimbursement to Mr. Spitz for time spent in connection therewith.~~

/s/ Owen C. McCarthy, J.S.C.

Hon. Owen McCarthy, J.S.C.

* See schedule A attached.

Search	Covers	Description
(barnet OR liberman OR lieberman)	Barnet Liberman	Defendant
mitchell	David J. Mitchell, Mitchell Holdings LLC	Defendant, Defendant Entity
305	305 Las Vegas LLC, 305 Second Avenue Associates	Defendant Entity, Defendant Entity Par
aquarius	Aquarius Owner, LLC	Defendant Entity
casino	Casino Coolidge LLC	Defendant Entity
(lw OR fc)	FC/LW Las Vegas LLC, FC Rolling Acres Inc, FC Vegas 20, LLC, FC Vegas 39, LLC, FC_LW Las Vegas LLC	Defendant Entity, Parcel Entity
"las vegas"	Las Vegas Land Partners, LLC	Defendant Entity
leah	Leah Property, LLC	Defendant Entity
(livework OR "live work")	Livework LLC, Livework Manager LLC, Livework TIC, Livework TIC Successor LLC	Defendant Entity, Parcel Reference
lvlp	LVLP Holdings LLC, LVLP, LVLP AJE, LVLP Billing, LVLP BS, LVLP Distributions, LVLP ENG, LVLP GENL Ledger, LVLP GL, LVLP INC STMT, LVLP LTR, LVLP PL, LVLP Rental Income, LVLP Rents, LVLP STMT, LVLP WTB	Defendant Entity, LVLP Accounting Doc
(lw OR tic)	LW/TIC Successor, LLC	Defendant Entity
meyer	Meyer Property, LTD	Defendant Entity
wink	Wink One, LLC	Defendant Entity
zoe	Zoe Property, LLC	Defendant Entity
eng	Eng Letter	LVLP Document
engagement AND (letter OR ltr)	Engagement Letter	LVLP Document
bny	BNY Mellon	Parcel Banking
("city national" OR cnb)	City National Bank	Parcel Banking
meadows	Meadows Bank	Parcel Banking
"signature bank"	Signature Bank	Parcel Banking
"us bank"	US Bank	Parcel Banking
("valley national" OR "valley natl" OR vnb)	Valley National Bank	Parcel Banking
heartland	Heartland Bank	Parcel Banking
key	Key Bank	Parcel Banking
(forest OR forrest)	Forest City	Parcel Entity
pq	PQ Las Vegas LLC	Parcel Entity
qh	QH Las Vegas LLC	Parcel Entity

"realty management"	Realty Management	Parcel Entity
"regional transportation"	Regional Transportation Commission	Parcel Entity
("river stone" OR riverstone)	Riverstone	Parcel Entity
"rolling acres"	Rolling Acres Inc	Parcel Entity
rtc	RTC	Parcel Entity
"book store"	Book Store	Parcel Reference
"city hall"	City Hall	Parcel Reference
(city AND "las vegas")	City of Las Vegas	Parcel Reference
downtown	Downtown	Parcel Reference
queen	Queen of Hearts	Parcel Reference
symphony	Symphony Park	Parcel Reference
(nype OR nipe OR russell OR rusty)	Russell L Nype	Plaintiff
("Revenue Plus" OR "Rev Plus" OR revplus)	Revenue Plus	Plaintiff Entity
(chamberlain OR win)	Win Chamberlain	Principal of Defendant Entity Parent Corr

RICH
WIGHTMAN
& COMPANY

Certified Public Accountants
(A Limited Liability Company)

1301 South Jones Blvd.
Las Vegas, NV 89146
Phone: (702) 878-0959 Fax: (702) 878-1325
WWW.RICHWIGHTMAN.COM

EXHIBIT "5"

DECLARATION OF JOHN W. MUIJE, ESQ. IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRCP 12(b)(2) and 12(b)(5), OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT

JOHN W. MUIJE, under penalty of perjury, hereby declares, deposes and says:

1. My name is John W. Muije, Esq. and I have been primary counsel for Plaintiffs[1] since approximately May of 2015, in efforts to enforce his judgment as to LVLP as entered in Nype's prior case decided on before the Honorable Ronald Israel in Case No. A-07-551073.

2. I make this declaration in support of Plaintiffs' Opposition.

3. Attached to the Opposition in this Appendix as Exhibit "1" is a true and correct copy of: the 2015—03-26 Findings of Fact, Conclusions of Law and Decision – Case No. 07A551073.

4. Attached to the Opposition in this Appendix as Exhibit "2" is a true and correct copy of the 2017—06-15 Declaration of Russell Nype as filed in conjunction with the Opposition to original Motion to Dismiss.

5. Attached to the Opposition in this Appendix as Exhibit "3" is the 2017---06-14 Sworn Declaration Under Penalty of Perjury of Mark Rich as filed in conjunction with the Opposition to Original Motion to Dismiss.

6. Attached to this Opposition in this Appendix as Exhibit "4" is the 2019—11-25 Plaintiff's Supplemental Expert Witness Report.

7. Attached to this Opposition in this Appendix as Exhibit "5" is the Declaration of John W. Muije In Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to NRCP 12(b)(2) and 12(b)(5), Or In The Alternative Motion for Summary Judgment.

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: Jmuije@muijelawoffice.com

8. Attached to this Opposition in this Appendix as Exhibit "6" is the Nevada Supreme Court Opinion (Unpublished) Magliarditi v. TransFirst Grp., Inc., Nevada Supreme Court Docket No. 73889, listed at 450 P.3d 911 in table format; 2019 Nev. Unpub. LEXIS 1156, at *17; 2019 WL 539470 (Oct. 21, 2019).

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

Executed this 12th day of December 2019.

JOHN W. MUIJE, ESQ.

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: Jmuije@muijelawoffice.com

[1] Capitalized terms not further defined herein shall have the meanings ascribed to them in the Opposition.

EXHIBIT “6"

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOMINIC J. MAGLIARDITI; FRANCINE MAGLIARDITI IN HER INDIVIDUAL CAPACITY AND AS TRUSTEE OF THE FRM TRUST, THE DJM IRREVOCABLE TRUST, AND THE FANE TRUST; ATM ENTERPRISES LLC; DII CAPITAL INC.; DFM HOLDINGS LTD.; DFM HOLDINGS LLP; DII PROPERTIES LLC; MAGLIARDITI LTD.; CHAZZLIVE.COM LLC; SPARTAN PAYMENT SOLUTIONS LLC; AND DFM HOLDINGS LP,
Appellants,
vs.
TRANSFIRST GROUP, INC.; TRANSFIRST THIRD PARTY SALES LLC; AND PAYMENT RESOURCES INTERNATIONAL, LLC,
Respondents.

No. 73889

ORDER ANSWERING QUESTIONS AND REMANDING

The United States District Court for the District of Nevada certified the following seven questions to this court concerning the application of the alter ego doctrine to entities other than corporations.

1. May a judgment creditor bring a claim for alter ego to make a third party liable on the judgment or is alter ego a remedy only?
2. Does alter ego apply to limited liability companies?
3. Does alter ego apply to partnerships?
4. Does alter ego apply to trusts?
5. Does alter ego apply to spendthrift trusts?

6. Is an alter ego of a judgment debtor a "debtor" under Nevada's Uniform Fraudulent Transfer Act?
7. Is a transfer between alter egos or between the judgment debtor and an alter ego a "transfer" under Nevada's Uniform Fraudulent Transfer Act?

We accepted these certified questions and accepted briefing. We conclude as to question one, that a judgment creditor may bring a claim for alter ego to make a third party liable on the judgment. As to questions two and three, we conclude that the alter ego doctrine applies to limited liability companies (LLCs) and partnerships. As to questions six and seven, we conclude that an alter ego of a judgment debtor is a "debtor" under Nevada's Uniform Fraudulent Transfer Act (NUFTA), and a transfer between alter egos or between the judgment debtor and an alter ego is a "transfer" under NUFTA. However, because it is unclear from the record the nature of the trusts at issue, we decline to answer certified questions four and five and remand to the United States District Court for the District of Nevada for further clarification.

Facts and Procedural History

"This court's review is limited to the facts provided by the certification order . . . ." *In re Fontainbleau Las Vegas Holdings*, 128 Nev. 556, 570, 289 P.3d 1199, 1207 (2012). TransFirst Group, Inc., TransFirst Third Party Sales LLC, and Payment Resources International, LLC (together, "TransFirst") obtained a judgment in the United States District Court for the Northern District of Texas against Dominic Magliarditi on fraud-related claims. Following unsuccessful post-judgment collection efforts, approximately $4 million remains unpaid. TransFirst brought the underlying litigation in Texas against Dominic, his wife Francine

Magliarditi, and various trust and corporate entities associated with Dominic and Francine alleging that Francine and the entities are alter egos of Dominic and therefore liable on the judgment. TransFirst also brought claims under the Uniform Fraudulent Transfer Act, alleging that transfers to and between the entities and Francine were fraudulent.

While the suit was pending, TransFirst brought a temporary restraining order (TRO) against the Magliarditis and corporate and trust entities, seeking to prevent them from transferring, concealing or otherwise disposing of their assets. The federal district court in Texas granted the TRO with respect to some of the parties, but not as to others, asserting that the court did not have jurisdiction over those entities. The Texas court then transferred the case to the United States District Court for the District of Nevada. The federal district court in Nevada reinstated the TRO as to all of the entities and set a hearing for TransFirst's pending motion for a preliminary injunction. The court granted TransFirst's preliminary injunction, making several predictions about Nevada law that are the subject of the underlying order certifying questions to this court seeking clarification of those predictions. Shortly thereafter, the Magliarditis timely moved for reconsideration of the preliminary injunction order in light of this court's recent decision in *Klabacka v. Nelson*, 133 Nev. 164, 180-81, 394 P.3d 940, 953 (2017).[1] In *Klabacka*, this court held that a constructive trust could not be used to reach the assets in a spendthrift trust. 133 Nev.

[1]The Magliarditis also requested the Nevada federal district court reconsider whether the alter ego doctrine is a separate cause of action or a remedy, whether a judgment could be collected against the corporate and trust entities, to permit the Magliarditis to withdraw specific dollar amounts per month from their accounts in light of the asset freeze, and to encourage the court to certify questions to this court.

at 180-81, 394 P.3d at 953. The Nevada federal district court granted in part and denied in part the Magliarditis' motion for reconsideration, but held that the preliminary injunction would remain in place with regard to any of the Magliarditis' spendthrift trusts, asserting that the question of whether the alter ego doctrine applies to spendthrift trusts (as well as the other certified questions) were for this court to determine.[2] We answer the certified questions in turn.

Alter ego claims – question one

The first question asks whether a judgment creditor may bring a claim for alter ego to make a third party liable on the judgment or whether alter ego is only a remedy. The Nevada federal district court predicted that the alter ego doctrine can be a separate cause of action when the claim is filed as a means for a judgment creditor to pursue the execution of a prior judgment. We agree.

In *Callie v. Bowling*, we considered a judgment creditor who domesticated a foreign judgment in Nevada and attempted to add a nonparty to its final judgment using the alter ego doctrine simply by seeking to amend the judgment. 123 Nev. 181, 182-83, 160 P.3d 878, 878-79 (2007). The nonparty was neither served with pleadings nor individually named when the creditor domesticated the judgment but after an evidentiary hearing, the district court amended the judgment to make the nonparty

[2]In October 2018, the Magliarditis filed a status report with this court, informing it that in June 2018, Dominic filed for Chapter 7 bankruptcy. *See Magliarditi v. TransFirst Group, Inc.*, Docket No. 73889 (Appellants' Status Report, Oct. 19, 2018). The automatic stay in place was lifted by the bankruptcy court and we subsequently concluded that this case could proceed. *Magliarditi v. TransFirst Group, Inc.*, Docket No. 73889 (Order, Dec. 27, 2018).

personally liable for the judgment. *Id.* at 183, 160 P.3d at 879. This court concluded that such a mechanism violated the nonparty's due process rights and held that "judgment creditor[s] who wish[ ] to assert an alter ego *claim* must do so in an *independent action* against the alleged alter ego." *Id.* at 182, 160 P.3d at 879 (emphasis added). We also clarified our prior holding in *McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 317 P.2d 957 (1957), and concluded "that a motion to amend a judgment is not the proper vehicle by which to allege an alter ego claim." *Callie*, 123 Nev. at 184-85, 160 P.3d at 880. We reasoned that a separate cause of action was necessary because the nonparty was an individual who may or may not have exercised the requisite degree of control over the debtor corporation at issue, and therefore the nonparty was entitled to due process to present a defense against alter ego liability. *Id.* at 186, 160 P.3d at 881.

Similarly, in *Mona v. Eighth Judicial District Court*, a judgment creditor domesticated a California judgment in Nevada against a debtor in his individual capacity and in his capacity as a trustee of a family trust—of which the California court found the debtor to be the alter ego of the family trust. 132 Nev. 719, 722-23, 380 P.3d 836, 839 (2016). Just before the judgment creditor domesticated the judgment, the debtor and his wife entered into a postmarital settlement agreement, dividing the proceeds of a corporate stock sale into their sole and separate property. *Id.* at 723, 380 P.3d at 839. After the judgment was domesticated, the district court ordered the debtor and his wife to appear for a judgment debtor examination and produce a number of documents pursuant to NRS 21.270. *Id.* The district court sanctioned the debtor and his wife for failing to disclose the postmarital agreement and the records for three bank accounts in the wife's name. *Id.* It also found that the creation of the postmarital

agreement was a fraudulent transfer pursuant to NRS Chapter 112 and that the judgment creditor could reach the property of the wife in the three undisclosed bank accounts in order to satisfy the judgment against the debtor. *Id.* The debtor and the wife filed a writ petition to this court seeking relief because the wife was not a party to the domesticated district court litigation. *Id.* In granting the writ as to the wife, this court looked to NRS 21.330 to conclude that when a third party possesses property of a judgment debtor but claims an adverse interest in the property, a court cannot simply order that the property be applied toward the judgment. *Id.* at 726-27, 380 P.3d at 841-42. "Instead, NRS 21.330 permits a judgment creditor to institute [*a separate*] *action* against the third parties with adverse claims to the property of a judgment debtor." *Id.* (alteration in original) (emphasis added) (quoting *Greene v. Eighth Judicial Dist. Court*, 115 Nev. 391, 395, 990 P.2d 184, 186 (1999)).

Our prior holdings in *Callie* and *Mona* demonstrate that a separate claim would be required to assure the nonparty is afforded due process. *Mona*, 132 Nev. at 726-27, 380 P.3d at 841-42; *Callie*, 123 Nev. at 186, 160 P.3d at 881; *see also In re Ward*, 558 B.R. 771, 788 (Bankr. N.D. Tex. 2016) ("[R]everse piercing is not an independent cause of action under Texas law and . . . the Plaintiff must either have a judgment in-hand or an underlying claim within the Complaint that would support a recovery under the reverse-piercing theory . . . ."); *Leek v. Cooper*, 125 Cal. Rptr. 3d 56, 71 (Ct. App. 2011) ("It is also possible for a party to bring a wholly separate action against the individual to enforce a prior judgment against the corporation on an alter ego theory."); *Pazur v. Belcher*, 612 S.E.2d 481, 483 (Ga. Ct. App. 2004) ("[T]he plaintiff's proper remedy was to 'pursue its claims against [the alter ego defendant] in a separate suit . . . to attempt to

pierce the corporate veil.") (alterations in original) (quoting *Oceanics Schools, Inc. v. Barbour*, 112 S.W.3d 135, 142 (Tenn. Ct. App. 2003)). While *Callie* and *Mona* were decided in the context of domesticating a foreign judgment, Nevada's Uniform Enforcement of Foreign Judgments Act does not require a judgment creditor to domesticate. Instead, "[a] judgment creditor may elect to bring an action to enforce his or her judgment instead of proceeding under NRS 17.330 to 17.440." NRS 17.390; *see also Maxus Liquidating Tr. v. YPF S.A.*, No. 18-50489, 2019 WL 647027, at *2 (Bankr. D. Del. Feb. 15, 2019) ("When coupled with allegations of another wrong, such as breach of fiduciary duty or a fraudulent conveyance, alter ego can constitute an independent claim."). Accordingly, a judgment creditor may bring a claim for alter ego to make a third party liable on a judgment.

Limited liability companies and partnerships – questions two and three

The second and third questions ask whether the alter ego doctrine applies to LLCs and partnerships. During the pendency of the case, we decided *Gardner v. Eighth Judicial Dist. Court*, which established that the alter ego doctrine applies to LLCs. 133 Nev. 730, 405 P.3d 651 (2017). This court proffered three reasons for concluding so. First, there exists a general consensus among state courts that the alter ego doctrine applies to LLCs, and this court, as well as other courts interpreting Nevada law, have assumed the alter ego doctrine applies to LLCs. *Id.* at 735-36, 405 P.3d at 655-56 (citing *Webb v. Shull*, 128 Nev. 85, 92 n.3, 270 P.3d 1266, 1271 n.3 (2012); *In re Giampietro*, 317 B.R. 841, 846 (Bankr. D. Nev. 2004)). Second, Nevada's LLC statutes were codified in 1991, ten years before the Legislature codified the alter ego doctrine for corporations in 2001. *Id.* at

736, 405 P.3d at 656 (citing NRS 78.747; 1991 Nev. Stat., ch. 442, at 1184).[3] Analyzing the legislative history, this court concluded that the Legislature's codification of the alter ego doctrine to *corporations* did not preclude by omission the application of the alter ego doctrine to LLCs. *Id.* Finally, pointing to nationwide recognition, LLCs afford the same opportunities for abuse and fraud as corporations, and therefore creditors of LLCs need the same opportunity to pierce the corporate veil as creditors of corporations when such fraud or abuse exists. *Id.* While *Gardner* does not explicitly apply to partnerships, we conclude the logic extends to these entities. *See Giampietro*, 317 B.R. at 847 ("Nowhere in the . . . legislative history, however, is there any indication of an intent to tighten or clarify alter ego liability for corporations while eliminating it for limited liability companies or any other limited liability entity (such as limited partnerships, limited-liability partnerships or limited-liability limited partnerships). Indeed, such a course would be counterproductive, in that it would disfavor the creating of corporations, which would lessen overall corporate franchise fee revenues."); *Sunrise Sec. Corp. v. Anzalone*, Docket No. 49052 (Order Reversing in Part and Affirming in Part, Feb. 5, 2009) (accepting the district court's application of the alter ego doctrine to a limited partnership). And the parties concede that *Gardner* resolves the certified questions as to these entities. Therefore, the alter ego doctrine applies to LLCs and partnerships.

Nevada's Uniform Fraudulent Transfer Act – questions six and seven

The sixth question asks whether an alter ego of a judgment debtor is a "debtor" under Nevada's Uniform Fraudulent Transfer Act (NUFTA). NUFTA defines a debtor as "a person who is liable on a claim."

---

[3]Nevada's corporation statutes explicitly codify the alter ego doctrine; our LLC statutes do not. *Compare* NRS 78.747, *with* NRS 86.371.

NRS 112.150(6). And a claim is "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." NRS 112.150(3). To prove that a debtor's transfer is fraudulent, it must be shown that the debtor made an actual fraudulent transfer, a constructive fraudulent transfer, or a transfer without receiving reasonably equivalent value. NRS 112.180(1)(a)-(b); NRS 112.190. The statute also provides a number of factors for courts to consider when determining whether a debtor acted with actual intent. *See* NRS 112.180(2). They are:

(a) The transfer or obligation was to an insider;

(b) The debtor retained possession or control of the property transferred after the transfer;

(c) The transfer or obligation was disclosed or concealed;

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) The transfer was of substantially all the debtor's assets;

(f) The debtor absconded;

(g) The debtor removed or concealed assets;

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

> (k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

NRS 112.180(2). Additionally, an "insider" is defined—if the debtor is a natural person—as a relative of a debtor, a partnership in which the debtor is a general partner, a general partner in such a partnership, and a corporation of which the debtor is a director, officer, or other controlling person. NRS 112.150(7)(a).

The Magliarditis assert that alter egos cannot be "debtors" under NUFTA because those entities are not actually liable on a claim. Instead, the true debtor is liable on the claim, and the alter egos are merely a means to reach the debtor's assets through a reverse piercing *remedy*. If an alter ego were a "debtor" under NUFTA, the Magliarditis assert, property of the alter ego would be considered an "asset" of the debtor, and this would impermissibly expand NUFTA's definition of "asset."[4]

But the legislative purpose of NUFTA is to "preserve a debtor's assets for the benefit of creditors" and "prevent a debtor from defrauding creditors by placing the subject property beyond the creditors' reach." *Herup v. First Boston Fin., LLC*, 123 Nev. 228, 232, 235 n.15, 162 P.3d 870, 872, 874 n.15 (2007). And this court has already recognized that "[i]n Nevada, a judgment debtor and his alter ego are *treated as identical* entities for the purposes of judgment execution." *Sunrise Securities Corp. v. Anzalone*, Docket No. 49052 (Order Reversing in Part and Affirming in Part,

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[4]"Asset" is defined by NUFTA as "property of a debtor." NRS 112.150(2). However, the term does not include "(a) Property to the extent it is encumbered by a valid lien; (b) Property to the extent it is generally exempt under nonbankruptcy law; or (c) An interest in property held in tenancy by the entireties or as community property to the extent it is not subject to process by a creditor holding a claim against only one tenant." *Id.*

Feb. 5, 2009) (emphasis added) (citing *McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 317 P.2d 957 (1957), *overruled on other grounds by Callie v. Bowling*, 123 Nev. 181, 160 P.3d 878 (2007)).

Further, other courts have concluded an alter ego of a judgment debtor is a "debtor" under their state UFTA laws. For example, in *In re Turner*, a bankruptcy trustee sought to avoid transfers from a debtor to a Nevada corporation and Nevada LLC he created as "actually fraudulent" and "constructively fraudulent" under federal bankruptcy fraudulent transfer law, 11 U.S.C. § 548 (2012), and California's Uniform Voidable Transactions Act, Cal. Civ. Code § 3439 (West 2016). 335 B.R. 140, 144, 146 (Bankr. N.D. Cal. 2005). The trial court found that all of the transfers were made with "actual intent" pursuant to the code, concluding that the transfers made by the debtor to his Nevada corporation and LLC were made to an "insider," that he "retained possession and control of the [property] after the all of the transfers," that he had been sued before most of the transfers, that he received no consideration for the transfers, and that he was rendered insolvent by the transfers. *Id.* at 146 & n.7 (referencing a list of factors for courts to consider whether a transfer was made with actual intent pursuant to California's fraudulent transfer law (citing Cal. Civ. Code § 3439.04)). These indicators of actual intent to defraud, in California's code are virtually identical to the "actual intent" factors in NUFTA. *Id.*; *compare* NRS 112.180(2)(a)-(k), *with* Cal. Civ. Code § 3439.04(b)(1)-(11). The court also concluded that the LLC and corporation were the debtor's alter egos, and that transfers made by those entities could be considered fraudulent transfers of the judgment debtor and therefore properly avoided. *In re Turner*, 335 B.R. at 147. The Ninth Circuit relatedly held that a corporation created by a judgment debtor to insulate the debtor's

assets was the debtor's alter ego, concluding that a fraudulent transfer *by an alter ego* could be treated as a fraudulent transfer by the judgment debtor. *Fleet Credit Corp. v. TML Bus Sales, Inc.*, 65 F.3d 119, 120-22 (9th Cir. 1995) (applying California's fraudulent transfer law).

Similarly, the Alabama Supreme Court held that under Alabama's UFTA (AUFTA), a judgment debtor and its alter ego company could be considered "one and the same" at the time of a transfer, and therefore a transfer of the alter ego's property is a transfer "made by the debtor" under the AUFTA. *Thompson Props. v. Birmingham Hide & Tallow Co.*, 839 So. 2d 629, 633-34 (Ala. 2002). And in *Dwyer v. Meramec Venture Associates, LLC*, the Missouri Court of Appeals held that a transfer by a judgment debtor's alter ego constitutes a transfer by the judgment debtor himself. 75 S.W.3d 291, 295 (Mo. Ct. App. 2002); *see also U.S. Capital Funding VI, Ltd. v. Patterson Bankshares, Inc.*, 137 F. Supp. 3d 1340, 1366-67 (S.D. Ga. 2015) ("[A] transfer carried out by an 'alter ego' or a 'mere instrumentality' of a judgment debtor is sufficient to constitute a transfer by the debtor itself."); 37 C.S.J. *Fraudulent Conveyances* § 21 (2017) ("A fraudulent conveyance can occur even if the debtor is not a party to the conveyance or did not carry it out, as in a transfer by the debtor's alter ego or mere instrumentality of a judgment debtor."); Peter Spero, *Fraudulent Transfers, Prebankruptcy Planning and Exemptions* § 1:16 n.6 (August 2018 update) (collecting cases).

The legislative history of UFTA—the federal parent of NUFTA—further bolsters this position. The purpose of UFTA is to "[p]rovid[e] a creditor with the capacity to procure assets a debtor has transferred to another person to keep them from being used to satisfy the debt." Hearing on A.B. 60 Before the Assembly Comm. on Judiciary, 64th

Leg. (Nev., Feb. 3, 1987) (Exhibit C-7). Further, the "badges of fraud" articulated in NRS 112.180(2)(a)-(k) "were written with a mind toward *limiting* the transferor's rights to deal with his property as against his creditors." *See* Brian M. Streicher, Husky Int'l Elecs., Inc. v. Ritz *and the Problem of Intent in Receiving Fraudulent Transfers*, Florida Bar Journal, Jan. 2017, at 8, 13 (emphasis added). The persuasiveness of these authorities and the plain language of NUFTA's definitions for "debtor" and "claim," NRS 112.150(3), (6), as well as the factors used to consider whether a debtor acted with "actual intent," NRS 112.180(2), demonstrate that an alter ego is a "debtor" under NUFTA.

The seventh and final question asks whether a transfer between alter egos or between the judgment debtor and an alter ego is a "transfer" under NUFTA. As an initial matter, NUFTA defines a "transfer" as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance." NRS 112.150(12).

The Magliarditis assert that under NUFTA, a transfer must be from a debtor to a third person, not from a debtor to a debtor, relying on NRS 112.200(4) which states that "[a] transfer is not made until the debtor has acquired rights in the asset transferred." They reason that because the alter ego doctrine is merely an equitable remedy to satisfy an existing debt, it cannot be used to dictate who has title to an asset at the time of a transfer. Therefore, the Magliarditis argue, a transfer made between alter egos cannot be linked to the debtor—an equitable remedy like alter ego cannot decide title at the time of the transfer.

However, jurisdictions that have found an alter ego may be a "debtor" for purposes of UFTA, likewise have found that transfers made to or between such alter egos are "transfers" under UFTA. For example, the Alabama Supreme Court held in *Thompson Properties* that a transfer of property made by a judgment debtor's alter ego was considered a transfer of the debtor. 839 So. 2d at 634. And "many states, including Georgia, have found that a 'transfer' may occur even if the debtor was not a party to, or did not carry out, the transfer." *U.S. Capital Funding VI*, 137 F. Supp. 3d at 1366; *see also Sherry v. Ross*, 846 F. Supp. 1424, 1428 (D. Haw. 1994) (stating that under Hawaii's UFTA, a fraudulent conveyance can occur even if the debtor is not a party to the conveyance); 37 C.J.S. Fraudulent Conveyances, § 21. As we are compelled to conclude that an alter ego may be a "debtor" under UFTA, we are likewise compelled to conclude that transfers to or between alter egos can be "transfers" under UFTA.

Trusts & Spendthrift Trusts – questions four and five

Questions four and five relate to whether alter ego applies to trusts and spendthrift trusts. NRAP 5(a), in pertinent part, provides:

> The Supreme Court may answer questions of law certified to it by . . . a United States District Court . . . when requested by the certifying court, if there are involved in any proceeding before those courts questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court or Court of Appeals of this state.

Thus, pursuant to NRAP 5, the court is constrained to answer only questions of law that may be determinative to a cause pending in the certifying court. Since we are unable to glean from the record provided the nature of the trusts involved, it is unclear to the court whether these two

questions of law may be determinative to the pending cause. Accordingly, we decline to answer these two questions in the absence of further clarification from the certifying court.

Conclusion

In sum, we conclude that a judgment creditor may bring a claim for alter ego to make a third party liable on the judgment, and the alter ego doctrine applies to limited liability companies (LLCs) and partnerships. Additionally, an alter ego of a judgment debtor is a "debtor" under Nevada's Uniform Fraudulent Transfer Act (NUFTA), and a transfer between alter egos or between the judgment debtor and an alter ego is a "transfer" under NUFTA. However, because it is unclear from the record the nature of the trusts at issue, we decline to answer certified questions four and five and remand for the United States District Court for the District of Nevada to provide any further clarification it may deem appropriate.

It is so ORDERED.


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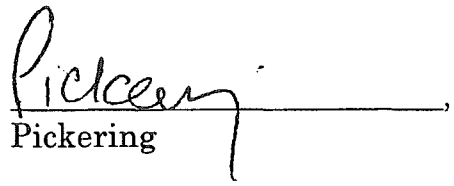
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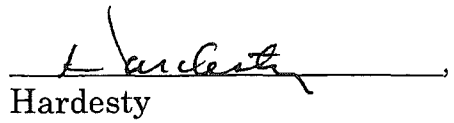
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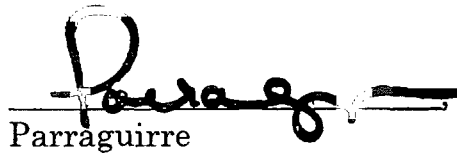
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DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC, Does I through X; DOES I through X, DOE CORPORATIONS I through X; and DOES PARTNERSHIPS I through X; Plaintiffs. vs. DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTYY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE OWRKS TIC SUCCESSOR, LLC; CASINO COOLIDGE, LLC; DOES I through III, and ROE CORPORATIONS I through III, inclusive, Defendants.	CASE NO: A-16-740689-B DEPT NO: XI **PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRCP 12(b)(2) and 12(b)(5), OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT** Hearing Date: December 23, 2019 Hearing Time: 9:00 a.m.

COME NOW Plaintiffs, RUSSELL L. NYPE ("Nype") and REVENUE PLUS, LLC ("RP") (Nype and RP, collectively, "Plaintiffs"), by and through their attorney of record, JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE & ASSOCIATES, and hereby submit their Opposition (the "Opposition")to Defendant's Motion to Dismiss Plaintiffs' Amended

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Complaint Pursuant to NRCP 12(b)(2) and 12(b)(5), or in the Alternative Motion for Summary Judgment (the "MTD").

This Opposition is made and based upon the points and authorities that follow, exhibits contained in the contemporaneously filed supporting appendix (the "Appendix"), including the Declaration of John W. Muije, Esq., attached to the Appendix as exhibit 5 and the Declaration of Mark D. Rich, CPA, CFF, attached to the Appendix as exhibit 3, the pleadings and documents on file herein, and the arguments to be adduced at the hearing hereon.

DATED this 12th day of December, 2019.

JOHN W. MUIJE & ASSOCIATES

By: _____
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants David J. Mitchell ("Mitchell"), Meyer Property, LLC ("MP"), Zoe Property, LLC ("ZP"), Leah Property, LLC ("LP"), Wink One, LLC ("Wink"), Live Work, LLC ("LiveWork"), Live Work Manager, LLC ("LWM"), Aquarius Owner, LLC ("Aquarius"), LVLP Holdings, LLC ("LVLP Holdings"), Mitchell Holdings, LLC ("Mitchell Holdings"), and Live Works TIC Successor, LLC ("LW TIC"), (Mitchell, MP, ZP, LP, Wink, LiveWork, LWM, Aquarius, LVLP Holdings, Mitchell Holdings, and LW TIC, collectively, the "Mitchell

Defendants"), have filed their MTD, which appears to be largely copied and pasted from the Motion to Dismiss filed by Defendants earlier in this matter on April 6, 2017 (the "Prior MTD").

The Mitchell Defendants' MTD, much like the Prior MTD, generally asserts the following arguments:

1. the court lacks personal jurisdiction against one or more of the Mitchell Defendants;

2. failure to state claims as regards each claim asserted by Plaintiffs, based on statute of limitations arguments and/or failure to plead with the required specificity; and

3. alter ego.

As the Court is well aware, this case derives and arises out of Plaintiffs' efforts to ultimately obtain the fruits of the judgment awarded it and against the primary defendant herein, Las Vegas Land Partners, LLC ("LVLP"). LVLP has recently (August 2019) filed for Chapter 7 bankruptcy and is not one of the movants herein. Indeed, LVLP's Bankruptcy Trustee, Shelley Krohn, has recently retained Plaintiffs' counsel to represent her interests in this case, has filed and served a Complaint-In-Intervention, and also opposes the Mitchell Defendants' Motion to Dismiss.

Having been unable to successfully effectuate collection of its judgment during the year after the entry thereof, Plaintiffs elected to bring this subsequent suit deriving in all respects from the underlying events and transactions addressed in the first litigation. A true and correct copy of the Findings of Fact, Conclusions of Law and Decision in the underlying litigation (hereinafter referred to as the First Case") is attached hereto as Exhibit "1" and by this reference incorporated herein.)

The Court (Judge Hardy) previously determined in granting a Motion to Strike Jury Demand (5-23-2017) that the various claims asserted by Plaintiffs against Defendants seek the imposition and enforcement of equitable remedies to facilitate and assist in the successful collection of the judgment rendered against LVLP. It should be noted that the named defendants herein are alleged and believed to be subsidiaries, affiliates, and associated entities deriving their existence and purpose from the ongoing activities and operations of the judgment debtor in the first action, LVLP. The alleged factual

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predicates and relevant transactional history is set forth in the Amended Complaint herein, starting at Page 2, Paragraph 1, through Page 17, Paragraph 93.

While the array of contentions and arguments asserted by defendants sounds overwhelming, Plaintiffs respectfully suggests that even to the extent any such argument finds favor in an individual or isolated case, taken in the context of existing litigation spanning over a decade, the complex of factors cannot be viewed in isolation. The First Case is characterized by a judgment debtor that has repeatedly delayed, obfuscated, and refused to produce relevant documentation (while affirmatively under-taking steps to assure that to the extent Plaintiffs ultimately prevailed, there would be no readily attachable or available liquid assets to satisfy Plaintiffs' claims). See Exhibit "2", Paragraphs 9, 11, and 12. Given that context and background, respectfully, technical arguments that might otherwise find favor in an isolated case or circumstance merge with the totality of equitable remedies sought by Plaintiffs, serving the very purpose of equity, i.e. to redress various misconduct, such as fraud, unjust enrichment, etc. where traditional legal remedies have proven inadequate. Cf *Waldman vs. Maini*, 124 Nev. 1121, 1131-1132, 195 P.3d 850, 854-58 (2008).

Indeed, overlying and buttressing the response to defendants' varied arguments, is one abiding theme, set forth in detail and more fully in Exhibit "3", of the Appendix, the Affidavit of Mark Rich, by this reference incorporated herein. Summarizing the same, Mr. Rich explains why the various machinations, financial shenanigans, and the very existence of viable claims, including primarily fraudulent conveyance and alter ego, could not have been reasonably discovered, until LVLP and its associated entities finally began producing important financial source data. (See Exhibit 3, Paragraphs 5-21) .

Mr. Rich's Sworn Declaration from June, 2017, is significantly enhanced, supplemented, and further explained in his expert witness report of January 11, 2019, as supplemented formally of record on November 25, 2019. See Exhibit "4" of the Appendix, by this reference incorporated

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herein. The Court should note that the original unsupplemented version of Mark Rich's expert report was admitted into evidence in this matter during the evidentiary hearing held on or about July 9, 2019, and included approximately 260 pages of specific supporting exhibits relating back to portions of the actual report.

As noted, such source data that Plaintiffs finally obtained (in part) after the judgment in the first case is critical to properly understanding the financial cash flows and transactions. The fact is that the collective impact of the numerous individual transactions functionally rendered LVLP insolvent, a primary and necessary element to sustain a claim of fraudulent conveyance. See Exhibit 3, Paragraph 31. As noted by Mr. Rich, the ongoing apparent activity of LVLP, even as noted on its tax returns, did not afford the data necessary to understand that available attachable assets were being dissipated and placed beyond the reach of creditors, until such time as sufficient source data had been accumulated, commencing approximately six months post-judgment, starting in the Fall of 2015 and continuing to this day. *Id,* at s 17, 18, 25, 26, 31 and 32.

As will be analyzed more fully below, the many straws at which defendants grasp must necessarily slip through their fingers, insofar as the totality of circumstances, and the particular facts of this case (given the previously undisclosed ongoing transactions of LVLP and its affiliated entities), patently demonstrate the appropriate applicability of the various equitable remedies which Plaintiffs now seek.

The Court is also well aware of the lengthy and contentious history of this litigation, especially regarding Plaintiffs' ongoing efforts to obtain relevant discovery from the Mitchell Defendants. Now the Mitchell Defendants, who have frustrated Plaintiffs' attempts to conduct discovery at every turn, have the audacity to argue, among other things, that Plaintiffs' Amended Complaint lacks specificity as to the claims against them, and that Plaintiffs cannot show that

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LVLP or the Mitchell Defendants are liable for any fraudulent transactions. As will be analyzed and detailed below, the Mitchell Defendants are wrong. Their MTD should be denied.

Plaintiffs, as a result of the hearing on the Prior MTD, filed an Amended Complaint on August 21, 2017. The Mitchell Defendants filed their Answer to the Amended Complaint on September 5, 2017. The Mitchell Defendants have now filed their MTD on November 21, 2019. But the deadline to file dispositive motions in this matter was August 23, 2019. (See May 20, 2019 4th Amended Business Court Scheduling Order and Order Setting Civil Bench Trial and Calendar Call, 1:16-18.)

II.

ARGUMENT

A. The Mitchell Defendants' Motion to Dismiss is Untimely and Should be Dismissed.

District courts have broad discretion to deny untimely motions. See e.g., Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 610 (9th Cir. 1992) ("The District Court did not abuse its discretion when it denied his motion to amend – a motion made four months after the cut-off date...."); Enwonwu v. Fulton-Dekalb Hosp. Auth., 286 Fed. Appx. 586, 595 (11th Cir. 2008) (stating that district courts retain "broad discretion in deciding ... whether to consider untimely motions for summary judgment") (internal citations omitted). Moreover, a party's failure to request a modification to a pretrial-filing deadline is itself alone a sufficient basis for a district court to deny an untimely motion. U.S. Dominator, Inc. v. Factory Ship Robert E. Resoff, 768 F.2d 1099, 1104 (9th Cir. 1985) ("[T]he record reveals that the defendants never requested a modification of the pretrial order to allow the filing of their motion. Accordingly, we conclude that the district court properly denied the motion as untimely."), *superceded by statute on other grounds as recognized in* MHC Fin. Ltd. P'ship v. City of San Rafael, 714 F.3d 1118, 1125 (9th Cir. 2013); see also Dedge v. Kendrick, 849 F.2d 1398, 1398 (11th Cir. 1988) (holding that a motion filed after a scheduling order deadline is untimely and may be denied solely on that ground).

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The Mitchell Defendants filed their Motion to Dismiss on November 21, 2019. However, the deadline for filing dispositive motions as set by the Court was August 23, 2019. (See 4th Amended Scheduling Order.) Thus, the Mitchell Defendants' Motion to Dismiss is nearly three months too late. Moreover, there is no evidence showing that the Mitchell Defendants' sought a modification or extension of this deadline. Therefore, the court has ample ground to deny the Motion to Dismiss solely on the on the basis of its untimely filing, and should do so.

B. The Mitchell Defendants' Motion to Dismiss is Procedurally Improper Because They Already Filed an Answer to the Amended Complaint.

As the Mitchell Defendants note in their MTD, after the hearing on the Prior MTD, the Order Denying Defendants' Motion to Dismiss Plaintiff's Complaint required Plaintiffs to file an Amended Complaint. MTD at 10:24 – 11:3; August 7, 2017, Order. Plaintiffs timely filed their Amended Complaint on August 21, 2017. The Mitchell Defendants filed their Answer to the Amended Complaint on September 5, 2017. Despite filing an Answer to the Amended Complaint, the Mitchell Defendants have now, more than two years later, and again, nearly three months beyond the dispositive motion deadline, belatedly, filed their MTD pursuant to NRCP 12(b)(2) and 12(b)(5). However, NRCP 12(b) clearly states that, "[a] motion asserting any of these defenses must be plead **before** a responsive pleading is allowed." NRCP 12(b) (emphasis added). As such, the Mitchell Defendants' MTD is improper, and should be denied.

C. Plaintiffs' Claims Are Within the Statute of Limitations Due to the Discovery Rule.

At least part of the Mitchell Defendants' arguments regarding the statute of limitations were made in the Prior MTD. As noted in Plaintiffs' prior Opposition, the problem with this argument is that the very reason why, without conceding the validity of the Mitchell Defendants' arguments, the claims were not filed until July 2016, I.E., those claims were not filed earlier because the defendants purposely concealed, and affirmatively undertook covert and secretive efforts to assure that a judgment creditor such as Nype would not be in a position to effectively enforce the judgment Plaintiffs obtained. See Exhibit "3", Paragraph 111. As is corroborated in

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detail in both Exhibits "2" and "3", the source financial documentation necessary to ascertain the relevant details of the fraudulent conveyance transactions were first disclosed to plaintiff less than one year prior to the filing of this suit, i.e. in the Fall of 2015. Even then, the documentation was woefully incomplete and required Plaintiffs to ultimately seek an Order Compelling Discovery in order to obtain many thousands of additional pages of information as to finances, emails, and the affiliated companies and subsidiaries, much of which was first provided (1,400,000 pages) on November 4, 2019. The reason Plaintiffs were not in a position to make a good faith assertion of fraudulent conveyance and/or alter ego prior to the 2016 filing of this case is attributable directly to the fact that the defendants consciously and affirmatively undertook steps to assure that Plaintiffs would not have sufficient data, evidence, and information to buttress and support such claims.

Statutes of limitation have long been applied so that the time limitation does not commence running until plaintiff discovers or reasonably should have discovered the operative facts necessary to assert a claim. As regards the fraudulent conveyance statute of limitation, of four years, as noted in Exhibit "3", Paragraphs 31 and 32, the limited financial documentation provided earlier in time was wholly inadequate and insufficient to determine or suggest that the transfers that had occurred had rendered LVLP functionally insolvent. Indeed, as noted in Exhibit "3", Paragraph 132, the limited documentation supplied prior to the Fall of 2015 suggested that LVLP was <u>not</u> insolvent, but was instead active and operating. Only when the underlying general ledgers, banking documents, and partial underlying source financial information was first disclosed, did Plaintiffs have reason, or even the possibility, of discovering and knowing that the transactions in question had in fact rendered LVLP functionally insolvent!

A proper analysis of the statute of limitations starts right with the language of the fraudulent conveyance statute, at NRS 112.230(1)(a) which specifically provides:

NRS 112.230 Limitation of actions; exception for spendthrift trusts.

1. A claim for relief with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(a) Under paragraph (a) of subsection 1 of NRS 112.180, Within Four (4) Years After The Transfer Was Made or the obligation was incurred or, IF LATER, Within One (1) Year After The Transfer Or Obligation Was Or Could Reasonably Have Been Discovered By The Claimant;

Id. (Emphasis added.)

This dovetails well with Nevada common law standards as to statutes of limitation. Specifically, Nevada law has long held that the issue of whether a plaintiff knew or should have known the operative facts necessary to assert a claim is a matter to be determined by its trier of fact. *Bemis vs. Estate of Bemis,* 114 Nev. 1021, 967 P.2d 437 (1998).

The Mitchell Defendants' assertions as to the applicability of the statute of limitations are predicated almost exclusively upon the age of the transactions, and the fact that some transactions involve conveyances of real estate. One of the fundamental requirements, however, of a fraudulent conveyance claim under NRS 112.180(1), is whether the subject transaction would functionally render the debtor insolvent or unable to pay his debt as they became due! See NRS 112.180(1)(b). As is noted in both Exhibit "2" and Exhibit "3", until detailed post-judgment discovery regarding the specifics of LVLP's finances occurred, commencing in September, 2015, Nype did not have knowledge or reason to believe that LVLP was in fact functionally insolvent. As noted in the *Bemis* case, *supra,* that issue is uniquely one to be determined by the trier of fact, after hearing all evidence. For now, the uncontroverted sworn statements of Nype and his forensic accounting expert, Mark Rich, stand unchallenged, i.e. the fact that numerous transactions were actually fraudulent and rendered LVLP insolvent

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were not known and could not have been discovered until the Fall of 2015, at the earliest, less than a year prior to the filing of this litigation.

The Mitchell Defendants also challenge Plaintiffs' civil conspiracy claim. As the court has already noted in determining defendants' motion to strike jury demand, Nevada precedent addresses the standards of such claims specifically. *Hilton Hotels vs. Butch Lewis Productions,* 109 Nev. 1043, 862 P.2d 1207 (1993). In this particular matter, the same arguments regarding the discovery of relevant evidence of conspiratorial activity, applies equally to learning the operative facts supporting plaintiffs' theories of a civil conspiracy by the defendants to avoid the effect of Plaintiffs' judgment against the parent company, LVLP. Further, as the Court is well aware, the Mitchell Defendants failed and refused to comply with the May 30, 2019 Order Compelling Discovery until being substantially sanctioned, being given a tight time deadline (twice extended), and finally producing 1,400,000 pages of documentation on the last possible day, November 4, 2019.

In this regards, as regard civil conspiracy, Mark Rich's expert report, a true and correct copy of the most recent version of which is contained as Exhibit "4" in the Appendix, suggests numerous items of questionable accounting activity, not the least of which is a serious question regarding spoliation of evidence, including the engagement letters that appear highly suspicious (perhaps constituting an affirmative willful wrongful act as to which defendants and their accountants conspired in order to explain and/or excuse the loss or destruction of such accounting records). See Exhibit "4", page 10, last full paragraph.

Having just received 1,400,000 pages of relatively non-indexed documents (the indices and discovery responses indicated broad general categories for thousands of pages of documents), Plaintiff, Mr. Rich, and his staff have been engaged in an ongoing review of these new materials produced which has a reasonable probability of producing additional evidence of conspiratorial misconduct, and/or corroborating Plaintiffs' previously voiced suspicions and doubts.

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The Mitchell Defendants do include an argument in their MTD that was not included in the Prior MTD. They argue that the discovery rule in NRS 112.230(1)(a) tolls from the discovery of the transfer, not from the allegedly fraudulent nature of the transfer. MTD at 6:21 – 8:22. They go on to state that the public recording of real estate deeds constitutes constructive notice, and that since the transactions were recorded with the County Recorder, Plaintiffs had notice of the transactions. Id. at 7:15-28. They then state that if Plaintiffs seek to toll the statute of limitations, they must show they exercised due diligence in discovery of the transfer. Id. at 8:11-14.

As noted above, until detailed post-judgment discovery regarding the specifics of LVLP's finances occurred, commencing in September, 2015, Plaintiffs had no knowledge or reason to believe that LVLP was in fact functionally insolvent. The fact that the numerous transactions had occurred were actually fraudulent and rendered LVLP insolvent was not known and could not have been discovered until the Fall of 2015, at the earliest, less than a year prior to the filing of this litigation.

As for due diligence, this Court is well aware of the lengthy, Herculean efforts required of Plaintiffs to finally, after Orders granting Plaintiffs' motions to compel and motions for sanctions, obtain requested documents from the Mitchell Defendants. The fact that the Mitchell Defendants' failed to produce documents until the last minute also belies their point that Plaintiffs had notice of at least certain transactions that were recorded with the County Recorder. Indeed, the Nevada Supreme Court has stated,

> In Allen v. Webb, 87 Nev. 261, 270, 485 P.2d 677, 682 (1971), we recognized the well-known principle that the public recording of real estate deeds constitutes constructive notice of the transaction. However, under the circumstances set forth in *Allen,* **we held that the public recording of a deed would not constitute constructive notice of facts giving rise to a prior purchaser's negligence cause of action against his escrow agent**. *Id.* The escrow agent had failed to record the prior purchaser's deed, thereby allowing a subsequent bona fide purchaser to successfully assert superior title against the prior purchaser under Nevada's recording statutes. *Id.*

Bemis v. Estate of Bemis, 114 Nev. 1021, 1026 n.2, 967 P.2d 437, 441 (1998) (emphasis added).

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Similar to the situation in Allen v. Webb, public recording of the deeds in this matter did not constitute constructive notice of the facts giving rise to Plaintiffs' fraudulent transfer claims because the limited documentation they produced to Plaintiffs prior to the Fall of 2015 suggested that LVLP was not insolvent, but rather active and operating, and claiming millions of dollars of "Net Worth."

Based on the foregoing, the Court should find that Plaintiffs' claims are within the statute of limitations, and should deny the Mitchell Defendants' MTD.

D. Plaintiffs' Claims Have Been Plead With the Requisite Particularity.

It seems odd that the Mitchell Defendants would argue that Plaintiffs' claims for fraudulent conveyance and constructive trust should be dismissed because they are not plead with particularity, **after** filing an Answer to the Amended Complaint! Indeed, the Mitchell Defendants have had ample time to raise this argument, yet failed to timely do so, or to request leave to do so. Indeed, they did not find the Amended Complaint so vague and ambiguous that they were unable to deny the allegations contained therein. See 9/5/17 Answer to Amended Complaint, 6:1-15. Tellingly, the Answer does not state that Defendants lacked sufficient information or knowledge to form a basis for the truth of the allegations asserted. Id. Rather, Defendants flat-out denied the asserted allegations. Id.

Again, not only is the MTD filed nearly three months past the dispositive motion deadline, it is also filed after the Mitchell Defendants filed an Answer to the Amended Complaint. These grounds alone are enough to dismiss the MTD.

Further, as Plaintiffs stated in their Opposition to the Prior MTD, Nevada jurisprudence recognizes that where the specific factual data necessary to prove the claim lies within the unique province of the defendants, pleading with less particularity is appropriate, and a plaintiff should be entitled to undertake reasonable discovery to pin down and determine the specific details of the misconduct that has occurred, which information is uniquely and exclusively within the possession of the defendants (who have obvious reason to conceal and not make such information available), despite the District Court's Order requiring them to produce all such documentation. See Exhibit "3", Sub-Exhibit "B", p. 3, line 24 - page 4, line 4.; Rocker v. KPMG LLP, 122 Nev,

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1185, 1194-1195, 148 P.3d 703 (2006) (overruled in part on other grounds by Buzz Stew, LLC. v. City of N. Las Vegas, 181 P.3d 670, 672, 124 Nev. 224, 228).

E. The Mitchell Defendants Are Not Entitled to Summary Judgment as a Matter of Law Because Their Motion is Untimely and Because There are Numerous Factual Disputes.

Should the Court be persuaded to treat the Mitchell Defendants' MTD as a Motion for Summary Judgment pursuant to NRCP 12(d), Plaintiffs again point out that the dispositive motion deadline was August 23, 2019, nearly three months prior to the filing of the Mitchell Defendants' MTD. Again, this basis alone is enough for the Court to dismiss the MTD.

However, should the Court be inclined to consider the merits of this argument, "[s]ummary judgment is appropriate . . . when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (quoting NRCP 56(c)) (alteration in the original). "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." Id. at 731, 121 P.3d 1031.

"To prevail on a summary judgment motion, the *moving party* has the burden of proving the absence of genuine issues of fact and must 'show that one of the elements is clearly lacking as a matter of law.'" Joynt v. California Hotel & Casino, 108 Nev. 539, 542, 835 P.2d 799, 801 (1992) (quoting Sims v. General Telephone and Electric, 107 Nev. 516, 521, 815 P.2d 151, 154 (1991)) (emphasis added). "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Wood, 121 Nev. at 729, 121 P.3d at 1029. Indeed, "the trial court is precluded from drawing inferences favorable to the moving party." Berge v. Fredericks, 95 Nev. 183, 186, 591 P.2d 246, 247 (1979). "Properly supported factual allegations and all reasonable inferences of the party opposing summary judgment must be accepted as true." Michaels v. Sudeck, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1991).

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Like the rest of their MTD, much of the Mitchell Defendants' arguments for summary judgment appear to be copied and pasted from the Prior MTD. However, they do include an additional argument with regard to Plaintiffs' fraudulent transfer claim, wherein the Mitchell Defendants argue that because LVLP is the only debtor, and did not make any transfers, LVLP cannot be liable for any fraudulent transfers. MTD at 17:4 – 19:4.

The Mitchell Defendants' argument in that regard ignores Plaintiffs' alter ego claims. Indeed, none of the cases cited by the Mitchell Defendants are alter ego cases. Id. Moreover, the Crystallex case cited by the Mitchell Defendants, while accurately quoted, then goes on to state,

> Delaware law "tends to accord dignity to legal entities except in cases in which the traditional law of piercing the corporate veil is met." *Hart Holding Co. v. Drexel Burnham Lambert Inc.* C.A. No. 11514, 1992 Del. Ch. LEXIS 112, 1992 WL 127567, at n.11 (Del. Ch. 1992). Such cases are rare, and include situations where the subsidiary is a mere "alter ego" of the parent. *See Mabon, Nugent & Co. v. Texas Am. Energy Corp.*, CIV A No. 8578, 1990 Del. Ch. LEXIS 46, 1990 WL 44267 (Del. Ch. 1990) (describing possible grounds for piercing the corporate veil under Delaware law). Crystallex alleges in great detail that *PDVSA* is Venezuela's alter ego. But that is beside the point. Tellingly, **it does not allege that PDVH is Venezuela's or PDVSA's alter ego or any other basis on which we could "pierce the corporate veil." Absent such allegations, we are unwilling to disregard PDVH's distinct corporate identity and attribute to it the actions of the debtor.**"

Crystallex Int'l Corp. v. Petróleos de Venez., S.A., 879 F.3d 79, 86, 2018 U.S. App. LEXIS 95, *13 (3d Cir. 2018) (emphasis added).

Unlike in Crystallex, here Plaintiffs' **have** alleged that LVLP is the alter ego of all the Mitchell Defendants, thus allowing the court to attribute the fraudulent transfers of the other entities to LVLP.

Even more on point is that the Nevada Supreme Court has recently concluded that an alter ego of a debtor can be a debtor under Nevada's Uniform Fraudulent Transfer Act, and that a transfer between alter egos or between the judgment debtor and an alter ego can be a transfer under Nevada's Uniform Fraudulent Transfer Act. In a recent unpublished case[1], Magliarditi v. TransFirst Grp., Inc., Nevada Supreme Court Docket No. 73889, listed at 450 P.3d 911 in table format;

[1] Pursuant to NRAP 36(c)(3), "[a] party may cite for its persuasive value, if any, an unpublished disposition issued by the Supreme Court on or after January 1, 2016."

2019 Nev. Unpub. LEXIS 1156, at *17; 2019 WL 539470 (Oct. 21, 2019), the Nevada Supreme Court accepted seven certified questions from the United States District Court for the District of Nevada, which included the questions, "[i]s an alter ego of a judgment debtor a 'debtor' under Nevada's Uniform Fraudulent Transfer Act?" and, "[i]s a transfer between an alter egos or between the judgment debtor and an alter ego a 'transfer' under Nevada's Uniform Fraudulent Transfer Act?" Id. at *1. After considering these questions, the Nevada Supreme Court concluded that, "[a]s we are compelled to conclude that an alter ego may be a 'debtor' under UFTA, we are likewise compelled to conclude that transfers to or between alter egos can be 'transfers' under UFTA." Id. at *14.

Similarly, the Supreme Court stated: "The court also concluded that the LLC and corporation were the debtor's alter egos, and that transfers made by those entities could be considered fraudulent transfers of the judgment debtor and therefore properly avoided. *In re Turner*, 335 B.R. at 147. The Ninth Circuit relatedly held that a corporation created by a judgment debtor to insulate the debtor's assets was the debtor's alter ego, concluding that a fraudulent transfer *by an alter ego* could be treated as a fraudulent transfer by the judgment debtor. *Fleet Credit Corp. v. TML Bus Sales, Inc.*, 65 F.3d 119, 120-22 (9th Cir. 1995) (applying California's fraudulent transfer law)." *Id.* at pp 11-12

In another argument not included in the Prior MTD, the Mitchell Defendants argue that defendant entities cannot be the alter ego of LVLP when LVLP only had ownership interest in Livework Manager, LLC. They argue that Plaintiffs can therefore not establish a unity of interest and ownership when there is no ownership. MTD at 24:19 – 25:9.

However, complete ownership of an entity is not required in order to find an alter ego relationship. LFC Mktg. Grp., Inc. v. Loomis, 116 Nev. 896, 905, 8 P.3d 841, 847 (2000). Indeed, the doctrine does not even require an individual or entity to have **any** ownership interest **at all**. See id. (finding a corporation to be the alter ego of an individual who "d[id] not own a single share of" the corporation); see also id. ("Although ownership of corporate shares is a strong factor favoring unity of ownership and interest, the absence of corporate ownership is not automatically a controlling event. Instead, the 'circumstances of each case' and the interests

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of justice should control."); accord State v. Easton, 169 Misc. 2d 282, 647 N.Y.S.2d 904, 909 (App. Div. 1995) (allowing a corporation's assets to be reached through reverse piercing where the debtor did not own a single share of the corporation's stock).

Finally, in addressing Plaintiffs' alter ego claims, the Mitchell Defendants assert that this is a remedy and not a proper cause of action, they neglect to advise the Court of a recent Nevada Supreme Court decision rejecting that contention! See Magliarditi, supra at pages 4-5. As was stated by the Nevada Supreme Court:

> "The Nevada federal district court predicted that the alter ego doctrine can be a separate cause of action when the claim is filed as a means for a judgment creditor to pursue the execution of a prior judgment. We agree.
>
> . . . .
>
> This court concluded that such a mechanism violated the nonparty's due process rights and held that "judgment creditor[s] who wish[] to assert an alter ego *claim* must do so in an *independent action* against the alleged alter ego."
> P.3d at 879 (emphasis added). We also clarified our prior holding in *McCleary Cattle Co. v. Sewell,* 73 Nev. 279, 317 P.2d 957 (1957) , and concluded "that a motion to amend a judgment is not the proper vehicle by which to allege an alter ego claim." *Callie,* 123 Nev. at 184-85, 160 P.3d at 880. We reasoned that a separate cause of action was necessary because the nonparty was an individual who may or may not have exercised the requisite degree of control over the debtor corporation at issue, and therefore the nonparty was entitled to due process to present a defense against alter ego liability. *Id.* at 186, 160 P.3d at 881.debtor corporation at issue, and therefore the nonparty was entitled to due process to present a defense against alter ego liability. *Id.* at 186, 160 P.3d at 881.

Id. (emphasis supplied)

The Mitchell Defendants also question whether the statutory enactment of specific alter ego remedies in the Nevada Corporation statutes suggest that the absence of such statutory remedy insulates limited liability companies, given that the previously enacted limited liability

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company statutes did not include any such remedy! In *Magliarditi* also rejects that contention. *Magliarditi*, *supra* at page 8.

As the Supreme Court stated:

> "Finally, pointing to nationwide recognition, LLC's afford the same opportunities for abuse and fraud as corporations, and therefore creditors of LLC's need the same opportunity to pierce the corporate veil as creditors of corporations when such fraud or abuse exists. *Id.* While *Gardner* does not explicitly apply to partnerships, we conclude the logic extends to these entities. See *Giampietro*, 317 B.R. at 847 ("Nowhere in the … legislative history, however, is there any indication of an intent to tighten or clarify alter ego liability for corporations while eliminating it for limited liability companies or any other limited liability entity (such as limited partnerships, limited-liability partnerships or limited-liability limited partnerships). Indeed, such a course would be counterproductive, in that it Would disfavor the creating of corporations, which would Lessen overall corporate franchise fee revenues."); *Sunrise Sec. Corp. vs. Anzalone*, Docket No. 49052 (Order Reversing in Part and Affirming in Part, Feb. 5, 2009) (accepting the district court's application of the alter ego doctrine to a limited partnership). And the parties concede that *Gardner* resolves the certified questions as to these entities. Therefore, the alter ego doctrine applies to LLC's and partnerships."

F. This Court has Personal Jurisdiction Over the Mitchell Defendants.

The Mitchell Defendants' argument that the Court lacks personal jurisdiction over them is also largely, if not completely, copied and pasted from the Prior MTD. As Plaintiffs' responded in their Opposition to the Prior MTD, it appears that defendants have placed the cart before the horse.

For example, fundamental jurisprudence advises that for purposes of a motion to dismiss, the allegations asserted by a plaintiff must be taken at face value and construed most favorably in favor of the claimant. *Morris vs. Bank of America,* 110 Nev. 1274, 88 2d P.2d 454 (1994). Furthermore, the Mitchell Defendants have not introduced any supporting documentation, evidence, or information which would make their MTD anything more than a naked motion to dismiss. While not doing so, they patently assert, that ten of the named defendants, which

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Plaintiffs acknowledge are all Delaware LLC's, have no employees or property in Nevada. Yet there is no corroboration, affidavit, declaration, or proof of the same. Even then, the court must carefully read between the lines because each of these entities has, at one time or another, had an beneficial or equity interest in various real estate related to or deriving from LVLP, either standing on its own, or in conjunction with its joint venture with Forest City Enterprises!

And, with all due respect, and with no corroboration whatsoever, the Mitchell Defendants then state that the ten designated Delaware LLC's, "are not **currently** qualified to conduct business in Nevada." Yet, the Mitchell Defendants cavalierly neglect to advise the court that several of the identified LLC's at one time were qualified and registered to do business in the State of Nevada, and/or owned beneficial interests in Nevada real estate.

The crux of Plaintiffs' case, it must be remembered, is that the defendants have acted jointly to gerrymander their beneficial interests and valuable assets and conceal them in out-of-state LLC' s, which in reality are all *alter egos* of LVLP and its principals.

The Mitchell Defendants do not dispute that LVLP is and has been subject to the jurisdiction of this Court.

"[F]ederal courts have consistently acknowledged that it is compatible with due process for a court to exercise personal jurisdiction over an individual or a corporation that would not ordinarily be subject to personal jurisdiction in that court when the individual or corporation is an alter ego or successor of a corporation that would be subject to personal jurisdiction in that court." Patin v. Thoroughbred Power Boats, 294 F.3d 640, 653 (5th Cir. 2002). "The theory underlying these cases is that, because the two corporations (or the corporation and its individual alter ego) are the same entity, *the jurisdictional contacts of one are the jurisdictional contacts of the other* for the purposes of the International Shoe due process analysis." Id. (emphasis added) (citing Lakota Girl Scout Council, 519 F.2d 634, 637 (8th Cir. 1975) (explaining that "if the corporation is [the individual defendant's] alter ego, its contacts are his and due process is satisfied")). "When a corporation is deemed the 'alter ego' of an individual, then those entities are

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considered to be *one and the same under the law*: 'the corporation's acts must be deemed to be [the individual's] own.'" Id. at 654 (emphasis added) (citing Packer v. TDI Systems, Inc., 959 F. Supp. 192, 203 (S.D.N.Y. 1997)).

"'Where a corporation is the alter ego of the stockholders so as to justify disregard of the corporate entity[,] jurisdiction over the corporation will support jurisdiction over the stockholders.'" Flynt Distr. Co. v. Harvey, 734 F.2d 1389, 1393 (9th Cir. 1984) (quoting Sheard v. Superior Ct., 40 Cal. App.3d 207, 210, 114 Cal. Rptr. 743, 745 (1974)) (emphasis and alteration in original); see also ADO Finance, AG v. McDonnell Douglas Corp., 931 F. Supp. 711, 715 (C.D. Cal. 1996) ("If a corporation is an alter ego of an individual or another corporation, then the district court may disregard the corporate form and exercise personal jurisdiction over the other individual or entity."). Accordingly, this Court has jurisdiction over the Mitchell Defendants based upon a prima-facie showing that they are in fact the Alter Egos of LVLP.

In the same context, the Mitchell Defendants contend that Liberman and Mitchell "have not conducted business in an individual capacity in Nevada." MTD at Page 26, Lines 22-24; Prior MTD at Page 8, Lines 5-6. But, that statement ignores the factual averments and allegations set forth in Plaintiffs' Amended Complaint which must be accepted as true. One of the most important allegations asserted by Plaintiffs is that Liberman and Mitchell have a unity of interest, a unity of control, and that to recognize as independent entities the LLC's would operate as a fraud and facilitate an injustice on LVLP's creditors! Cf. *Polaris Industrial Corp. vs. Kaplan,* 103 Nev. 598, 601, 747 P.2d 884 (1987).

Stated in another way, as required in evaluating a motion to dismiss, and accepting the factual allegations supporting Plaintiff's *alter ego* claims as true, it is patently apparent that the individual defendants, the principals of LVLP, have acted as the alter egos of LVLP, as to which there is no *bona fide* question of personal jurisdiction, and therefore necessarily have been active and doing ongoing business in Nevada for over a decade!

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Indeed, in terms of evaluating the Mitchell Defendants' MTD, one of the leading jurisdictional cases cited by the Mitchell Defendants provides the answer in terms of a legal standard by which the court should evaluate the Mitchell Defendants' jurisdictional motion. As noted by the Nevada Supreme Court in *Viega GmbH v. Eighth Judicial District Court,* 130 Nev. 368, 376, 328 P.3d 1152 (2014) stated:

> "The alter ego theory allows plaintiffs to pierce the corporate veil to impute a subsidiary's contacts to the parent company by showing that the subsidiary and the parent are one and the same. See, e.g., *Goodyear* 564 U.S. at 530, 131 S. Ct. at 2857 (implying, but not deciding, that an alter ego theory would be appropriate in such a situation); see also *Platten v. HG Bermuda Exempted, Ltd.,* 437 F.3d 118, 139 (1' Cir. 2006); *Patin v. Thoroughbred Power Boats, Inc.,* 294 F.3d 640, 653 (5th Cir. 2002). The rationale behind this theory is that the alter ego subsidiary is the same entity as its parent, and thus, the jurisdictional contacts of the subsidiary are also jurisdictional contacts of the parent. *Patin,* 294 F.3d at 653.

Id. Emphasis supplied.

Finally, and also telling as to the *bona fides* of defendants, the Mitchell Defendants wholly failed to mention that two of the ten purported entities which claim not to be subject to personal jurisdiction in fact affirmatively chose to come to the Nevada courts and participate as affirmative plaintiffs in the First Case vs. Plaintiffs! To the extent that they may have terminated prior contacts with Nevada in the interim, such severance will not divest the court of jurisdiction to hold them legally accountable for their past affirmative voluntary forum activity, the details of which were concealed and never disclosed prior to the belated discovery of relevant and financial transactional data, as attested to more fully in Exhibit "3".

III.

CONCLUSION

Based on the foregoing, the Mitchell Defendants' MTD should be denied. The MTD is untimely, and filed long after they filed an Answer to the Amended Complaint. Moreover, the Mitchell Defendants conveniently overlook the fact that LVLP and two of its affiliated companies, first chose to sue Plaintiffs in Nevada. LVLP also overlooked the fact that many of the affiliated companies were previously qualified and registered to do business in Nevada.

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The common law governing personal jurisdiction provides that personal jurisdiction does attach to affiliated entities acting as the alter ego of the parent! Above all else, it must be remembered that LVLP, operating under the behest and control of its principals, is certainly subject to personal jurisdiction, and has never challenged the same. In fact, LVLP chose the Las Vegas forum to bring its lawsuit involving its diverse and extensive Las Vegas real estate investing and activities against Mr. Nype, which choice ultimately resulted in a judgment in favor of Plaintiffs, on their counterclaim.

Finally, as noted, had the Mitchell Defendants been candid and forthright regarding their finances and the various transactions they undertook, the issues regarding fraudulent conveyances, alter ego, etc. could and likely would have been addressed in the underlying litigation. Instead, LVLP belatedly produced a bare minimum documentation required by the court in the first litigation, which tax returns on their face showed an ongoing operating entity, active in the Las Vegas, Nevada area, with substantial assets allegedly worth more than the putative amount of Plaintiffs' claims. Only after Plaintiffs obtained their judgment, and commenced post-judgment discovery, was it learned by careful examination of the underlying source financial documents (which incidentally do not match or reconcile to the actual tax returns as filed!) that the details of those transactions ultimately culminated in a circumstance where LVLP is functionally insolvent and unable to pay regular bills as they become due.

DATED this 12th day of December, 2019.

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CERTIFICATE OF SERVICE

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 12th day of December, 2019, I caused the foregoing document, **PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO NRCP 12(b)(2) and 12(b)(5), OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT** to be served as follows:

__ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed as follows; and/or

_X_ by electronically filing and serving with the Clerk of the Court via the Odyssey E-File and Serve System; and/or

__ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid marked certified return receipt requested addressed as follows;

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DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC, DOES I through X; DOES I through X; DOE CORPORATIONS I through X; and DOES PARTNERSHIPS I through X, Plaintiffs, vs. DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; 305 LAS VEGAS LLC; LIVE WORKS TIC SUCCESSOR, LLC; CASINO COOLIDGE LLC; DOES I through III, and ROE CORPORATIONS I through III, inclusive, Defendants.	Case No. A-16-740689-B Dept. No. 11 **DEFFENDANTS BARNET LIBERMAN AND CASINO COOLIDGE, LLC'S TRIAL BRIEF** **Trial: date: December 30, 2019**

TRIAL BRIEF

Defendants Barnet Liberman and Casino Coolidge, LLC, by and through their counsel, the law firm of Blut Law Group, PC, submit the following Trial Brief.

I.

STATEMENT OF THE CASE

The facts leading to this action are extensive and have been the subject of a motion to dismiss and for summary judgment briefed and argued in the last 4 months. This brief will not seek to reiterate all of the facts but to highlight the factual deficiencies in Plaintiffs' case.

This action arises from the April 10, 2015 judgment that Plaintiff Russell L. Nype obtained against Las Vegas Land Partners, LLC ("LVLP") and subsequent efforts by Plaintiff to collect that judgment through various co-defendant entities. Plaintiffs allege that LVLP dissipated its assets by transferring assets to related business entities controlled by Defendant Barnet Liberman, and others, without consideration, to the detriment of the Plaintiffs.

Plaintiffs filed their original complaint on July 27, 2016 and an amended complaint on August 21, 2017. Barnet Liberman, ("Liberman") and Casino Coolidge LLC, a Nevada LLC ("Casino Coolidge"), are named as defendants. The Trustee in the Bankruptcy Case *of Las Vegas Land Partners, LLC*, Case No. BK-19-15333-mkn intervened in the instant action on November 18, 2019.

There is no evidence that proves Liberman or Casino Coolidge engaged in acts to diminish or waste assets or that Liberman transferred assets, title or equity interests on behalf of Casino Coolidge. Neither Liberman nor Casino Coolidge control LVLP. Liberman was a manger of LVLP but did not have sufficient control over LVLP that he could engage in acts to diminish or waste assets of LVLP and there is no evidence he transferred assets, title or equity interests on behalf of LVLP. Similarly, Liberman did not control Aquarius Owner LLC, FC/LW Vegas, LLC, FC/Vegas 20, LLC, Live Work LLC, Wink One, LLC, 305 Law Vegas, LLC, Mitchell Holdings, LLC, Live Works TIC Successor, LLC, or Liberman Holdings, LLC or direct their operations.

Plaintiffs allege that real property and ownership equity transfers took place between LVLP and Leah Property, LLC. Liberman and Casino Coolidge deny such transfers took place,

but even if they had, they would not implicate Liberman or Coolidge since they did not have control over LVLP.

The other real property transfer that Plaintiff alleges to be a fraudulent conveyance involves the sale of real property from LiveWork, LLC to 305 Las Vegas, LLC. The sole member of 305 Las Vegas, LLC is 305 Second Avenue Associates, LLC. There is no evidence that Liberman controlled 305 Las Vegas, LLC or for that matter, its manager 305 Second Avenue Associates, LLC. The sole transaction complained of was for adequate consideration and was not made to avoid any payment to Plaintiff or the cause of any capitalization issues of LVLP.

II.

CLAIMS AND DEFENSES

1. Constructive Trust (Which is being abandoned but has not been as of the time of the filing of this Brief)

"The constructive trust is no longer limited to [fraud and] misconduct cases; it redresses unjust enrichment, not wrongdoing." *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1027, 967 P.2d 437, 441-42 (1998), citing Dan B. Dobbs, *Law of Remedies* § 4.3(2) (2d ed. 1993); *See also DeLee v. Roggen*, 111 Nev. 1453, 1457, 907 P.2d 168, 170 (1995), quoting *Locken v. Locken*, 98 Nev. 369, 372, 650 P. 2d 803, 804-05 (1982)(reiterating that "'[a] constructive trust is a remedial device by which the holder of legal title to property is held to be a trustee of that property for the benefit of another who in good conscience is entitled to it." A constructive trust exists where: "(1) a confidential relationship exists between the parties; (2) the retention of legal title by the holder thereof against another would be inequitable; and (3) the existence of such a trust is essential to the effectuation of justice." 98 Nev. at 372, 650 P. 2d at 805.

When the wrongdoer embezzles money and uses it to purchase property, he or she can be required to convey the property to the person from whom the money was taken, by means of a constructive trust. See *Haskel Engineering Supply v. Hartford Acc.*, 144 Cal. Rptr. 189 (Ct.App. 1978); Restatement of Restitution § 202 (1937). The requirement that a constructive trustee have

title (not mere possession) to the property involved is critical to the imposition of a constructive trust. See *Cherno v. Dutch Am. Mercantile Corp*., 353 F.2d 147 (2d Cir. 1965); *Thompson v. Mobile Producing Co*., 163 F. Supp. 402 (D. Mont. 1958); G. Bogert, Law of Trusts 208 (4th ed. 1963) *Danning v. Lum's, Inc*., 86 Nev. 868, 871 (Nev. 1971).

Here, the Plaintiffs fail to describe any specific property upon which a trust could be imposed. "As the court ruled in *Bradford v. Chase Nat'l Bank*, 24 F. Supp. 28, 34 (S.D.N.Y. 1938), *aff'd sub nom., Berger v. Chase Nat'l Bank*, 105 F.2d 1001 (2d Cir. 1939), *aff'd*, 309 U.S. 632 (1939): "There must be an asset — whether it be land, a chattel, or a chose in action — in order to have a trust of any kind, express, implied in fact, or impressed by law.". . . *Danning v. Lum's, Inc*., 86 Nev. 868, 871 (Nev. 1971). Neither the first amended complaint nor the complaint in intervention describes a specific asset upon which a constructive trust could be imposed.

2. Fraudulent Conveyance

In Nevada, three types of fraudulent transfers are prohibited: "(1) actual fraudulent transfers; (2) constructive fraudulent transfers; and (3) certain transfers by insolvent debtors." *Herup v. Boston Fin. LLC*, 123 Nev. 228, 233, 162 P.3d 870, 873 (2007). For both actual and constructive fraudulent transfer, the transfer in question must be made by the debtor. NRS 112.180(1).

A fraudulent conveyance occurs "if the debtor made the transfer . . . [w]ith actual intent to hinder, delay or defraud any creditor of the debtor," without regard for when the transfer was made or when the debt was incurred. NRS 112.180(1). In determining "actual intent" to support a fraudulent conveyance claim, considerations relevant to this case include whether:

> (a) The transfer or obligation was to an insider;
> . . . .
> (d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
> (e) The transfer was of substantially all the debtor's assets;
> . . . .

> (h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
> (i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
> (j) The transfer occurred shortly before or shortly after a substantial debt was incurred . . . .

NRS 112.180(2); *Certain v. Sunridge Builders, Inc.*, 431 P.3d 38 (Nev. 2018). In addition NRS 112.220(1) provides: "A transfer or obligation is not voidable under paragraph (1) of subsection 1 of NRS 112.180 against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

One transfer complained about is a sale of real property previously owned by Leah, LLC to Casino Coolidge, LLC. First, Plaintiff will not be able to establish that Leah, LLC was the alter ego of LVLP (See below). Even if this is established, Plaintiff will be unable to establish that Liberman was the alter ego of Leah, LLC (See below), and there is no evidence that Casino Coolidge, LLC was an insider within the meaning of the statute. Even if the two points are able to be established, there is no evidence that LVLP or its managers made a fraudulent transfer to Casino Coolidge, LLC by LVLP on or after the date judgment was entered and the debt was incurred, on April 10, 2015. Plaintiff has failed to produce any evidence that the sale of the real property for $1,000,000 was not for reasonable equivalent value, failed to establish that the real property sold by Leah, LLC was substantially all of LVLP's assets (if Leah was an asset of LVLP). With no evidence that Liberman or Casino Coolidge fraudulently transferred money or any other assets while LVLP was insolvent or that rendered LVLP insolvent, this claim must fail. Plaintiffs cannot demonstrate the intent to defraud or hinder the Plaintiffs as creditors.

The other transaction complained of relates to the sale of real property Defendant 305 Las Vegas, LLC ("305 Las Vegas") whose sole member is non-party 305 Second Avenue Associates, LP. In May, 2007, 305 Las Vegas purchased real property for $25,029,850 from LiveWork, LLC. Plaintiff's expert concedes that he has no evidence that reasonable equivalent value was not received. There will not be any evidence that this transfer from LiveWork was to an insider, under the threat of suit by Plaintiff, that the transfer was of substantially all of LVLP's assets, or

that LVLP was insolvent of became insolvent shortly after the transfer was made. Nor was the sale conducted near the time a substantial debt was incurred. This transaction was an arms-length transaction, for value and was not entered with actual intent to hinder any efforts of Plaintiff.

Plaintiff's expert will opine that a $5,000,000 carry back note and deed of trust was written off and this was done with the intent to avoid payment to Nype. The actual evidence of the transaction is such that the $5,000,000 deed of trust was in third position and the note was forgiven as part of a settlement of the foreclosure and associated litigation in Missouri brought by the first deed of trust holder. The write off of the $5,000,000 was unrelated to Nype's at the time unliquidated claim. The settlement agreement provides the details of an agreement to resolve a foreclosure and litigation and undercuts this claim.

3. Conspiracy to Defraud

An actionable civil conspiracy-to-defraud claim exists when there is (1) a conspiracy agreement, "a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another" *Consolidated Generator v. Cummins Engine*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998); (2) an overt act of fraud in furtherance of the conspiracy; and (3) resulting damages to the plaintiff. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 74-75, 110 P.3d 30, 51 (2005), *abrogated on other grounds by Buzz Stew*, 124 Nev. at 228 n.6, 181 P.3d at 672 n.6. "Proof of an agreement alone is not sufficient, however, because it is essential that the conduct of each tortfeasor be in itself tortious. Section 876(a), cmts. b c." *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1488-89 (Nev. 1998).

Thus, an underlying cause of action for fraud is a necessary predicate to a cause of action for conspiracy to defraud. 16 Am. Jur. 2d Conspiracy § 63 (1998); *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003). In Nevada, fraudulent misrepresentation occurs when a false representation is made with knowledge or belief that it is false, or with an insufficient basis of information for making the representation, and with intent to induce the plaintiff to act, and the plaintiff relies on the misrepresentation with resulting damages. *Barmettler v. Reno Air, Inc.,*

114 Nev. 441, 446-47, 956 P. 2d 1382, 1386 (1998). Intent must be specifically alleged. *Tahoe Village Homeowners v. Douglas Co.*, 106 Nev. 660, 663, 799 P. 2d 556, 558 (1990).

There is no evidence of tortious conduct by Defendants Barnet Liberman or Defendant Casino Coolidge. The Plaintiffs cannot prove the existence of any agreement, tacit or otherwise, between LVLP and Barnet Liberman and/or Casino Coolidge in which they agreed to place assets otherwise subject to levy outside the reach of the Plaintiffs; to defraud Plaintiffs; to dissipate assets of LVLP to avoid payment of the judgment. While it is undisputed that the real estate market in Las Vegas crashed in and around 2008, Plaintiffs cannot claim that such collapse renders Liberman liable for the judgment against LVLP.

4. Declaratory Relief

Declaratory relief is available if: (1) a justiciable controversy exists between persons with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the controversy, and (3) the issue is ripe for judicial determination. *Cty. of Clark ex rel. Univ. Med. Ctr. v. Upchurch by & Through Upchurch*, 114 Nev. 749, 961 P.2d 754 (1998) citing *Knittle v. Progressive Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996).

Declaratory relief is within the discretion of the district court, which may refuse to enter a declaratory judgment if the judgment "would not terminate the uncertainty or controversy giving rise to the proceeding." NRS 30.080. *Farmers Ins. Exch. v. Bainbridge*, No. 63348, at *2 (Nev. Nov. 17, 2015). The Plaintiffs' case is one for money damages, and declaratory relief will not aid the court or the parties in the determination of that claim. *See* Restatement (Second) of Judgments § 33 cmt. c ("[T]he court whose discretion is invoked by a declaratory action has means of preventing abuse. The court should lean toward declining the action if another remedy, such as a coercive action on an existing claim, is plainly available and would have wider [claim preclusive] effects.").

5. Alter Ego

Under the standard alter ego doctrine, there are three elements for determining whether the corporate fiction should be disregarded:

> (1) the corporation must be influenced and governed by the person asserted to be the alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice.

Certain v. Sunridge Builders, Inc., 431 P.3d 38 (Nev. 2018), citing *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987); *see also* MRS 78.747(2) (codifying the *Polaris* test).

In determining whether a plaintiff has demonstrated the second element, courts look to "factors like co-mingling of funds, undercapitalization, unauthorized diversion of funds, treatment of corporate assets as the individual's own, and failure to observe corporate formalities." *Polaris*, 103 Nev. at 601, 747 P.2d at 887. These factors are not exclusive and "[t]here is no litmus test for determining when the corporate fiction should be disregarded; the result depends on the circumstances of each case." *Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 808, 963 P.2d 488, 497 (1998). *Certain v. Sunridge Builders, Inc.*, 431 P.3d 38 (Nev. 2018). It should be noted, however, that "'[t]he corporate cloak is not lightly thrown aside' and that the alter ego doctrine is an exception to the general rule recognizing corporate independence." *Truck Ins. Exch. v. Swanson*, 124 Nev. 629, 635, 189 P.3d 656, 660 (2008), citing *LFC Mktg. Group, Inc. v. Loomis*, 116 Nev. 896, 903-04, 8 P.3d 841, 846 (2000).

"The obligation to provide adequate capital begins with incorporation and is a continuing obligation thereafter during the corporation's operations." *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co*. 540 F.2d 681, 686 (4th Cir. 1976). Inadequate capitalization means capitalization that is very small in relation to the nature of the business of the corporation and the risks the business necessarily entails. *J-R Grain Co. v. FAC, Inc.*, 627 F.2d 129, 135 (8th Cir. 1980); *Anderson v. Abbot*, 321 U.S. 349, 362 (1944) ("inadequate capital" is "measured by the nature and magnitude of the corporate undertaking"). The test for undercapitalization of a corporation is not whether it could satisfy a judgment entered against it, but whether it has the capital necessary to enable it to operate its business and pay its debts as they come due.

Laborers Clean-Up Contract Admin. Trust Fund v. Uriarte Clean-Up Servs., Inc., 736 F.2d 516, 534 (9th Cir. 1984).

Plaintiff's entire action omits a critical piece of evidence, i.e. that LVLP is the only debtor. Plaintiff will not establish any of the factors that courts have recognized to establish the unity of interest, such as commingling of funds, undercapitalization, treatment of corporate assets as the individual's own or failure to observe corporate formalities. While entities were disregarded for tax purposes, this is not grounds for a finding of alter ego. LVLP owned real property and an interest in a tenancy in common agreement with Forest City. This is the very transaction in which Plaintiff originally sought payment for his introduction. Plaintiff was fully aware of the entity he was providing "services for" as well as the planned outcome of the relationship between Forest City and LVLP. Plaintiff will be unable to establish hat LVLP or any of the defendant entities were undercapitalized, nor that any of the transactions entered into contemplated Plaintiff in any way.

Plaintiffs also seek to "reverse" Pierce the corporate veil – namely, to hold Defendant Casino Coolidge liable for the personal liability of Liberman. This is in essence an attempt to reach assets of Liberman prior to obtaining a judgment against Liberman. Casino Coolidge maintains its own bank accounts, is accounted for on Liberman's tax returns on Schedule E and has maintained corporate formalities. There is no basis for a reverse piercing as to Casino Coolidge or any other defendant entity.

The third element relates to whether the facts are such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice. Here, plaintiff will testify that he knew that he was dealing with LVLP and not Liberman individually. Plaintiff was aware of the transaction at the time in which Forest City invested tens of millions for a controlling share of a new entity formed. Plaintiff knew he entered into an agreement with LVLP relating to the Forest City transaction and cannot come to this Court some twelve years later claiming that he had any other understanding. Plaintiff chose the entity defendant in the original action. There is no injustice or fraud on the part of Liberman relating to the choice of defendant chosen by Plaintiff in the 2007 action.

III.

CONCLUSION

At the conclusion of the testimony, it will be clear that Plaintiffs have not met their burden and Liberman and Casino Coolidge will request a defense Judgment in their favor.

DATED this 29th day of December, 2019.

BLUT LAW GROUP, PC

/s/ Elliot S. Blut

By: _____

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BLUT LAW GROUP, PC, and that on **December 29, 2019**, I caused a correct copy of the foregoing document entitled **DEFFENDANTS BARNET LIBERMAN AND CASINO COOLIDGE, LLC'S TRIAL BRIEF** to be served as follows:

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which First Class postage was prepaid: and/or

[ ] pursuant to NRCP (5)(b)(2)(D) to be served via facsimile; and/or

[ ] pursuant to EDCR 7.26, to be sent via email; and/or

[X] pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

[ ] to be hand-delivered,

to the attorneys / interested parties listed below at the address and/or facsimile number indicated below:

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/s/ Elliot S. Blut
An Employee of Blut Law Group, PC

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID J. MITCHELL; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY LTD; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; AND LIVE WORKS TIC SUCCESSOR, LLC, Appellants, vs. RUSSELL L. NYPE; REVENUE PLUS, LLC; AND SHELLEY D. KROHN, Respondents.	Case No. 80693

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable ELIZABETH GONZALEZ, District Judge
District Court Case No. A-16-740689-B

RESPONDENTS' APPENDIX – VOLUME 4
(BATES RANGE) RA 000605 – RA 000748

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10/17/19	Plaintiffs' Opposition to The Mitchell Defendants' Statement of Compliance and Motion for Additional Time for Further Production and Countermotion for Case Concluding Sanctions	Volume 2, RA 365 – RA 429
11/17/19	Status Report Regarding The Mitchell Defendants' Compliance with This Court's Order Re: Discovery Sanctions	Volume 3, RA 430 – RA 434
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12/12/19	Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to NRCP (12(b)(2) and 12(b)(5), or in the Alternative Motion for Summary Judgment	Volume 3, RA 562 – RA 583
12/29/19	Defendants Barnet Liberman and Casino Coolidge, LLC's Trial Brief	Volume 3, RA 584 – RA 594

TRIAL EXHIBITS

Date	Description	Volume/Bates No.
Undated	Plaintiffs' **Trial Exhibit No. 4**	Volume 4, RA 605 – RA 650
Undated	Plaintiffs' **Trial Exhibit No. 6**	Volume 4, RA 651 – RA 679
Undated	Plaintiffs' **Trial Exhibit No. 7**	Volume 4, RA 680 – RA 681
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DATED this 28th day of October 2021.

JOHN W. MUIJE & ASSOCIATES

/s/ John W. Muije, Esq.
JOHN W. MUIJE
Nevada Bar No. 2419
3216 Lone Canyon Court
N. Las Vegas, NV 89031
(702) 386-7002
jmuije@muijelawoffice.com
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, I have caused a true and correct copy of the foregoing RESPONDENTS' APPENDIX – VOLUME 4 to be served by electronic service by the Supreme Court of Nevada Electronic Filing System to the following:

H. STAN JOHNSON, ESQ.
Nevada Bar No. 265
KEVIN M. JOHNSON, ESQ.
Nevada Bar No. 14551
COHEN JOHNSON
375 East Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400
Email: sjohnson@cohenjohnson.com
Attorneys for Appellants

/s/ Melanie Bruner
As an agent for and on behalf of
JOHN W. MUIJE & Associates

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

EXHIBIT A

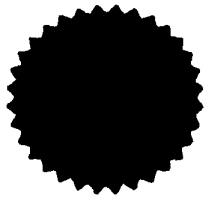
Certificate of Formation

304775-1-W

Delaware

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.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3843407 8100

040600796

AUTHENTICATION: 3299861

DATE: 08-17-04

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
Esmm Kataky Korins & Siger, LLP
605 Third Avenue
New York, New York 10158

233117-1-W

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:54 PM 08/17/20
FILED 12:46 PM 08/17/2004
SRV 040600796 - 3843407 FII

EXHIBIT B

Operating Agreement

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 distributes 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 (10th) 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 ADispute@), 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.

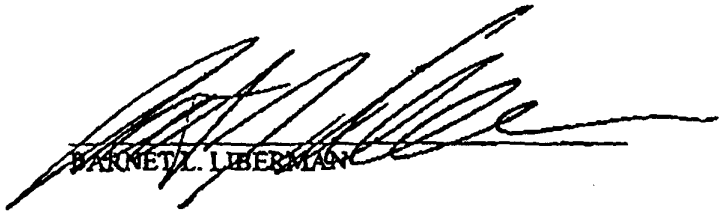
(i) Gender. References to "he," "his" or "him" relating to any Member shall be construed in a gender neutral manner and shall be construed as referring to any Member, whether a male, female or an entity.

(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

EXHIBIT A

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

Name and Address	Total Contributions:	Percentage Interest
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)

Name and Address	Contributions to Date	Percentage Interest
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:

Daniel L. Liberman

David J. Mitchell

EXHIBIT A-1

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

Name and Address	Contributions to Date	Percentage Interest
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:

(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 decease 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(b)(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

SECRETARY OF STATE

STATE OF NEVADA

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.

ROSS MILLER
Secretary of State

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

Mitch0162936

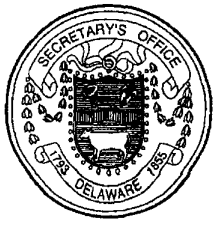
4-0039
Case No.:

Delaware

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.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3843407 8300

070713456

AUTHENTICATION: 5761734

DATE: 06-15-07

EXHIBIT D

Resolutions

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

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.

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

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

MEMBERS:

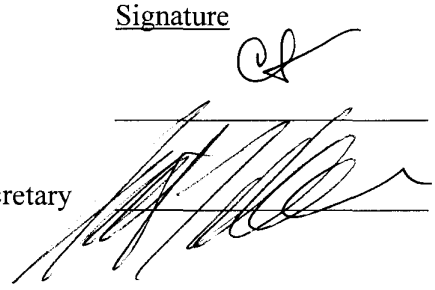
DAVID J. MITCHELL

BARNET L. LIBERMAN

304793-1-W

EXHIBIT E

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



304775-1-W

From: Danow, Matthew <mdanow@katskykorins.com>
Sent: Friday, July 29, 2016 1:44 PM EDT
To: David Mitchell <djm@mitchellholdings.com>
Subject: RTC and Wink Documents
Attachment(s): "Wink One LLC- Nevada qualification.PDF","Signed TIC Management Agmt with FC RTC, Forest City TIC I and Wink One.PDF","Wink LLC signed Agreement.PDF","Signed TIC Agmt with FC RTC, Forest City TIC I and Wink One.PDF","RTC Letter Confirming Rent Schedule.pdf","First Amendment to RTC Lease.pdf","Memorandum of RTC Lease.pdf","RTC Certification re Self-Insurance.pdf","RTC Lease (executed with exhibits).pdf","RTC Lease Commencement Notice.pdf","RTC Leasehold Title Policy.pdf","RTC Letter of Credit June 2007.pdf"

David—Please see the attached, what I have on the RTC lease and its ownership. This includes:

1. NV qualification for Wink One LLC
2. Operating Agreement of Wink One LLC
3. RTC TIC Agreement
4. RTC TIC Management Agreement
5. RTC Lease
6. RTC Lease Amendment
7. RTC Letter confirming the rent schedule
8. RTC Lease Commencement Notice
9. RTC Certification re Self-Insurance
10. RTC Leasehold Title Insurance Policy
11. RTC Letter of Credit from 2007-08 (This expired, and I don't have the current one).

Please let me know if you need anything further.

Regards,

Matt

Matthew Danow, Esq.
Katsky Korins LLP
605 Third Avenue
New York, New York 10158
Direct Dial: (212) 716-3312
Direct Fax (212) 716-3332
mdanow@katskykorins.com

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 distributes 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 coveys 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^{th}) 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 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.

_____

BARNET L. LIBERMAN

_____

DAVID J. MITCHELL

Schedule A

Contracts and /or Cash Initially Contributed

EXHIBIT A

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

Name and Address	**Total Contributions:**	**Percentage Interest**
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)

Name and Address	**Contributions to Date**	**Percentage Interest**
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:

(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 decease 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(b)(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.

Subject: Fwd: Disregarded entities
Date: Friday, December 16, 2016 at 9:47:00 AM Pacific Standard Time
From: David Mitchell
To: Garry Hayes
Attachments: image001.jpg, ATT00001.htm, DISREGARDED ENTITIES.pdf, ATT00002.htm

DAVID MITCHELL
Mitchell Holdings LLC
801 Madison Avenue
New York NY 10065
USA
1212-486-4444
djm@mitchellholdings.com

Begin forwarded message:

From: Sam Spitz <sam@skecpa.com>
Date: December 16, 2016 at 12:45:50 PM EST
To: "David Mitchell (djm@mitchellholdings.com)" <djm@mitchellholdings.com>
Subject: Disregarded entities

Attached is a schedule we previously provided to you which lists all of the entities that are disregarded for tax purposes. All transactions were reported on LVLP tax return

Sam K. Spitz, Esq., CPA
sam@skecpa.com

LVLP HOLDINGS

LLC	Property	Date Acquired
GAVIAYANA COMPANY LLC	JUDGES	2004
EXCHANGE FOR CASA MITCHELL LLC	LAKES	2004
CASA MITCHELL LLC	WHEELER	2005
LAS VEGAS BONNEVILLE PARTNERS LLC	PRUDENTIAL	2004
AVA PROPERTY LLC	DOCTORS	2004
STELLA PROPERTY LLC	KREIGER	2005
ZOE PROPERTY LLC	777 PROPERTY	2005
ZOE PROPERTY LLC	QUEEN OF HEARTS	2006
AARON PROPERTY LLC	GRAGSON	2005
MARC PROPERTY LLC	GREGORY II	2005
LEAH LLC	COOLIDGE	2005 PARTIAL SALE 2007
ADRIAN PROPERTY LLC	MASON	2005
AQUARIUS OWNER LLC	EAST CHARLESTON	2006 SOLD 2007
LAS VEGAS LAND PARTNERS	BLAYLOCK	2006
MEYER PROPERTY LLC	DEVLIN	2006
??	BOOKSTORE	2006
LIVEWORK LLC	SPILATRO	2005
LIVEWORK LLC	DESERT MANOR	2005
LIVEWORK LLC	BIGELOW "DAISY"	2005
LIVEWORK LLC	BIGELOW	2005
LIVEWORK LLC	SUNSTATE	2005
LIVEWORK LLC	APACHE	2005
LIVEWORK LLC	TOWERS	2005
LIVEWORK LLC	GLENNEN	2005
LIVEWORK LLC	COLEMAN	2005
LIVEWORK LLC	BEESLEY	2006
LIVEWORK LLC	TRIOPOLY	2006
LIVEWORK LLC	LOGAN	2006
LIVEWORK LLC	CROMER	2007

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

LAS VEGAS LAND PARTNERS, LLC

Entity Number:

E0316222005-6

Entity Type:

Foreign Limited-Liability Company

Entity Status:

Active

Formation Date:

05/23/2005

NV Business ID:

NV20051332580

Termination Date:

Perpetual

Annual Report Due Date:

5/31/2020

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:

8-0002
Case No.:

OFFICER INFORMATION

☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
Managing Member	DAVID J MITCHELL	801 MADISON AVENUE, 4TH FLOOR, NEW YORK, NY, 10065, USA	08/06/2015	Active

Page 1 of 1, records 1 to 1 of 1

Filing History Name History Mergers/Conversions

Return to Search Return to Results

8-0003
Case No.:

CONSENT OF THE SOLE MEMBER OF LIVEWORK, LLC

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

RESOLVED, that the Company be, and hereby is, authorized to acquire a forty percent (40%) tenancy-in-common interest in the real property and improvements located at 625 South 1st Street, Las Vegas, Nevada (the **"Cromer Property"**), pursuant to (a) a certain Agreement for Purchase and Sale of Real Property with Escrow Instructions, dated on or about June 4, 2006, by and between The George A. Cromer Family Trust and The Estate of George A. Cromer, as seller, as seller, and Meyer Property, LLC, (**"Meyer"**) as purchaser, and (b) Assignment of Contract, executed by Meyer, as assignor, and the Company and 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**"), as assignee, and, in connection therewith, to enter into, execute and deliver any and all transfer tax documents, agreements, instruments or documents as may be necessary in order to effectuate such acquisition; and be it further

RESOLVED, that that the Company be, and hereby is, authorized, together with the FC TIC Owners, to execute an amendment to deed of trust and any other documents or instruments necessary to add the Cromer Property to the collateral securing that certain loan made to the Company and the FC TIC Owners by Keybank National Association, the principal amount of up to $114,800,000.00; and be it further

RESOLVED, that each of the Member and each of the officers 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 transfer tax forms, documents, agreements, security instruments, mortgages, deeds of trust, assignments of leases and rents, financing statements, and such other certificates, affidavits, instruments, indemnities and other documents as are or may be necessary, appropriate or convenient in connection with the transactions contemplated by the resolutions set forth herein; in each case, all in such form and containing such provisions as the Member or officer executing the same may deem advisable, such determination to be conclusively evidenced by the execution and delivery thereof by the Member or any such officer, and to do such acts and things as may be necessary or, in the opinion of the officer executing the same, are desirable or proper to carry out the transactions contemplated by the resolutions set forth herein; 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 Member, any officer or any representative of thereof, in connection with the matters contemplated by the foregoing resolutions are hereby confirmed, ratified and approved in all respects.

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

IN WITNESS WHEREOF, the undersigned have signed this consent as of the 2nd day of July, 2007.

MEMBERS:

DAVID J. MITCHELL

BARNET L. LIBERMAN

IN WITNESS WHEREOF, the undersigned have signed this consent as of the 2nd day of July, 2007.

MEMBER:

LIVEWORK MANAGER, LLC, a Delaware limited liability company

By: Las Vegas Land Partners, LLC, a Delaware limited liability company, its sole member

By: _____
David J. Mitchell, Managing Member

By: _____
Barnet L. Liberman, Managing Member

EXHIBIT D

Resolutions

CONSENT OF THE SOLE MEMBER OF LIVEWORK, LLC

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

RESOLVED, that the Member hereby authorizes the Company to acquire frpm each of the transferors shown on Schedule A annexed hereto (collectively, the "**Transferors**"), all of such Transferor's right title and interest in and to the real property and improvements (collectively, the "**Transferred Properties**") owned by such Transferor, as shown on said Schedule A, and, in connection therewith, to enter into, execute and deliver any and all agreements, instruments or documents as may be necessary in order to effectuate such assumption; and be it further

RESOLVED, that the Member hereby authorizes the Company to purchase the premises located at 618, 614, 608 and 604 S. Casino Center Boulevard, Las Vegas, Nevada (the "**Spilotro Property**"), pursuant to (a) a certain Agreement for Purchase and Sale of Real Property with Escrow Instructions, dated as of January 28, 2005, as amended by Letter Agreement, dated March 17, 2005, between 600 Casino Center, LLC, as seller and Las Vegas Land Partners, LLC ("**LVLP**"), as purchaser, and (b) Assignment to be executed by LVLP, as assignor and the Company, as assignee, and, in connection therewith, to enter into, execute and deliver any and all agreements, instruments or documents as may be necessary in order to effectuate such assumption; and be it further

RESOLVED, that the Member hereby authorizes the Company to purchase the premises located at 501 South First Street, Las Vegas, Nevada and 108 Clark Avenue, Las Vegas Nevada (collectively, the "**Wheeler Property**" and together with the Spilotro Property and the Transferred Properties, collectively, the "**Mortgaged Property**"), pursuant to (a) a certain Agreement for Purchase and Sale of Real Property with Escrow Instructions, dated as of January 28, 2005, as amended by Letter Agreement, dated December 8, 2004 and Letter Agreement, dated March 17, 2005, between Steve Wheeler, as Trustee of Wheeler Family Trust and Jane T. Young, as Trustee of Young Family Trust, as seller and LVLP, as purchaser, and (b) Nominee Instructions, to be executed by LVLP, as assignor and the Company, as assignee, and, in connection therewith, to enter into, execute and deliver any and all agreements, instruments or documents as may be necessary in order to effectuate such assumption; and be it further

RESOLVED, that the Member hereby authorizes the Company to borrow from SFT I, Inc. (the "**Lender**"), the principal amount of $36,500,000.00 (the "**Mortgage Loan**"), which Mortgage Loan may be secured by a deed of trust covering the Mortgaged Property, and by other assets of the Company; and be it further

RESOLVED, that the Member hereby authorizes the officers of the Company to execute and deliver, in connection with the foregoing and in connection with that certain loan, in the principal amount of $24,000,000.00 (the "**Mezzanine Loan**"), made by the Lender to David J. Mitchell, Barnet L. Liberman and the Member, one or more Loan Agreements, note or notes, security instruments, and such other agreements, mortgages, assignments of leases and rents, financing statements, and such other certificates, affidavits, instruments, indemnities and other documents as are or may be necessary, appropriate or convenient in connection with said Mortgage Loan and Mezzanine Loan transactions; in each case, all in such form and containing such provisions as the officer executing the same may deem advisable, such determination to be conclusively evidenced by the execution and delivery thereof by any such officer, and to do such acts and things as may be necessary or, in the opinion of the officer executing the same, are desirable or proper to carry out the transactions contemplated by the foregoing resolution with the Lender; 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 Member, or any representative thereof, in connection with the matters contemplated by the foregoing resolutions are hereby confirmed, ratified and approved in all respects.

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

IN WITNESS WHEREOF, the undersigned has signed this consent as of the __ day of April, 2005.

LIVEWORK MANAGER, LLC

By: Las Vegas Land Partners, LLC, sole member

By: _____
David J. Mitchell, Managing Member

By: _____
Barret L. Liberman, Managing Member

263871-1-W

SCHEDULE A

Transferors and Properties

TRANSFEROR	PROPERTY NAME AND ADDRESS		PROPERTY APN.
Las Vegas Bonneville Partners, LLC	Bonneville Properties (Prudential)		
		101 E. Bonneville Ave.	13934311034
		111 E. Bonneville Ave.	13934311032
		105 E. Bonneville Ave.	13934311033
Gaviayana Company, LLC	Lakes Properties		
		517 S. 1st. Street	13934311028 13934311029
		617 S. 1st Street	13934311036 13934311037 13934311038
Stella Property, LLC	Deliverance/Krieger	611 S. First Street	13934311035
Ava Property, LLC	Doctors' Property	122 Clark Avenue	13934302009
Gaviayana Property, LLC	Judges' Properties	525 S. 1st Street	13934311030
		114 E. Bonneville Ave.	13934311031
Zoe Property, LLC	777 Properties	624 S. 1st Street	13934311011
Aaron Property, LLC	Gragson	511 S. 1st Street	13934311026
Marc Property, LLC	Gregory II	510 1st Street	13934210017
		512 1st Street	13934311022
		518 1st Street	13934311021
		522 1st Street	13934311020
		526 1st Street	13934311019

263871-1-W

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

CHARLESTON CASINO PARTNERS LLC

Entity Number:

E0287342007-6

Entity Type:

Foreign Limited-Liability Company

Entity Status:

Permanently Revoked

Formation Date:

04/24/2007

NV Business ID:

NV20071656306

Termination Date:

Perpetual

Annual Report Due Date:

4/30/2008

Series LLC:

Domicile Name:

Jurisdiction:

Delaware

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

CORPORATION SERVICE COMPANY

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Commercial Registered Agent

NV Business ID:

NV19981229806

Office or Position:

Jurisdiction:

DELAWARE

Street Address:

112 NORTH CURRY STREET, Carson City, NV, 89703, USA

Email Address:

SOP@CSCGLOBAL.COM

Mailing Address:

Individual with Authority to Act:

GEORGE MASSIH III

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
Manager	LAS VEGAS LAND PARTNERS, LLC	C/O MITCHELL HOLDINGS 41 E 60TH STREET, NEW YORK, NY, 10022, USA	04/24/2007	Active

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Filing History Name History Mergers/Conversions

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Department of State: Division of Corporations

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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	**4337320**	Incorporation Date / Formation Date:	**4/19/2007** (mm/dd/yyyy)
Entity Name:	**305 LAS VEGAS LLC**		
Entity Kind:	**Limited Liability Company**	Entity Type:	**General**
Residency:	**Domestic**	State:	**DELAWARE**

REGISTERED AGENT INFORMATION

Name:	**CORPORATION SERVICE COMPANY**		
Address:	**251 LITTLE FALLS DRIVE**		
City:	**WILMINGTON**	County:	**New Castle**
State:	**DE**	Postal Code:	**19808**
Phone:	**302-636-5401**		

Additional Information is available for a fee. You can retrieve Status for a fee of $10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of $20.00.

Would you like ○ Status ○ Status,Tax & History Information [Submit]

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305LV03201

22-0001
Case No.: A

INITIAL/ANNUAL LIST OF MANAGERS OR MANAGING MEMBERS AND STATE BUSINESS LICENSE APPLICATION OF:

305 LAS VEGAS LLC	E0298142007-5
NAME OF LIMITED-LIABILITY COMPANY	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

☐ 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	Document Number
Barbara K. Cegavske	20160106104-41
Barbara K. Cegavske Secretary of State State of Nevada	Filing Date and Time 03/07/2016 10:00 AM
	Entity Number E0298142007-5

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: ___

NOTE: If claiming an exemption, a notorized 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.

WINTHROP CHAMBERLIN NAME:	MANAGER OR MANAGING MEMBER		
421 HUDSON STREET, C-9 ADDRESS:	NEW YORK CITY:	NY STATE:	10014 ZIP:
BARNET LIBERMAN NAME:	MANAGER OR MANAGING MEMBER		
421 HUDSON STREET, C-9 ADDRESS:	NEW YORK CITY:	NY STATE:	10014 ZIP:
NAME:	MANAGER OR MANAGING MEMBER		
ADDRESS:	CITY:	STATE:	ZIP:
NAME:	MANAGER OR MANAGING MEMBER		
ADDRESS:	CITY:	STATE:	ZIP:
NAME:	MANAGER OR MANAGING MEMBER		
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 _____
Signature of Manager, Managing Member or Other Authorized Signature

Title: Managing Member

Date: 3-3-16

Nevada Secretary of State List Manor/Mem Revised: 7-1-15

305LV03361

MSJOPP000375

24-0001
Case No.: A

RA 000697

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

305 LAS VEGAS LLC

Entity Number:

E0298142007-5

Entity Type:

Foreign Limited-Liability Company

Entity Status:

Active

Formation Date:

04/30/2007

NV Business ID:

NV20071665414

Termination Date:

Perpetual

Annual Report Due Date:

4/30/2020

Series LLC:

Domicile Name:

Jurisdiction:

Delaware

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

CORPORATION SERVICE COMPANY

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Commercial Registered Agent

NV Business ID:

NV19981229806

Office or Position:

Jurisdiction:

DELAWARE

Street Address:

112 NORTH CURRY STREET, Carson City, NV, 89703, USA

Email Address:

SOP@CSCGLOBAL.COM

Mailing Address:

Individual with Authority to Act:

GEORGE MASSIH III

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	305 SECOND AVENUE ASSOCIATES, L.P.	421 HUDSON STREET, NEW YORK, NY, 10014, USA	04/30/2018	Active

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INTENTIONALLY OMITTED

FIRST AMENDMENT TO TENANCY-IN-COMMON AGREEMENT

This First Amendment to Tenancy-In-Common Agreement ("Amendment") is made and entered into effective as of _____, 2010, by and among FC RTC 39, LLC, a Delaware limited liability company ("Forest City TIC I"), FC RTC 20, LLC, a Delaware limited liability company ("Forest City TIC II" and together with Forest City TIC I, the "Forest City TICs") and Wink One, LLC, a Delaware limited liability company ("Wink One"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the RTC TIC Agreement (as hereinafter defined).

RECITALS:

A. WHEREAS, each of Forest City TIC I, Forest City TIC II and Wink One is the owner of an undivided tenancy-in-common interest in the amounts of 39.75%, 20.25% and 40%, respectively, in the Property; and

B. WHEREAS, the Co-Owners entered into a Tenancy-In-Common Agreement, dated as of April 28, 2008 (the "RTC TIC Agreement"); and

C. WHEREAS, Co-Owners now desire to amend the RTC TIC Agreement to modify certain aspects of the distribution of cash and the Property thereunder.

NOW, THEREFORE, the parties hereto agree as follows:

1. Section 2(a) of the RTC TIC Agreement shall be amended as follows: The words "and 2(e)" shall be added following "2(d)" in the first sentence.

2. The following new section "(e)" shall be added following 2(d), and the current Sections 2(e) – (h) shall be renumbered as 2(f) – (i) accordingly:

   (e) The Co-Owners agree that notwithstanding anything to the contrary herein:

      (i) Until the repayment of the "Initial Contributions of FC" (as defined below) in full, fifty (50%) of the net Property Funds received by Wink One shall be paid to Downtown Vegas, LLC, which amounts shall be applied to the outstanding capital account balance constituting the Initial Contributions of FC. Any such payment shall not be treated as a capital contribution by Livework to Downtown Vegas LLC.

(ii) If the Initial Contributions of FC are repaid in full to FC prior to expiration of the Lease, the Forest City TIC shall transfer all of its right, title and interest in the Property to Wink One within thirty (30) days following the expiration of the Lease.

(iii) If the Initial Contributions of FC are not repaid in full to FC prior to the expiration of the Lease, following the expiration of the Lease, the Forest City TICs shall retain a TIC Interest equal to the amount of the Initial Contributions of FC that remain outstanding over the fair market value of the Property. Upon repayment in full of the Initial Contributions of FC, the Forest City TICs shall transfer all of their right, title and interest in the Property to Wink One within thirty (30) days following such repayment in full. In connection herewith, Wink One or any of its affiliates or principals may in its sole discretion and at any time following the expiration of the Lease make a direct payment of the outstanding unpaid amount of the Initial Contributions of FC and within thirty (30) days of receipt of any such payment, the Forest City TICs shall transfer all of their right, title and interest in the Property to Wink One. Any such payment shall not be treated as a capital contribution by Livework to Downtown Vegas LLC. Notwithstanding the foregoing, at no time shall the Forest City TIC's TIC Interests exceed eighty percent (80%) of the fair market value of the Property. Until the Initial Contributions of FC are repaid in full, net Property Funds shall be disbursed by the Property Manager to the Co-owners as determined in accordance with this Section 2(e)(iii)

For the purposes of this Section 2(e):

(A) "Initial Contributions of FC" shall mean the amount of the "Initial Contributions" of FC Vegas 20, LLC described in Section 6(a)(i) of that certain Amended and Restated Operating Agreement of Downtown Vegas, LLC, dated as of _____, 2010, between FC Vegas 20, LLC and Livework, LLC, and

(B) "FC" shall mean FC Vegas 20, LLC, a Nevada limited liability company.

(C) "Lease" shall mean the lease between the Co-Owners and the Regional Transportation Commission of Southern Nevada dated as of April 2, 2007.

{Signatures continued on next page.}

IN WITNESS WHEREOF, the undersigned have executed this document as of the date first written above.

FC RTC 39, LLC, a Delaware limited liability company

By: Rolling Acres Properties Co. Limited Partnership, its sole member

By: Artus, Inc., its general partner

By: _____
Name: _____
Title: _____

FC RTC 20, LLC, a Delaware limited liability company

By: Canton Centre Mall Limited Partnership, its sole member

By: F. C. Canton Centre, Inc., its general Partner

By: _____
Name: _____
Title: _____

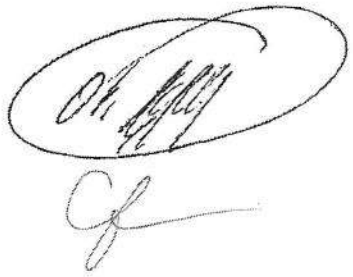
Wink One, LLC

By: _____
Name: Raquel Libertad
Title: Authorized Person

By: _____
Name: David J. Mitchell
Title: Authorized Person

INSERT – SECTION 8(f)

(f) RTC Distributions. Reference is hereby made to that certain Tenancy-in-Common Agreement dated as of April 28, 2008 by and among FC RTC 39, LLC, FC RTC 20, LLC and Wink One, LLC, as amended by a First Amendment to Tenancy-in-Common Agreement dated as of _____, 2010 (as amended, the "RTC TIC Agreement"). FC RTC 20, LLC and FC RTC 39, LLC are affiliates of FC 20 and Wink One, LLC is an affiliate of Livework. Notwithstanding anything in this Agreement to the contrary, including the distribution waterfall described in Section 8(a) hereof, one hundred percent (100%) of the payments made by Wink One, LLC, to the Company pursuant to the RTC TIC Agreement shall be distributed to FC 20 and applied against its capital account balance for Initial Contributions until such amount is reduced to zero. In no event shall any such payments by Wink One be credited to Livework's capital account.



C:\DOCUME~1\BARNET~1\LOCALS~1\Temp\Insert 8(f).docx

CONSENT AND DIRECTION OF HOLDERS

The undersigned, being the Holder of the principal amount of Las Vegas RTC 2008 CTL Trust Lease-Backed Pass-Through Certificates (the "Certificates") designated below, issued under and pursuant to that certain Trust Agreement, dated as of April 23, 2008, between The Bank of New York (now known as the Bank of New York Mellon), as trustee ("Trustee") and CTL Lending Group, LLC, executed and delivery by _____ does hereby authorize and direct the Trustee to consent to the above Right of Way Grant for Road Purposes.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Direction to be executed as of the date set forth below.

NAME OF HOLDER:

_____

By: _____

Name: _____

Title: _____

Date: _____

Principal Amount of Certificates:

_____

FC RTC 39, LLC; FC RTC 20, LLC; and
WINK ONE, LLC

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: David Mitchell

Title: President

CONSENT AND DIRECTION OF HOLDERS

The undersigned, being the Holder of the principal amount of Las Vegas RTC 2008 CTL Trust Lease-Backed Pass-Through Certificates (the "Certificates") designated below, issued under and pursuant to that certain Trust Agreement, dated as of April 28, 2008, between The Bank of New York (now known as the Bank of New York Mellon), as trustee ("Trustee") and CTL Lending Group, LLC, executed and delivery by _____ does hereby authorize and direct the Trustee to consent to the above Right of Way Grant for Road Purposes.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Direction to be executed as of the date set forth below.

NAME OF HOLDER:

_____

By: _____

Name: _____

Title: _____

Date: _____

Principal Amount of Certificates:

_____

FC RTC 39 LLC; FC RTC 20, LLC; and
WINK ONE, LLC

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: David Mitchell

Title: President

MITDEF003328

CONSENT AND DIRECTION OF HOLDERS

The undersigned, being the Holder of the principal amount of Las Vegas RTC 2008 CTL Trust Lease-Backed Pass-Through Certificates (the "Certificates") designated below, issued under and pursuant to that certain Trust Agreement, dated as of April 28, 2008, between The Bank of New York (now known as the Bank of New York Mellon), as trustee ("Trustee") and CTL Lending Group, LLC, executed and delivery by _____ does hereby authorize and direct the Trustee to consent to the above Right of Way Grant for Road Purposes.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Direction to be executed as of the date set forth below.

NAME OF HOLDER:

_____

By: _____

Name: _____

Title: _____

Date: _____

Principal Amount of Certificates:

_____

FC RTC 39, I LC; FC RTC 20, LLC; and
WINK ONE, LLC

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: David Mitchell

Title: President

CONSENT AND DIRECTION OF HOLDERS

The undersigned, being the Holder of the principal amount of Las Vegas RTC 2008 CTL Trust Lease-Backed Pass-Through Certificates (the "Certificates") designated below, issued under and pursuant to that certain Trust Agreement, dated as of April 28, 2008, between The Bank of New York (now known as the Bank of New York Mellon), as trustee ("Trustee") and CTL Lending Group, LLC, executed and delivery by _____ does hereby authorize and direct the Trustee to consent to the above Right of Way Grant for Road Purposes.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Direction to be executed as of the date set forth below.

NAME OF HOLDER:

_____

By: _____

Name: _____

Title: _____

Date: _____

Principal Amount of Certificates:

_____

FC RTC 39, LLC; FC RTC 20, LLC; and
WINK ONE, LLC

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: David Mitchell

Title: President

MITDEF003330

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

LIMITED LIABILITY COMPANY AGREEMENT OF WINK ONE LLC

This Limited Liability Company Agreement (together with the schedules attached hereto, this "Agreement") of WINK ONE LLC (the "Company"), is entered into by LAS VEGAS LAND PARTNERS LLC as the sole equity member (the "Member"), and Cheryl A. Tussie and Victoria L. Novack, 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 Cheryl A. Tussie and Victoria L. Novack hereby agree as follows:

Section 1. Name.

The Company was formed under the name of Wink One LLC, pursuant to a Certificate of Formation filed with the Secretary of State of the State of Delaware on April 3, 2008.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at 41 East 60th Street, 6th Floor, New York, New York 10022, (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.

(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 preserve and continue the existence of 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 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 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 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 four 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 Members. 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) remain solvent and maintain adequate capital in light of its 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;

(C) not fail to correct any known misunderstanding regarding its separate identity;

(D) 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;

(E) except for the Subaccounts (as defined in the Loan Documents), which shall be maintained in accordance with the Loan Documents, shall maintain bank accounts separate from any Person other than the Co-Borrowers;

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

(G) not commingle its funds or assets with those of any other Person, other than the Co-Borrowers;

(H) hold its assets in its own name;

(I) conduct its business in its own name;

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

(K) pay its own liabilities, including the salaries of its own employees, if any, out of its own funds and assets; 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;

(L) observe all limited liability company formalities;

(M) maintain an arm's-length relationship with its Affiliates;

(N) have no indebtedness other than Permitted Indebtedness (as defined in the Loan Documents);

(O) except with respect to the Obligations under the Loan Documents, not assume or guarantee or become obligated for the debts of any other Person or

hold out its credit as being available to satisfy the obligations of any other Person;

(P) not acquire obligations or securities of its partners, members or shareholders;

(Q) allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;

(R) except in connection with the Obligations, not pledge its assets for the benefit of any other Person;

(S) hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(T) maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Person other than the Co-Borrowers;

(U) not make loans to any Person;

(V) not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of the Company;

(W) not be a party to any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(X) 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, to the fullest extent permitted by law, constitute a claim against such Person if cash flow in excess of the Obligations is not sufficient to satisfy such indemnification obligations; and the Company's organizational documents shall require, to the fullest extent permitted by law, including section 18-1101(c) of the Act, consideration of the interests of the creditors of the Company in connection with all limited liability company actions; and

(Y) to the fullest extent permitted by law, including Section 18-1101(c) of the Act, consider the interests of its creditors in connection with all limited liability company actions.

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.

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 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.

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

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 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.

[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 3RD day of APRIL, 2008.

MEMBER:

LAS VEGAS LAND PARTNERS LLC

By: _____
David J. Mitchell, Member

By: _____
Barnet L. Liberman, Member

SPECIAL MEMBERS:

_____
CHERYL A. TUSSIE

_____
VICTORIA L. NOVACK

317358

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By: _____
Barnet L. Liberman, Member

SPECIAL MEMBERS:

_____
CHERYL A. TUSSIE

_____
VICTORIA L. NOVACK

317358

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 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 TIC Agreement, the TIC Management Agreement 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.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on April 3, 2008, 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

"Co-Borrowers" means each of (i) FC RTC 39, LLC, a Delaware limited liability company and (ii) FC RTC 20, LLC, a Delaware limited liability company, each of which, together with the Company, owns the Project as tenants-in-common.

"Company" means Wink One 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 (other than an Independent Director, Special Member or like capacity), 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 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 CTL Lending Group, LLC, a Delaware limited liability company in its capacity as lender under the Loan Agreement, together with its successors and assigns.

"Loan" means that certain loan in the amount of $25,000,000.00 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 by and among the Company, the Co-Borrowers and Lender.

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

(a) Deed of Trust Note (the "Note) made by the Company and the Co-Borrowers to Lender in the principal amount of $25,000,000.00

(b) Loan Agreement;

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

(d) Assignment of Leases and Rents given by the Company and the Co-Borrowers to Lender;

(e) Deposit Account Agreement by and among The Bank of New York Mellon, as the deposit bank, Borrower, Co-Borrower and Lender;

(f) Guaranty of Recourse Obligations given by Forest City Enterprises, Inc., an Ohio corporation ("FCE"), David J. Mitchell, an individual, and Barnet L. Liberman, an individual, for the benefit of Lender;

(g) Environmental and Hazardous Substances Indemnity Agreement from the Company, the Co-Borrowers, FCE, David J. Mitchell and Barnet L. Liberman for the benefit of Lender;

(h) UCC Financing Statements made by the Company, as debtor, for the benefit of Lender, as secured party;

(i) 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.

"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.

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

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

"TIC Agreement" shall mean that certain Tenancy in Common Agreement dated as of the date hereof, by and among the Company and the Co-Borrowers.

"TIC Management Agreement" shall mean that certain Tenancy in Common Management Agreement dated as of the date hereof, but and among the Company and the Co-Borrowers.

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

Name	Mailing Address	Capital Contribution	Membership Interest
LAS VEGAS LAND PARTNERS LLC	c/o Mitchell Holdings 41 E. 60th St., 6th Floor New York NY 10022	the Property	100%

317358-4-W

SCHEDULE C

Management Agreement

April __, 2008

Las Vegas Land Partners LLC
c/o Mitchell Holdings
41 East 60th Street, 6th Floor
New York, New York 10022

Re: Management Agreement -- Wink One LLC

Ladies and Gentlemen:

For good and valuable consideration, each of the undersigned Persons, who have been designated as directors of Wink One LLC, a Delaware limited liability company (the "Company"), in accordance with the Limited Liability Company Agreement of the Company, dated as of April ___, 2008 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.

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.

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

_____
CHERYL A. TUSSIE

_____
VICTORIA L. NOVACK

SCHEDULE D

DIRECTORS

1. DAVID J. MITCHELL

2. BARNET L. LIBERMAN

3. CHERYL A. TUSSIE (Independent Director)

4. VICTORIA L. NOVACK (Independent Director)

SCHEDULE E

OFFICERS	TITLE
David J. Mitchell	President
Barnet L. Liberman	Vice President
David J. Mitchell	Treasurer
Barnet L. Liberman	Secretary

EXHIBIT C

Resolutions

WRITTEN CONSENT OF THE DIRECTORS OF WINK ONE LLC

The undersigned, being the Directors of Wink One LLC, a Delaware limited liability company (the "**Company**"), hereby consent to the following actions to be taken by the Company:

RESOLVED, that the Company be, and hereby is, authorized to acquire all of Las Vegas Land Partners LLC's ("**LVLP**") (as successor-in-interest to Livework LLC and Livework Manager LLC) 40% tenancy-in-common interest in and to (the "**Acquisition**"): (i) in the premises located in Las Vegas, Nevada, as more fully described on Exhibit A annexed hereto (the "**Property**"), pursuant to that certain Grant, Bargain and Sale Deed, dated as of the date hereof from LVLP, as grantor, to Borrower, as grantee (the "**Deed**"); (ii) the lease affecting the Property by Assignment and Assumption of Lease dated as of the date hereof by and between LVLP, as assignor, and the Borrower, as assignee (the "**Assignment of Lease**"); and (iii) the fixtures and personal property at the Property by Bill of Sale dated as of the date hereof, by and between LVLP, as grantor, and the Borrower, as grantee (the "**Bill of Sale**" and together with the Deed and the Assignment of Lease, collectively, the "**Acquisition Documents**"); and be it further

RESOLVED, that the Company be, and hereby is, authorized to enter into that certain Tenancy in Common Agreement dated as of the date hereof (the "**Tenancy in Common Agreement**") with respect to the Property, by and among the Company, FC RTC 39, LLC and FC RTC 20, LLC (FC RTC 39, LLC and FC RTC 20 LLC shall be collectively referred to herein as the "**Co- Borrowers**"); and be it further

RESOLVED, that the Company be, and hereby is, authorized to enter into that certain Tenancy in Common Management Agreement dated as of the date hereof (the "**TIC Management Agreement**", and together with the Tenancy in Common Agreement, the "**TIC Documents**") with respect to the Property, by and among the Company and Co-Borrowers; and be it further

RESOLVED, that the Company be, and hereby is, authorized to borrow, along with the Co-Borrowers, from CTL Lending Group, LLC, (the "**Lender**"), the principal amount of $25,000,000.00 (the "**Loan**"), which Loan may be secured by a deed of trust covering the Property and by other assets of the Borrower and Co-Borrower and guaranteed by Forest City Enterprises, Inc., David J. Mitchell and Barnet L. Liberman; and be it further

RESOLVED, that David Mitchell or Barnet Liberman, each as an officer of the Company be, and hereby are, individually authorized to execute and deliver, in connection with the foregoing, (a) the Acquisition Documents, or any other documents or instruments necessary or convenient to effect the Acquisition; (b) the TIC Documents, and any other documents necessary or related thereto; (c) (i) a Loan Agreement by and among the Lender, the Company and the Co-Borrowers, (ii) a Deed of Trust Note in the principal amount of $25,000,000.00 made by the Company and the Co-Borrowers in favor of the Lender; (iii) a Deed of Trust, Security

Agreement, Assignment of Leases and Rents and Fixture Filing in the principal amount of $25,000,000.00 made by the Company and the Co-Borrowers to First American Title Insurance Company, as trustee, for the benefit of the Lender; (iv) an Assignment of Leases and Rents made by the Company and the Co-Borrower to the Lender; (iv) a Hazardous Materials Indemnity made by the Company and the Co-Borrowers for the benefit of the Lender; (v) the Deposit Account Agreement by and among the Company, the Co-Borrowers, the Lender and The Bank of New York Mellon; and (vi) UCC-1 Financing Statements naming the Company and Co-Borrowers, as debtor, and the Lender, as secured party; and such other certificates, affidavits, instruments, indemnities and other documents as are or may be necessary, appropriate or convenient in connection with said Loan, Acquisition and TIC transactions; in each case, all in such form and containing such provisions as the member or officer executing the same may deem advisable, such determination to be conclusively evidenced by the execution and delivery thereof by any such member or officer, and to do such acts and things as may be necessary or, in the opinion of the member or officer executing the same, are desirable or proper to carry out the transactions contemplated by the foregoing resolution with the Lender, the Co-Borrower or the Grantor; such determination to be conclusively evidenced by such member's or such officer's signature; and be it further

RESOLVED, that all actions of any kind heretofore taken by David Mitchell, Barnet Liberman, the Company, and/or any member, officer, director or representative of the Company in connection with the Acquisition, the Loan and the TIC transaction and any other matters contemplated by the foregoing resolutions are hereby confirmed, ratified and approved in all respects.

[*The remainder of this page is intentionally blank.*]

IN WITNESS WHEREOF, the undersigned has signed this consent as of the __ day of_____, 2008.

BOARD OF DIRECTORS OF WINK ONE LLC:

_____
DAVID MITCHELL

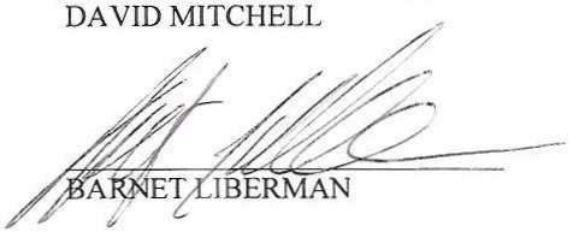
_____
BARNET LIBERMAN

317548

IN WITNESS WHEREOF, the undersigned has signed this consent as of the __ day of_____, 2008.

BOARD OF DIRECTORS OF WINK ONE LLC:

_____
DAVID MITCHELL



_____
BARNET LIBERMAN

317548

EXHIBIT A

The Property

BEING LOTS 1 THROUGH 32, BLOCK 9 OF CLARK'S LAS VEGAS TOWNSITE RECORDED IN BOOK 1 OF PLATS, PAGE 37 OF OFFICIAL RECORDS CLARK COUNTY, NEVADA, LYING WITHIN THE SOUTHWEST QUARTER (SW ¼) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA;

TOGETHER WITH THAT VACATED AREA RECORDED IN BOOK 20071030, DOCUMENT NO. 01765;

EXCEPTING THEREFROM THE AREAS DEDICATED TO THE CITY OF LAS VEGAS IN BOOK 20010718, DOCUMENT NO. 01127, BOOK 20020611, DOCUMENT NO. 00433, AND BOOK 20071011, DOCUMENT NO. 03371;

AS REVERTED BY THAT CERTAIN REVERSIONARY FINAL MAP OF FOREST CITY RECORDED DECEMBER 3, 2007 IN BOOK 138 OF PLATS, PAGE 95 OF OFFICIAL RECORDS.