

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Feb 07 2022 06:56 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CHARLES LAM, INDIVIDUALLY AND
DERIVATIVELY ON BEHALF OF TRAN
ENTERPRISES, LLC, A NEVADA
LIMITED LIABILITY COMPANY, AND
AS TRUSTEE OF THE NT REVOCABLE
LIVING TRUST DATED THE 15TH OF
OCTOBER 2009,

Appellant(s),

vs.

P. STERLING KERR, INDIVIDUALLY
AND AS TRUSTEE OF THE NT LEGACY
TRUST, DATED THE 15TH DAY OF
OCTOBER 2009; NHU TRAN
FOUNDATION, INC., A NEVADA NON-
PROFIT CORPORATION; AND COURT
APPOINTED RECEIVER, ROBERT
ANSARA OF DUNHAM TRUST
COMPANY,

Respondent(s),

Case No: P-17-093391-T
Consolidated with A-17-760853-B
Docket No: 83730

RECORD ON APPEAL

VOLUME

1

ATTORNEY FOR APPELLANT
CHARLES LAM, PROPER PERSON
P.O. BOX 27738
LAS VEGAS, NV 89126

ATTORNEY FOR RESPONDENT
MARK ALAN SOLOMON, ESQ.
9060 W. CHEYENNE AVE.
LAS VEGAS, NV 89129

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 245
2	246 - 485

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	11/28/2017	AMENDED MOTION TO CONSOLIDATE CASES, AND TO STAY PROCEEDINGS IN SECOND AND THIRD CASES	395 - 469
2	11/29/2017	AMENDED NOTICE OF HEARING	470 - 473
1	11/17/2017	APPENDIX TO OPPOSITION OF CHARLES LAM TO PETITION TO ASSUME IN REM JURISDICTION OVER THE NT LEGACY TRUST, DATED OCTOBER 15, 2009 AND PETITION TO CONFIRM TRUSTEE AND FOR INSTRUCTIONS AND PETITION FOR A DECLARATION THAT THE NT LEGACY TRUST IS SOLE MEMBER OF TRAN ENTERPRISES, LLC AND PETITION TO EXPUNGE LIS PENDENS (CONTINUED)	189 - 245
2	11/17/2017	APPENDIX TO OPPOSITION OF CHARLES LAM TO PETITION TO ASSUME IN REM JURISDICTION OVER THE NT LEGACY TRUST, DATED OCTOBER 15, 2009 AND PETITION TO CONFIRM TRUSTEE AND FOR INSTRUCTIONS AND PETITION FOR A DECLARATION THAT THE NT LEGACY TRUST IS SOLE MEMBER OF TRAN ENTERPRISES, LLC AND PETITION TO EXPUNGE LIS PENDENS (CONTINUATION)	246 - 386
1	11/02/2017	CERTIFICATE OF MAILING	150 - 151
2	02/04/2022	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
2	02/04/2022	DISTRICT COURT MINUTES	484 - 485
1	11/14/2017	MOTION TO CONSOLIDATE CASES, AND TO STAY PROCEEDINGS IN SECOND CASE ON ORDER SHORTENING TIME	152 - 179
2	01/03/2018	NOTICE OF ENTRY OF ORDER GRANTING MOTION TO CONSOLIDATE CASES AND DENYING COUNTERMOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT, OR ALTERNATIVELY TO REFER THIS ACTION TO THE PROBATE COMMISSIONER	477 - 483
2	11/28/2017	NOTICE OF ENTRY OF STIPULATION AND ORDER TO CONTINUE HEARING ON MOTION TO CONSOLIDATE CASES	387 - 394
1	10/26/2017	NOTICE OF HEARING	148 - 149
1	11/17/2017	OPPOSITION OF CHARLES LAM TO PETITION TO ASSUME IN	180 - 188

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		REM JURISDICTION OVER THE NT LEGACY TRUST, DATED OCTOBER 15, 2009 AND PETITION TO CONFIRM TRUSTEE AND FOR INSTRUCTIONS AND PETITION FOR A DECLARATION THAT THE NT LEGACY TRUST IS SOLE MEMBER OF TRAN ENTERPRISES, LLC AND PETITION TO EXPUNGE LIS PENDENS	
2	12/26/2017	ORDER GRANTING MOTION TO CONSOLIDATE CASES AND DENYING COUNTERMOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT, OR ALTERNATIVELY TO REFER THIS ACTION TO THE PROBATE COMMISSIONER	474 - 476
1	10/26/2017	PETITION TO ASSUME IN REM JURISDICTION OVER THE NT LEGACY TRUST, DATED OCTOBER 15, 2009 -AND- PETITION TO CONFIRM TRUSTEE AND FOR INSTRUCTIONS -AND- PETITION FOR A DECLARATION THAT THE NT LEGACY TRUST IS THE SOLE MEMBER OF TRAN ENTERPRISES, LLC - AND- PETITION TO EXPUNGE LIS PENDENS	1 - 147

Steven D. Grierson

1 Mark A. Solomon (#418)
Alexander G. LeVeque (#11183)
2 Craig D. Friedel (#13873)
SOLOMON DWIGGINS & FREER, LTD.
3 9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
4 Telephone: 702.853.5483
Facsimile: 702.853.5485
5 msolomon@sdfnvlaw.com
aleveque@sdfnvlaw.com
6 cfriedel@sdfnvlaw.com

7 *Attorneys for P. Sterling Kerr, Trustee of the*
8 *NT Legacy Trust, dated October 15, 2009*

9
10 **DISTRICT COURT**
CLARK COUNTY, NEVADA

11 In the Matter of the
12 NT LEGACY TRUST, dated October 15, 2009

Case No.: P-17-093391-T
Dept. No.: XXVI
Date of Hearing: October 27, 2017
Time of Hearing: 9:30 a.m.

13
14 **PETITION TO ASSUME *IN REM* JURISDICTION OVER THE NT LEGACY TRUST,**
15 **DATED OCTOBER 15, 2009**

16 **-AND-**

17 **PETITION TO CONFIRM TRUSTEE AND FOR INSTRUCTIONS**

18 **-AND-**

19 **PETITION FOR A DECLARATION THAT THE NT LEGACY TRUST IS THE SOLE**
20 **MEMBER OF TRAN ENTERPRISES, LLC**

21 **-AND-**

22 **PETITION TO EXPUNGE LIS PENDENS**

23 Petitioner, P. Sterling Kerr, Esq. ("Petitioner"), hereby petitions this Honorable Court,
24 pursuant to NRS 153.031, 164.010, 164.015 and 164.033 to assume *in rem* jurisdiction over the
25 NT Legacy Trust, dated October 15, 2009 (the "Legacy Trust"), to confirm Petitioner as Trustee
26 of the Legacy Trust, for instructions, for a declaration at the Legacy Trust is the sole member of

Tran Enterprises, LLC ("TE LLC"), a Nevada limited-liability company, and to expunge improvidently recorded lis pendens' on several parcels of real property owned by the Legacy Trust through TE LLC. This Petition is made and based on the Memorandum of Points and Authorities set forth herein, all of the papers and pleadings already on file with the Court, and any oral argument that the Court may entertain at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Charles Lam ("Lam"), son and beneficiary of the decedent, Nhu Thi Tran ("Tran"), has brought a civil action on behalf of TE LLC against the Petitioner, P. Sterling Kerr, Esq. ("Petitioner"), in his individual capacity and as Trustee of the Legacy Trust, which is pending in Department 13 of the Eighth Judicial District Court.

Procedurally, a threshold issue has arisen with respect to Lam's standing to bring such a lawsuit on behalf of TE LLC given that the Legacy Trust is the sole owner of TE LLC's membership interest, and that Lam was removed as TE LLC's manager in March of 2017.

The Legacy Trust is an irrevocable Nevada asset protection trust. Accordingly, this Court is the appropriate forum to determine the Legacy Trust's ownership interest in TE LLC and to exercise *in rem* jurisdiction over the Legacy Trust to oversee its administration now that Tran has passed away. This court is also the appropriate forum to instruct the Petitioner with regard to the internal affairs of the Legacy Trust, including the marshaling and liquidation of assets and payment of all testamentary bequests. For these reasons, Petitioner respectfully requests that this Court grant the instant petition in its entirety.

II. STATEMENT OF FACTS

INTERESTED PERSONS

1. Pursuant to NRS 153.031(2), Petitioners provide that the following individuals, on information and belief, are interested persons under the Trust and as to the relief requested in this Petition:



NAME	RELATIONSHIP	ADDRESS
Charles Lam	Beneficiary / Plaintiff in Case No. A-17- 7608563-B	c/o J. Michael Oakes, Esq. FOLEY & OAKES, PC 626 South Eighth Street Las Vegas, Nevada 89101
Vince Lam	Beneficiary	629 Shenandoah Road Corona, CA 92879
Tony Lam	Beneficiary	5956 Seville Avenue Huntington Park, CA 90255
Dennis Lam	Beneficiary	629 Shenandoah Road Corona, CA 92879
Lisa Lam	Beneficiary	5959 Seville Avenue Huntington Park, CA 90255
Bryan Lam	Beneficiary	5956 Seville Avenue Huntington Park, CA 90255
Ha Thi Tran	Beneficiary	10990 High Land Meadow Village Dr. Apt 807 Houston, TX 77089
Nhu Tran Foundation, Inc.	Beneficiary	2450 St. Rose Parkway, Suite 120 Henderson, NV 89074
Mary V. Kaufman	Former Trustee	2036 Laggia Court Las Vegas, NV 89117

FORMATION HISTORY AND OVERVIEW OF NHU THI TRAN'S ESTATE PLANNING

2. On October 15, 2009, Tran settled the Legacy Trust, a Nevada irrevocable asset protection trust. *See* NT Legacy Trust, a true and correct copy being attached hereto as **Exhibit 1**.

3. Tran appointed the Petitioner and Mary V. Kaufman ("Kaufman") as the initial Co-Trustees of the Legacy Trust. *See* Ex. 1, at p. 43.

4. On October 15, 2009, Tran assigned all of her right, title and interest to certain membership interests in TE LLC to the Legacy Trust. *See* Assignment, a true and correct copy being attached hereto as **Exhibit 2**.

1 5. TE LLC is a Nevada limited-liability company, formed for the purpose of holding
2 several parcels of undeveloped real party. *See* TE LLC Operating Agreement, a true and correct
3 copy being attached here as **Exhibit 3**.

4 6. On or about June 3, 2016, Kaufman tendered her resignation as Co-Trustee of the
5 Legacy Trust thereby resulting in Petitioner being the sole Trustee of the Legacy Trust, as of June
6 3, 2016. *See* Kaufman Resignation, a true and correct copy being attached hereto as **Exhibit 4**.

7 7. On January 25, 2017, Tran passed away. *See* Death Certificate, a true and correct
8 copy being attached hereto as **Exhibit 5**.

9 8. Section 3.2(A) of the Legacy Trust provides that upon Tran's death, the Trustee
10 shall pay specific bequests to certain beneficiaries as follows:

- 11 a. \$2,000,000 to Charles Lam, Tran's son;
- 12 b. \$20,000 to Vince Lam, Tran's son;
- 13 c. \$20,000 to Tony Lam, Tran's son;
- 14 d. \$20,000 to Dennis Lam, Tran's grandson;
- 15 e. \$20,000 to Lisa Lam, Tran's granddaughter;
- 16 f. \$20,000 to Bryan Lam, Tran's grandson; and
- 17 g. \$20,000 to Ha Thi Tran, Tran's sister. *See, Ex. 1*, at pp.10-11 (TRAN0081-82).

18 9. Section 3.2(B) of the Legacy Trust provides that, after the payment of specific
19 bequests, the remainder and residual of the assets are to be paid to Nhu Tran Foundation, Inc. (the
20 "Tran Foundation").

21 **THE DISPUTE BETWEEN LAM AND PETITIONER FOLLOWING TRAN'S DEATH**

22 ***The Removal of Lam as Manager of TE LLC***

23 10. At the time of Tran's death, Lam was the manager of TE LLC.

11. On March 22, 2017, Petitioner, in his capacity as Trustee of the Legacy Trust, the sole member of TE LLC, terminated Lam as manager.¹ See Letter to Charles Lam, dated March 22, 2017, a true and correct copy being attached hereto as **Exhibit 6**.

12. On April 4, 2017, Lam responded to Petitioner's letter wherein he refused to acknowledge his removal. See, Letter to Sterling Kerr, dated April 4, 2017, a true and correct copy being attached hereto as **Exhibit 7**.

Lam's Business Court Complaint against Petitioner

13. On September 1, 2017, Lam, purportedly on behalf of TE LLC, filed a civil lawsuit against Petitioner, individually and as Trustee of the Legacy Trust, which seeks damages, declaratory relief and equitable relief. See Business Court Complaint, filed on September 1, 2017, a true and correct copy being attached hereto as **Exhibit 8**. Specifically, Lam seeks the following: (a) damages caused by Petitioner allegedly breaching a fiduciary duty and/or acting negligent by selling real properties owned by TE LLC for less than fair market value; (b) a declaration "setting forth the rights of the parties and their authority to act on behalf of the NT Legacy Trust, the Revocable Trust, and Tran Enterprises"; and (c) an order removing Petitioner as Trustee of the Legacy Trust, enjoining Petitioner from selling real property owned by TE LLC and/or the Legacy Trust, and appointing a receiver over the Legacy Trust and TE LLC. *Id*.

14. In addition the filing of the Business Court Complaint, Lam also filed a motion to remove the Petitioner as trustee of the Legacy Trust (the "Motion to Remove"), and a motion for a temporary restraining order and a preliminary injunction (the "Motion for TRO"), which sought to enjoin Petitioner from selling real property owned by the Legacy Trust TE LLC. See Motion to Remove & Motion for TRO, true and correct copies being attached hereto as **Exhibit 9** and **Exhibit 10**, respectively.

Lam's Motion to Remove Petitioner as Trustee of the Legacy Trust

¹ Section 3.2 of the TC LLC Operating Agreement expressly provides that a manager may be removed "with or without cause" by a vote of the majority in interest of members. See **Ex. 3**, at p. 4.

1 15. As for the Motion to Remove, which was properly referred by Department 13 to
2 this Court, the sole basis for removal of the Petitioner is that Tran signed a document on or about
3 September 4, 2013, which purports to remove Petitioner and Kaufman as Co-Trustees of the
4 Legacy Trust. *See* Revocation of Power of Attorney and Assignment, attached hereto as **Exhibit**
5 **11**. The Legacy Trust, however, is an irrevocable trust and has no provisions whatsoever that give
6 Tran, its settlor, any power to remove a trustee. *See generally* Article VII of the Legacy Trust, **Ex.**
7 **1**, at pp. 22-31.

8 16. Moreover, even if Tran held a power to remove the Petitioner as Trustee (which
9 she did not), the Legacy Trust requires formality and strict compliance with the removal
10 procedure, which in this case required delivery to the Petition by certified or registered mail,
11 courier, or hand delivery.² The purported “revocation” was never delivered to the Petitioner prior
12 to Tran’s death, and, in fact, expressly states in contravention of the strict requirements of Section
13 7.2(c) that the trustee revocation “is effective immediately upon [Tran’s] signature herein
14 subscribed.”³

15 17. Therefore, as a matter of law, Petitioner cannot be, and has not been, removed as
16 Trustee of the Legacy Trust on the basis the Lam has advanced.

17 ***Lam’s Motion for TRO/Preliminary Injunction***

18 18. Concurrently with the filing of the Business Court Complaint and the Motion to
19 Remove Trustee, Lam also filed a Motion for TRO and Preliminary Injunction. *See* Motion for
20 TRO, a true and correct copy being attached hereto as **Exhibit 10**. The Motion for TRO sought to
21

22 ² 7.2(c) **Formality Required.**

23 ...

24 Any document specified in this Section 7.2(c) **shall not be effective** unless se[n]t by certified
25 mail or registered mail or by courier, postage and/or fees prepaid, return receipt request, by
facsimile transmission (where receipt is capable of being determined), or by hand delivery
(Emphasis added).

26 ³ Petitioner is also informed and believes that Tran may have lacked contractual capacity in
27 September of 2013.



1 enjoin the Petitioner from selling real property owned by TE LLC. In support of his motion, Lam
2 erroneously asserted that he was the manager of TE LLC and that Petitioner had no authority to
3 act as Trustee of the Legacy Trust. Lam relied on the Revocation of Power of Attorney and
4 Assignment document which, as explained *supra*, is a legally inoperative instrument because (1)
5 Tran had no authority under the Legacy Trust to remove Petitioner as Trustee; and (2) even if she
6 did, the notice of removal was never delivered.

7 19. Presumably, the Business Court did not understand (or perhaps was not informed)
8 that Lam's argument in support of a TRO was legally unsound because on September 6, 2017, it
9 entered a temporary restraining order enjoining Petitioner from selling any further parcels of
10 property because "[t]he Plaintiffs have provided evidence to show that there is a legitimate
11 dispute as to the authority of Defendants Kerr and Kaufman to act in any capacity, based on the
12 Revocation signed on September 4, 2013 by Nhu Tran, the settlor of the trusts." *See* TRO Order,
13 at ¶ 4, a true and correct copy being attached hereto as **Exhibit 12**. Notably, however, the
14 Business Court went on to state that "the Court is not expressing an opinion on the ultimate merits
15 of the case" and that it did not find that there is a reasonable likelihood of success on the merits;
16 only that Plaintiff may be able to demonstrate a reasonable likelihood of success on the merits. *Id.*

17 20. On September 21, 2017, the Business Court held a non-evidentiary hearing on
18 Lam's Motion for Preliminary Injunction. *See* Business Court Minutes, a true and correct copy
19 being attached hereto as **Exhibit 13**. During the hearing, the Business Court granted the
20 preliminary injunction, increased the bond to \$5,000, and referred the Motion to Remove,
21 pursuant to EDCR 4.03, to this Court. *Id.* No written order has yet been entered by the Business
22 Court.

23 ***Lam's Lis Pendens***

24 21. Concurrently with the filing of the Business Court Complaint on September 1,
25 2017, Lam also filed and recorded a Notice of Pendency of Action (Lis Pendens). *See* Lis
26 Pendens, a true and correct copy being attached hereto as **Exhibit 14**.

1 22. According to the Lis Pendens, Lam claims that the Business Court action “affects
2 title to certain parcels of real property owned by Trans [sic] Enterprises, LLC and the NT
3 Revocable Living Trust, dated the 15th day of October, 2009...” *Id.*

4 23. On September 27, 2017, Lam filed an Amended Lis Pendens, which released one
5 of the parcels and corrected an APN of one of the affected parcels. *See* Amended Lis Pendens, a
6 true and correct copy being attached hereto as **Exhibit 15**.

7 24. As set forth in greater detail herein, both the Lis Pendens and the Amended Lis
8 Pendens were improvidently filed as to the parcels owned by TE LLC because there is no dispute
9 as to the title of those parcels. Rather, Lam’s alleged dispute is whether Petitioner has authority to
10 sell the parcels. Accordingly, the lis pendens’ should be expunged as to the approximate sixteen
11 (16) parcels owned by TE LLC.

12 ***Lam’s Purported 10% Interest in TE LLC.***

13 25. On December 2, 2009, Tran executed and delivered to the Petitioner an
14 Assignment of Interest instrument which purportedly and conditionally assigns a 10%
15 membership interest in TE LLC to Lam. *See* Assignment of Interest, a true and correct copy being
16 attached hereto as **Exhibit 16**. Pursuant to its terms, the Assignment of Interest is effective “only
17 upon presentation to CHARLIE LAM from my attorney, P. STERLING KERR, ESQ.” *Id.*

18 26. However, the Assignment of Interest is an inoperative instrument because Tran no
19 longer had any membership interests in TE LLC to assign to Lam as she previously assigned all
20 of her right, title and interest in TE LLC to the Legacy Trust two months prior in October of 2009.
21 *See Ex. 2*. Moreover, Tran never instructed Petitioner to deliver the Assignment of Interest to
22 Lam, presumably because she was informed by Lam in or around March of 2010 that he had no
23 interest in receiving and accepting the 10% membership interest. *See* Tran Handwritten Letter,
24 dated March 24, 2010, a true and correct copy being attached hereto as **Exhibit 17**.

III. ARGUMENT

A. THIS COURT SHOULD ASSUME *IN REM* JURISDICTION OVER THE LEGACY TRUST AND CONFIRM PETITIONER AS ITS TRUSTEE.

NRS 164.010 provides in relevant part:

Petition for assumption of jurisdiction; powers of court; petition for removal of trust from jurisdiction of court; determination of where trust is domiciled

1. Upon petition of any person appointed as trustee of an express trust by any written instrument other than a will, or upon petition of a settlor or beneficiary of the trust, the district court of the county in which any trustee resides or conducts business at the time of the filing of the petition or in which the trust has been domiciled as of the time of the filing of the petition shall assume jurisdiction of the trust as a proceeding in rem unless another court has properly assumed continuing jurisdiction in rem in accordance with the laws of that jurisdiction and the district court determines that it is not appropriate for the district court to assume jurisdiction under the circumstances.

5. When the court assumes jurisdiction pursuant to this section, the court:

(a) Has jurisdiction of the trust as a proceeding in rem as of the date of the filing of the petition.

NRS 164.015 further provides in relevant part:

1. The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust ... Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trust, including petitions with respect to a nontestamentary trust for any appropriate relief ...

Under its terms, the Legacy Trust is an irrevocable trust settled in Nevada. *See Ex. 1*, p. 31, Article VIII. Its initial trustees were the Petitioner and Kaufman. *See Acceptance by Co-Trustees, Ex. 1*, at p. 41. However, on June 3, 2016, Kaufman resigned as trustee thereby resulting in the Petitioner being the sole Trustee of the Legacy Trust from June 3, 2016, through the present. *See Ex. 4*.

Accordingly, this Court should assume *in rem* jurisdiction over the Legacy Trust and confirm Petitioner as its Trustee. Petitioner anticipates that Lam will object to the Court's confirmation of Petitioner as Trustee because of a document that he produced in the Business

1 Court litigation which purports to remove Petitioner as Trustee of the Legacy Trust. *See Ex. 2.*
2 However, this document is invalid as a matter of law for two reasons. First, the Legacy Trust did
3 not vest Tran with any authority to remove trustees. The Legacy Trust is an irrevocable trust. As
4 such, in the absence of an express revocation power, Tran as settlor had no authority to remove a
5 trustee. Second, even if Tran had such a power, the Legacy Trust expressly provides that a notice
6 of removal **shall** be delivered to the trustee to be effective. The purported removal document was
7 never delivered to Petitioner during Tran's lifetime and, therefore, is inoperative.

8 Assuming that this Court exercises *in rem* jurisdiction over the Legacy Trust, it should
9 also declare that it has *exclusive* jurisdiction over all matters concerning the Legacy Trust,
10 including, but not limited to, administration, internal affairs, and matters concerning disputes over
11 the Legacy Trust's property. NRS 164.010(1). Under well-settled and controlling law, "when one
12 court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem*
13 jurisdiction over the same *res*."⁴ This is commonly known as the "prior-exclusive-jurisdiction
14 doctrine".⁵ The prior-exclusive-jurisdiction doctrine is one that is not only recognized and
15 followed by the Supreme Court of Nevada, but is also recognized and followed by the United
16 States Supreme Court.⁶ In *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. 456 (1939), a
17 trust proceeding, the United States Supreme Court aptly stated:

18 We have said that the principle applicable to both federal and state courts is that
19 the court first assuming jurisdiction over property may maintain and exercise that
20 jurisdiction to the exclusion of the other, it's not restricted to cases where property
21 has actually been seized under judicial process before a second suit is instituted,
but applies as well where suits are brought to marshal assets, administer
trusts, or liquidate estates, and in suits of a similar nature where, to give

22 ⁴ *Chapman v. Deutsche Bank Nat'l Tr. Co.*, 129 Nev. Adv. Op. 34, 302 P.3d 1103, 1105 (2013)
23 (quoting *Marshall v. Marshall*, 547 U.S. 293, 311, 126 S.Ct. 1735, 164 L.Ed.2d 480 (2006)).

24 ⁵ *Id.*

25 ⁶ *See e.g. Penn Gen. Cas. Co. v. Commonwealth of Pennsylvania ex rel. Schnader*, 55 S. Ct. 386,
26 390 (1935) ("[T]wo courts having concurrent jurisdiction in rem, one first taking possession
27 acquires exclusive jurisdiction.");

1 **effect to its jurisdiction, the court must control the property. The doctrine is**
2 **necessary to the harmonious cooperation of federal and state tribunals.**

3 An exercise of *in rem* jurisdiction over the Legacy Trust confers upon this Court the
4 *exclusive* jurisdiction to hear and decide all matters relating to the Legacy Trust. In this case,
5 Petitioner seeks not only his confirmation as Trustee, but also orders and declarations concerning
6 the Legacy's Trust's property, including, but not limited to, TE LLC and its assets. Nevada law
7 expressly authorizes this Court to make declarations with respect to matters relating to the Legacy
8 Trust. Indeed, NRS 164.010(2)(d) states that at the time of the hearing on the Petition, the Court
9 may consider making orders on "matters relating to the trust, including, without limitation,
10 matters that might be addressed in a declaratory judgment relating to the trust under subsection 2
11 of NRS 30.040 or petitions filed pursuant to NRS 153.031 or 164.015."⁸

12 **B. THIS COURT SHOULD DECLARE THAT THE LEGACY TRUST IS THE SOLE MEMBER OF**
13 **TRAN ENTERPRISES, LLC AND THAT CHARLES LAM IS NEITHER A MEMBER NOR A**
14 **MANAGER OF TRAN ENTERPRISES, LLC.**

15 NRS 164.015(1) and 164.033(1) provide this Court authority to declare that the Legacy
16 Trust is the sole member of TE LLC, and that, as the sole member, the Legacy Trust can remove
17 and replace TE LLC's manager. Indeed, NRS 164.033 states in relevant part:

18 1. The trustee or an interested person may petition the court to enter an order:

19 (a) If the trustee is in possession of, or holds title to, property and the
20 property or an interest in it is claimed by another.

21 ⁷ 305 U.S. at 466 (Emphasis added). See also *In re Thomas and Agnes Carvel Foundation*, 36
22 F.Supp.2d 144 (S.D.N.Y. 1999) (declining to exercise jurisdiction, pursuant to *Princess Lida*,
over an intervivos trust because the New York state surrogate's court had already exercised
jurisdiction over the trust).

23 ⁸ NRS 164.010(2)(d). NRS 30.040(2) provides: "A maker or legal representative of a maker of a
24 will, trust or other writings constituting a testamentary instrument may have determined any
25 question of construction or validity arising under the instrument and obtain a declaration of rights,
26 status or legal relations thereunder. Any action for declaratory relief may only be made in a
proceeding commenced pursuant to the provisions of title 12 or 13 of NRS, as appropriate. See
also NRS 30.070.



(b) If the trustee has a claim to property and another holds title to or is in possession of the property.

Prior to the settling of the Legacy Trust, Tran, in her individual capacity, was the sole member of TE LLC. However, on October 15, 2009, Tran assigned all of her right, title and interest in her TE LLC membership interest to the Legacy Trust. *See Ex. 2.* Accordingly, this Court can and should declare that the Legacy Trust is the sole member of TE LLC and, therefore, Lam has no membership interest therein. With regard to Lam's claim that he holds a 10% membership interest in TE LLC, the purported Assignment of Interest that Tran signed on December 2, 2009 is legally inoperative because Tran had already divested herself of her membership interests in TE LLC two months prior. Moreover, even if she had a membership interest to give, the Assignment of Interest instrument was never delivered to Lam by the Petitioner, primarily because Lam refused to accept delivery of the gift, as evidenced by Tran's 2010 letter to the Petitioner. *See Ex. 17.*

Similarly, this Court should also declare that the Petitioner's removal of Lam as TE LLC's manager was proper given that (1) Petitioner is the Trustee of the Legacy Trust, the sole owner of TE LLC's membership interest; and (2) pursuant to TE LLC's Operating Agreement, a manager can be removed and replaced upon a majority vote of the membership, which in this case only required the vote of the Petitioner. *See, Ex. 3, at p. 4.*

C. THIS COURT SHOULD EXPUNGE ALL LIS PENDENS RECORDED AGAINST THE REAL PROPERTY OWNED BY TE LLC.

NRS 14.010 permits a plaintiff to file a lis pendens only "[i]n an action for the foreclosure of a mortgage upon real property, or affecting title or possession of real property." "As a general proposition, lis pendens are not appropriate instruments for use in promoting recoveries in actions for personal or money judgments; rather, their office is to prevent the transfer or loss of real property which is the subject of dispute in the action that provides the basis for the lis pendens." *Levinson v. Eighth Judicial Dist. Ct.*, 109 Nev. 747, 750 (Nev. 1993).

Accordingly, NRS 14.015(1) and (2) provide that a defendant may request a hearing upon 15 days' notice, whereupon Lam must:

... establish to the satisfaction of the court that:

- (a) The action is for the foreclosure of a mortgage upon the real property described in the notice or affects the title or possession of the real property described in the notice;
- (b) The action was not brought in bad faith or for an improper motive;
- (c) The party who recorded the notice will be able to perform any conditions precedent to the relief sought in the action insofar as it affects the title or possession of the real property; and
- (d) The party who recorded the notice would be injured by any transfer of an interest in the property before the action is concluded.

NRS 15.015(3) provides that: "[i]n addition to the matters enumerated in subsection 2, the party who recorded the notice must establish to the satisfaction of the court either:

- (a) That the party who recorded the notice is likely to prevail in the action; or
- (b) That the party who recorded the notice has a fair chance of success on the merits in the action and the injury described in paragraph (d) of subsection 2 would be sufficiently serious that the hardship on him or her in the event of a transfer would be greater than the hardship on the defendant resulting from the notice of pendency, - and that if the party who recorded the notice prevails he or she will be entitled to relief affecting the title or possession of the real property.

If Lam fails to meet the foregoing burden, the lis pendens' must be expunged. NRS 14.015(5).

According to his Amended Notice of Lis Pendens, Lam improvidently recorded lis pendens' against the following parcels of real property owned by TE LLC:

<u>APN Number</u>	<u>Property Description</u>
161-28-301-006	Hacienda Avenue and Morris Street
126-10-501-015	Iron Mountain and Patricia Avenue
176-13-501-030	Mohawk Street and Shelbourne Avenue
161-28-401-013	Nellis Blvd and Rawhide Avenue
177-17-701-012	Ford Avenue and Ensworth Street

<u>APN Number</u>	<u>Property Description</u>
177-17-701-011	Ford Avenue and Ensworth Street
140-08-601-013	Nellis Blvd and Gowan Road
139-16-310-017	Cartier Avenue and Martin L. King Blvd
126-03-801-002	Dolan Martin and O'Hare Avenue
126-01-501-004	Trails End Avenue and McKinister Road
176-13-501-036	Mohawk Street and Mistral Avenue
179-27-605-005	Roan Road and Derby Drive
179-27-605-004	Derby Drive
179-27-605-003	Pinto Road and Colt Drive
177-17-701-013	Ford Avenue and Ensworth Street
161-28-401-009	US-95 and Denning Street

For the reasons set forth *supra*, the lis pendens' recorded against all of the parcels owned by TE LLC are required to be expunged because there is no dispute that TE LLC owns the parcels. Moreover, the record establishes that there is no genuine dispute concerning the Legacy Trust's ownership of TE LLC and its ability to remove Lam as the manager. Lam's case is really about control; not ownership. The question of who has the right to control the Legacy Trust and TE LLC is not a statutory basis for the recordation of a lis pendens. Title and possession are not in dispute. Lis pendens', therefore, are not necessary and only cloud title to the detriment of the Legacy Trust. Accordingly, the lis pendens' should be expunged.

D. PETITIONER REQUESTS INSTRUCTIONS WITH REGARD TO PAYING SPECIFIC BEQUESTS AND DISTRIBUTING THE REMAINDER TO THE RESIDUAL BENEFICIARY.

NRS 153.031 provides in relevant part:

1. A trustee or beneficiary may petition the court regarding any aspect of the affairs of the trust, including:
 - ...
 - (g) Instructing the trustee;

1 The Legacy Trust provides that upon Tran's death, the trustee is required liquidate trust
2 assets to pay \$2,120,000.00 in specific bequests. *See Ex. 1*, at pp. 10-11. Following payment of
3 the specific bequests, the trustee is then directed to pay the residual and remaining trust estate to
4 the Nhu Tran Foundation, Inc. ("Tran Foundation") *Id.*

5 The Legacy Trust currently has enough liquidity to satisfy all of the specific bequests,
6 including the \$2 million specific bequest to Lam. Accordingly, Petitioner respectfully requests an
7 instruction from this Court to pay the specific bequests without further delay. Upon satisfaction of
8 the specific bequests, Petitioner further requests instructions from this Court to sell the remaining
9 assets of the Legacy Trust, including those parcels of real property owned by TE LLC, to pay the
10 residual and remainder to the Tran Foundation. Not only does this Court have the equitable power
11 to do so, but the express terms of the Legacy Trust also grant the Petitioner the power to sell
12 assets without Court approval. *See Ex. 1*, at Articles 6.3, 6.23.⁹

13 **WHEREFORE**, Petitioner respectfully requests that this Court issue the following relief:

14
15 ⁹ "In addition to the powers vested in them by law and other provisions of this Instrument, the
16 Trustees shall have the following powers, exercisable in their sole and absolute discretion,
without court approval, and effective until actual distribution of all property...

17 **6.3 Sale or Lease of Property.** For prices and upon such terms as they deem property. (i) to sell at
18 public or private sale, or to exchange, any real or personal property; (ii) to give options for any
19 such sales, exchanges, or leases; and (iii) to lease Trust property for terms within or beyond the
term of the Trust and for any purpose, including exploration for an removal of gas, oil, and other
minerals; and to enter into community oil leases, pooling and utilization agreements.

20 **6.23 Broad Powers Of Distribution.** Upon any division or partial or final distribution of the
21 Trust estate, the successor Trustee shall have the power to partition, allot and distribute the Trust
22 estate in undivided interest or in kind, or partly in money and partly in kind, at valuations
23 determined by the Trustees, and to sell such property as the Trustees, in the Trustees' discretion,
24 considers necessary to make such division or distribution. In making any division or partial or
25 final distribution of the Trust estate, the Trustees shall be under no obligation to make a pro rata
26 division or to distribute the same assets to beneficiaries similarly situated. Rather, the Trustees
27 may, in the Trustees' discretion, make non pro rata divisions between Trusts or shares and non
28 pro rata distributions to beneficiaries as long as the respective assets allocated to separate trusts or
shares or the distributions to beneficiaries have equivalent or proportionate fair market value. The
income tax basis of assets allocated or distributed non pro rata need not be equivalent and may
vary to a greater or lesser amount, as determined by the Trustees, in his or her discretion, and no
adjustment need be made to compensate for any difference in basis.

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM


SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



1. An order assuming *in rem* jurisdiction of the Legacy Trust;
2. An order confirming Petitioner, P. Sterling Kerr, Esq., as the Trustee of the Legacy Trust;
3. A declaration that the Legacy Trust is the sole member of Tran Enterprises, LLC;
4. A declaration that Charles Lam has no membership interest in Tran Enterprises, LLC;
5. A declaration that Petitioner had authority to remove Charles Lam as Manager of TE LLC in or about March of 2017;
6. An order expunging all lis pendens' recorded against the real property owned by the Legacy Trust though its membership interest in TE LLC;
7. An order instructing the Petitioner to pay all specific bequests, to liquidate all remaining Trust assets, and to pay the residue of the Legacy Trust estate to the Tran Foundation, the remainder beneficiary; and
8. An order for any and all other relief just and warranted under the circumstances.

Dated this 26 day of October, 2017.

SOLOMON DWIGGINS & FREER, LTD.



Mark A. Solomon (#418)
Alexander G. Leveque (#11183)
Craig D. Friedel (#13873)
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Petitioner, P. Sterling Kerr

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 833-5483
FACSIMILE (702) 833-5485
WWW.SOLVIAW.COM

 **SOLOMON**
DWIGGINS & FREER
FIRST AND SECOND ATTORNEYS

VERIFICATION

Petitioner, P. STERLING KERR, whose mailing address is 2450 St. Rose Parkway, Suite 120, Henderson, Nevada 89074, declares under penalties of perjury of the State of Nevada:

That he is the Petitioner who makes the foregoing **PETITION TO ASSUME *IN REM* JURISDICTION OVER THE NT LEGACY TRUST, DATED OCTOBER 15, 2009 -AND- PETITION TO CONFIRM TRUSTEE AND FOR INSTRUCTIONS -AND- PETITION FOR A DECLARATION THAT THE NT LEGACY TRUST IS THE SOLE MEMBER OF TRAN ENTERPRISES, LLC -AND- PETITION TO EXPUNGE LIS PENDENS**, that he has read said petition and knows the contents thereof, and that the same is true of his own knowledge except for those matters stated on information and belief, and that as to such matters he believes them to be true.

DATED this 26th day of October, 2017

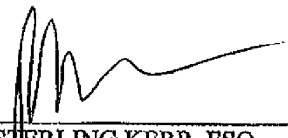

P. STERLING KERR, ESQ.

EXHIBIT 1

EXHIBIT 1

THE NT LEGACY TRUST
DATED THE 15th DAY OF OCTOBER, 2009 .

Prepared by:
the Law Offices of P. Sterling Kerr
1055 Whitrey Ranch Drive, #110
Henderson, NV 89014
Telephone: (702) 451-2055

TRAN0067

TABLE OF CONTENTS

ARTICLE I	1
DEFINITIONS AND CONSTRUCTION	1
1.1 Name	1
1.2 Distribution Event	1
1.3 Settlement; Trust; Trust Fund, Etc.	2
1.4 Provisions Relating to Beneficiaries	2
1.5 Fiduciary	3
1.6 Estate	3
1.7 Personal Representative	3
1.8 Trustee	3
1.9 Child, Children, Grandchild, Grandchildren; Descendant	3
1.10 "Independent Trustee"	3
1.11 Per Stirpes	3
1.12 Headings and Captions; Gender and Number	4
1.13 Survivorship	4
1.14 Applicable Law; Construction	4
1.15 Related or Subordinate Party	5
1.16 Discretion	5
1.17 Herein, Hereunder, Etc.	5
1.18 Issue	5
1.19 Settlor, Related Terms	5
1.20 Legal Age; Adult; Age of Majority	5
1.21 Incapacity; Adjudicated Incapacity	6
1.22 Severability	6
1.23 Trust Period	6
1.24 Person	6
1.25 Scheduled Investment	6
1.26 Special Provisions	6
1.27 Commencement of Trust	7
1.28 Code, Internal Revenue Code; Regulations	7
ARTICLE II	7
DISPOSITIVE PROVISIONS. DURING THE SETTLORS' LIFETIMES	7
2.1 Income	7
2.2 Principal	7
2.3 Discretionary Distributions	7
2.4 Testamentary Power of Appointment	8
2.5 Nature and Powers of Appointment	8
ARTICLE III	8
DISPOSITIVE PROVISIONS UPON A SETTLOR'S DEATH	8
3.1 Exemption Trust	8
3.2 Allocation for Issue	10
3.3 Distribution Upon Termination of Trust Period	11
3.4 Coordination With Governmental or Private Assistance	11

TRAN0068

ARTICLE IV	12
TERMINATION AT TRUSTEES' DISCRETION.....	12
4.1 Small Trust Termination	12
4.2 No Right to Compel Termination	13
ARTICLE V.....	13
PROTECTIVE PROVISIONS.....	13
5.1 Spendthrift Provision	13
5.2 No Action Under Duress	15
5.3 Change in Situs/Applicable Law	15
5.4 Disclaimers	16
5.5 Disregarding Interests of Others	16
5.6 Exclusive Property.....	16
ARTICLE VI	17
TRUSTEES' POWERS	17
6.1 Title to Investments	17
6.2 Consolidating Funds.....	17
6.3 Sale or Lease of Property.....	17
6.4 Borrowing.....	17
6.5 Retaining Form of Property	18
6.6 Investment Discretion	18
6.7 Fund Advancement	18
6.8 Lawsuits.....	18
6.9 Voting of Stock.....	18
6.10 Principal and Income Determination	18
6.11 Payments to Disabled Beneficiary.....	18
6.12 Additions of Corpus	18
6.13 Bank Deposits.....	18
6.14 Safety Deposit Box	18
6.15 Statutory Powers	18
6.16 General Powers Not Limited	19
6.17 Securities	19
6.18 Closely Held Business.....	19
6.19 Transactions With Certain Estates	19
6.20 Directions to Fiduciaries	20
6.21 Additional Powers	21
6.22 Power to Appoint Agent.....	21
6.23 Broad Powers Of Distribution.....	21
6.24 Apply For Government Assistance	21
6.25 Merger of Identical Trusts.....	22
ARTICLE VII	22
APPOINTMENT OF AND PROVISIONS RELATING TO FIDUCIARIES	22
7.1 Appointments; Resignations.....	22
7.2 Additional Removal And Succession Provisions	23

TRAN0069

7.3	Waiver of Security	26
7.4	Fiduciaries' Responsibility	26
7.5	Transactions With Related Parties	27
7.6	General Action of Fiduciaries	27
7.7	Accounting And Qualification	28
7.8	Compensation	28
7.9	Miscellaneous	29
ARTICLE VIII		31
TRUST IRREVOCABLE		31
ARTICLE IX		31
RECEIPT OF PROPERTY BY TRUSTEES		31
9.1	Initial Trust Contribution	31
9.2	Subsequent Trust Contributions	32
9.3	Nature of Trust Property	32
9.4	Provision for Existing Obligations	32
ARTICLE X		33
ACCUMULATIONS AND PERPETUITIES		33
ARTICLE XI		33
(RESERVED)		33
ARTICLE XII		33
POWERS OF APPOINTMENT		33
12.1	General	33
12.2	Operating Rules	34
ARTICLE XIII		36
SUBSTITUTION OF PROPERTY		36
13.1	Substitution of Property	36
13.2	Veto Power of Settlor	36
13.3	Waiver of Veto Power	37
ARTICLE XIV		37
SPENDTHRIFT SAVINGS CLAUSE		37
ARTICLE XV		37
ADDITIONAL PROVISIONS IF TRUST SITUS CHANGED		38
15.1	Court Supervision	38
15.2	Inter vivos Power of Appointment	38
15.3	Actions of Fiduciaries Supplemental Provision	38
15.4	Settlor's Veto Power Void	39
15.5	Registration in Foreign Jurisdiction	39
15.6	Managing Trustee and Custodial Trustee	39
15.7	Veto Power of Protector/Committee	39

TRAN0070

15.8	Waiver of Veto Power	40
	SCHEDULE I.....	43
	SCHEDULE II.....	44
	SCHEDULE III.....	45
	SCHEDULE IV.....	46
	SCHEDULE V.....	47
	SCHEDULE VI.....	48
	SCHEDULE VII.....	49
	SCHEDULE VIII.....	50
	SCHEDULE IX.....	51

TRAN0071

**TRUST AGREEMENT
OF THE
NT LEGACY TRUST**

THIS DECLARATION OF TRUST AGREEMENT is made on the 15th day of October, 2009, by NHU THI TRAN (hereinafter referred to as the "Settlor", "Trustor" or "Grantor" when reference is made to her in the capacity as creator of this Trust and the transferor of the principal properties thereof), and the Co-Trustees, whose names and addresses are as set forth in Schedule I attached hereto and incorporated herein by reference (hereinafter referred to as the "Co-Trustees," or "Fiduciaries," when reference is made to them or their capacity as Co-Trustees or fiduciaries hereunder).

Witnesseth.

WHEREAS, the Trustor desires by this Trust Agreement to establish an Irrevocable Trust for the use and purposes hereinafter set forth, to make provisions for the care and management of certain of her present properties and for the ultimate distribution of the Trust properties;

NOW, THEREFORE, the Trustor hereby gives, grants, and transfers irrevocably to the Trustee, IN TRUST, which Trustee hereby declares that it has received from the Grantor, the property listed on Schedule "II", (which schedule is attached hereto and made a part of this Trust Agreement), TO HAVE AND TO HOLD THE SAME IN TRUST, and to manage, invest and reinvest the same and any additions that may be made from time to time hereto, subject to the provisions of Trust as hereinafter provided.

All property subject to this Trust Indenture shall constitute the Trust Estate and shall be held for the purpose of protecting and preserving it, collecting the income therefrom, and making distributions of the principal and income thereof as hereinafter provided.

Additional property may be added to the Trust Estate, at any time and from time to time, by the Trustor or any person or persons, by inter vivos act or testamentary transfer, or by insurance contract or Trust designation.

**ARTICLE I
DEFINITIONS AND CONSTRUCTION**

- 1.1 **Name.** The Trusts created in this instrument may be referred to collectively as the "NT LEGACY TRUST", and any separate Trust may be referred to by adding the name of the beneficiary.
- 1.2 **Distribution Event.** The term "Distribution Event", as used herein, shall mean the death of the Settlor.

- 1 -

P. Sterling Kerr
Attorney at Law

TRAN0072.

1.3 Settlement; Trust; Trust Fund, Etc.

- (a) General. Unless otherwise indicated or required by the context, the terms "Settlement" and "Trust" shall mean and refer to the "NT LEGACY TRUST", to be held, administered, and distributed pursuant to the terms of this Instrument. The terms "Settlement" and "Trust" shall also mean each executed original of this Instrument, as required or permitted by the context in which such terms are used. Unless otherwise indicated or required by the context, the terms "Trust Fund", "Trust Property", and "Trust Estate", as used herein, shall mean and include all property received initially by the Trustee with respect to the account of a particular Settlor hereunder, all additions thereto received by the Trustee from any other source, all investments and reinvestments of such property and such additions thereto and all accrued and undistributed income of such account. In this connection, the Trustees shall establish and maintain an account hereunder for each Settlor hereof.
- (b) With Respect to a Settlor. The terms "Settlement," "Trust," "Trust Fund," "Trust Property," and "Trust Estate," as used herein regarding the exercise of any power by any person, and/or regarding any Trust provisions effective, or distributions to be made upon, following, or with respect to the life or death of a Settlor, shall, unless otherwise required by the context, mean and include all property received initially by the Trustee with respect to the account of a particular Settlor, all additions thereto received by the Trustee from any other source, all investments and reinvestments of such property and such additions thereto and all accrued and undistributed income of such account.
- (c) Predecessor Trusts. For purposes of this Instrument, the term "Predecessor Trusts" shall mean and refer to the trust identified as such in Section 1.1, above, if any.

1.4 Provisions Relating to Beneficiaries.

- (a) Beneficiary. Unless otherwise expressly identified herein, wherever reference is made herein to a "Beneficiary," such reference shall be deemed to mean a person identified as such on Schedule III attached hereto and incorporated herein by this reference. No person who is an Excluded Person hereunder (as hereinafter defined) shall be capable of being a Beneficiary.
- (b) Appointed Class. Subject to ARTICLE V, Sections 5.4 and 5.5 hereof, for purposes of this Instrument, the term "Appointed Class" means. (i) the Beneficiaries (as hereinabove defined); (ii) any then living spouse, surviving spouse, Child (as hereinafter defined), or other Issue (as hereinafter defined) of any of the Beneficiaries; and (iii) any organization which qualifies for United States federal income and/or estate tax deductions pursuant to §§ 170 and/or 2055 of the Code. No person who is an Excluded Person hereunder (as hereinafter defined) shall be capable of being a member of the Appointed Class.

children of each such deceased child of such specified person will receive by right of representation the share which their parent would have received had he then been living.

1.12 Headings and Captions; Gender and Number.

- (a) Headings and Captions. The headings, captions, titles, and subtitles herein are provided for convenience of reference only, and shall in no way be construed as defining, extending, limiting, or describing the scope of this Instrument, or any provision hereof, or the Settlor's intent with respect to any provision hereof.
- (b) Gender and Number. Wherever the context of this Instrument so requires, references to the singular number shall be read, construed, and interpreted to mean and include the plural number and vice-versa; references to the masculine gender shall be read, construed, and interpreted to mean and include the feminine gender and vice-versa; and references to the neuter gender shall be read, construed, and interpreted to mean and include the masculine and/or feminine genders, as applicable, under the circumstances.

1.13 Survivorship.

- (a) In the event that any Beneficiary hereunder and the Settlor shall die under ~~circumstances which make difficult or impracticable the determination of the order~~ of their deaths, then, in such event, it shall be presumed that any such Beneficiary survived the Senior.
- (b) Subject to the application of Paragraph (a) of Section 1.13, above, in the event any income Beneficiary of a Trust Fund created hereunder shall die at the same time as the remainder Beneficiary of such Trust Fund, or under circumstances which make difficult or impracticable the determination of the order of their deaths, it shall be presumed that such income Beneficiary survived such remainder Beneficiary.

1.14 Applicable Law; Construction.

- (a) As used herein, the term "Applicable Law" means the law of the jurisdiction to which the rights of all parties hereto shall be subject, to which the construction and effect of this Settlement shall be subject, and by which such rights, construction and effect shall be construed, interpreted and governed.
- (b) Subject and without prejudice to any transfer of the administration of the trusts hereof, to any change in the Applicable Law of this Settlement, and to any change in the law of interpretation of this Settlement duly made according to the powers and provisions herein declared, from the date of execution of this Instrument as a Spendthrift Trust under Chapter 166 of the Nevada Revised Statutes, the Applicable Law of this Settlement shall be the Laws of the State of Nevada, whose law shall govern the construction, validity and administration hereof.

(c) Excluded Person. For purposes of this Instrument, the term "Excluded Person" means any person who is specified as such in Schedule IV attached hereto and incorporated herein by this reference, any person who is so designated pursuant to ARTICLE II, Sections 2.1 and 2.2 thereof.

- 1.5 Fiduciary. Wherever reference is made herein to a "Fiduciary," such term shall mean and include the Trustee, as required or permitted by the context. Such term shall also mean and include a successor to such Trustee and each Co-Trustee.
- 1.6 Estate. The term "Estate," as used herein, shall mean not only the Settlor's property which is subject to court administration, but any other property with respect to which the Fiduciary may properly exercise any power, direction, or take any action.
- 1.7 Personal Representative. The term "Personal Representative," as used herein, means the person appointed by a court of competent jurisdiction to administer an estate of a decedent.
- 1.8 Trustee. The term "Trustee" means the person(s) appointed to hold, administer, and distribute the Trust Estate, subject to applicable fiduciary standards as modified herein, and such term includes an original, additional, surviving, remaining, or successor Trustee, regardless of whether appointed or confirmed by any court. No reference to a "Co-Trustee" shall be interpreted as an exception to this Section 1.8.
-
- 1.9 Child, Children, Grandchild, Grandchildren; Descendant. As used herein, the term "child" or "children" shall mean lawful descendants in the first degree of the designated person, "grandchild" or "grandchildren" shall mean lawful descendants in the second degree of the designated person, and "descendant or descendants" shall mean lawful descendants in the first, second or any other degree of the designated ancestor. Any implication herein to the contrary notwithstanding, a lawfully adopted or legitimated child shall be deemed to be a descendant of the relevant person (if legitimated or legally adopted prior to such child attaining age eighteen (18), and a child or grandchild in gestation (later born alive) at the date of a specified event shall be deemed to be living at the date of such specified event.
- 1.10 "Independent Trustee". The term "Independent Trustee" refers to a corporate Trustee if then serving, or in the event there is no corporate Trustee, then to any non-corporate Trustee other than the beneficiary.
- 1.11 Per Stirpes. As used herein, the term "per stirpes" shall have its accepted legal meaning, so that, for example, if a distribution is to be made "per stirpes" to the descendants or Issue of a specified person and one of said person's children is deceased but is survived by children, then the share which would otherwise have been distributable to such deceased child of said specified person had he then been living shall be divided equally among the then-living children of such deceased child. As a further example, and consistent herewith, if all of the children of said specified person shall be deceased, then the share which would otherwise have been distributable to each such deceased child shall be divided equally among the then-living children of each such deceased child, with the effect that the then-living

- 1.15 Related or Subordinate Party. As used herein, the term "related" or "subordinate" party shall have the meaning assigned to it by Section 672 of the Internal Revenue Code, and the legal interpretations thereof.
- 1.16 Discretion. As used herein, the word "discretion", unless otherwise expressly limited herein, shall mean the sole and absolute right, power, and authority to make a determination which shall not be subject to question by any person and shall be conclusive and binding on all persons and parties howsoever interested in the matter.
- 1.17 Herein, Hereunder, Etc. As used in this Instrument, the words "herein", "hereunder", and similar compounds of the word "here", shall, unless otherwise required by the context, mean and refer to this entire Instrument.
- 1.18 Issue. The word "Issue" as used herein, shall have the same meaning as the word "descendant", and such terms shall mean and refer to a person's legitimate natural born children, legitimated and legally adopted children (if legitimated or legally adopted prior to such child attaining age eighteen [18]), and the lineal descendants of such child or children. Subject to ARTICLE XI, the term "descendant" or "descendants" shall include those persons in being (or in gestation, if later born alive) at the time they must be ascertained to give effect to the reference to them regardless of whether they were born before or after the death of the Settlor, or the death of any other person.

1.19 Settlor, Related Terms.

- (a) Settlor. When reference is made in this Instrument to the "Settlor" and the "Settlor's Spouse", such terms shall have the following meanings and construction. With regard to the account maintained hereunder and funded with property initially transferred hereto by NHU THI TRAN, the term "Settlor" shall mean NHU THI TRAN.
- (b) Settlor's Account. The term "Settlor's account", when used herein, shall mean and refer to the share of this Settlement determined with respect to a Settlor hereunder by taking into account the contributions made hereto to by the said Settlor, individually, or in any other capacity on behalf of such Settlor, the earnings (ordinary, capital, or any other type) thereon and/or allocated or credited thereto, the losses incurred with respect thereto, the expenses (ordinary, capital, or any other type) disbursed therefore and/or allocated or charged thereto, and the distributions to any person therefrom.
- 1.20 Legal Age; Adult; Age of Majority. Applicable Law to the contrary notwithstanding, for all purposes hereunder, terms such as "adult", "age of majority", and similar references shall be construed to mean and refer to a person who has attained the age of eighteen (18) years. Prior to such time, a person shall be considered to be a minor for all purposes hereunder.

1.21 **Incapacity; Adjudicated Incapacity.** For all purposes of this Instrument, any person shall be treated as having been adjudicated incompetent (which shall begin a period of Adjudicated Incapacity) when the Trustees are presented with either.

- (a) a certified copy of an order or decree of any court of competent jurisdiction finding such person to be incapacitated (unless such order or decree does not find such person to be incapacitated with regard to his financial and business affairs), or
- (b) a written certificate stating that, in the opinion of the signers of such certificate, the subject person is in such a permanent physically or mentally deteriorated condition that such person is, and thereafter for the foreseeable future will be, unable to responsibly conduct his financial and business affairs on a continuous basis. Such certificate must be signed, in the presence of a notary public or other official authorized by law to take sworn statements, by the subject person's regular physician, by one (1) other physician not affiliated in medical practice with such regular physician, and by one (1) licensed clinical social worker (who represents that he/she has expertise in matters involving the determination of competency).

1.22 **Severability.** In the event any term, condition, right, power, privilege, or provision of this Instrument, or the administration thereof, is determined by a court of competent jurisdiction to be unenforceable or invalid, or should otherwise be unenforceable or invalid, for any reason whatsoever, then, in such event, the remaining provisions hereof shall be unaffected in any way, and shall continue in full force and effect.

1.23 **Trust Period.** Except as otherwise limited by Article X hereof, for purposes of this Instrument, the term "Trust Period" means the period of time which began on the "commencement date" being either the date first above written, or if this is an amendment and restatement of Predecessor Trusts, from the original date of the oldest of said Predecessor Trusts, and continuing through and including the first to occur of the following dates or points in time. (i) One Hundred, (100) years from the commencement date, which shall be the perpetuity period applicable to the disposition; or (ii) the date as of which the entirety of the Trust Fund has been distributed according to the terms and provisions hereof.

1.24 **Person.** "Person" means, when used generally herein, an individual, person, firm, corporation, partnership (general or limited), limited liability company, company, trust, association, entity, or other such classification. When used generally herein, such word need not be capitalized.

1.25 **Scheduled Investment.** The term "Scheduled Investment" means any item or class of items described in Schedule II hereof.

1.26 **Special Provisions.** The special provisions, if any, which are to apply in the course of administering the Trust during the Trust Period are as set forth in Schedule IX attached hereto and incorporated herein by this reference.

- 1.27 Commencement of Trust. The Trust established by this Instrument shall commence existence on the date first above written, such date being the time when the last of the following has occurred, the Settlor has executed this Instrument, one of the Trustees has executed this instrument, and a corpus has been transferred to said Trustees.
- 1.28 Code, Internal Revenue Code; Regulations. As used herein, any reference to the "Code" or to the "Internal Revenue Code" shall mean and refer to the United States Internal Revenue Code of 1986, as amended from time to time, or any statute from time to time in effect and corresponding thereto. References to Treasury Regulations shall mean and refer to the regulation promulgations of the United States Treasury Department, as amended from time to time, and the terms "Proposed" and "Temporary" when used in conjunction with a Treasury Regulation reference shall be deemed to mean and include the final version of same, to the extent not substantially inconsistent with the said Proposed or Temporary version.

ARTICLE II

DISPOSITIVE PROVISIONS, DURING THE SETTLOR'S LIFETIME

Prior to Settlor's Death.

- ~~2.1 Income. To the extent remaining following the exercise (if any) of the powers of~~
appointment set forth in Section 2.4 and Section 15.2, if applicable, the Trustee may, in his or her sole and absolute discretion, pay or apply the whole, any portion, or none of the net income of the Trust to or in any manner the Trustee deems to be for the benefit, including but not limited to support and maintenance, of all or any one or more of the members of the Appointed Class other than an Excluded Person; provided, however, that any discretionary distributions to the Settlor shall be determined by the Trustee(s) who is not the Settlor. Income not so applied shall be added to and administered as a part of Trust corpus.
- 2.2 Principal. To the extent remaining following the exercise (if any) of the powers of appointment set forth in Section 2.4 and Section 15.2, if applicable, the Trustee may, in his or her sole and absolute discretion, pay, transfer, or apply the whole, any portion, or none of the Trust Principal to or in any manner the Trustee deems to be for the benefit, including but not limited to support and maintenance, of all or any one or more of the Appointed Class other than an Excluded Person; provided, however, that any discretionary distributions to the Settlor shall be determined by the Trustee(s) who is not the Settlor.
- 2.3 Discretionary Distributions.
- (a) General. In exercising the discretion conferred upon them by Sections 2.1 and 2.2 above, the Trustee may pay more to, appropriate, or apply more for some members of the Appointed Class than others, and may make payments to or application of benefits for one or more of them to the exclusion of one or all of the others. Any payment or application of benefits pursuant to this Section 2.3 shall be charged against the respective account in the Trust Fund as a whole

- 7 -

P. Sterling Kerr
Attorney at Law

TRAN0078

rather than against the ultimate distributive share (if any) of a member of the Appointed Class to whom or for whose benefit payment is made.

- (b) Charitable Distributions. The Trustee, may, in his or her sole discretion, but only at the request of any member of the Appointed Class, pay or apply any part of the Trust Fund to or for the benefit of any charitable institution or other charitable objects approved or requested by such member of the Appointed Class. Any such payment or application shall be deemed to be a distribution for the benefit of such member of the Appointed Class. The Trustee shall not be restricted by any rule or law as to the amount or manner of such payment or application. The receipt in writing of the treasurer or other officer of any charitable institution or object shall be a sufficient discharge to the Trustee for any net income and/or principal paid to such institution or object hereunder.

- 2.4 Testamentary Power of Appointment. Subject to Section 2.5 of this ARTICLE II, and subject to ARTICLE V hereof, upon the death of the Settlor, the Trustee shall distribute the Senior's account in the Trust Fund or any part thereof to such one or more members of the Appointed Class, on such terms and conditions, either outright or in trust, as the Settlor may appoint by an instrument in writing (including, without limitation, a Will or a Codiell) signed by the Settlor and delivered to the Trustee, specifically referring to and exercising this power of appointment.

- 2.5 Nature and Powers of Appointment. The powers of appointment set forth in Section 2.4, above, of this Article II, and Section 15.2 of Article XV, if applicable, are limited powers of appointment subject to the restrictions set forth in Section 12.2(d) of ARTICLE XII.

ARTICLE III

DISPOSITIVE PROVISIONS UPON SETTLOR'S DEATH

Following the death of the Settlor, the account of the deceased Settlor, including any assets added thereto received from the Senior's Estate, and any other assets added thereto received by virtue of the Senior's death, together with any other property acquired hereunder, to the extent not appointed by the Settlor pursuant to Section 2.4 of ARTICLE II, above, shall be administered in accordance with the provisions of this ARTICLE III.

3.1 Exemption Trust.

- (a) The Trustees shall set apart out of the funds and properties to be administered under this ARTICLE III and shall hold as a separate Trust Fund or Funds the aggregate of the following amounts.
- (1) All of such funds and properties, if any, which are subject to administration hereunder but which are not included in the Settlor's gross estate as the same is determined for federal estate tax purposes; plus

- (2) With respect to all funds and properties held hereunder which are included in the Settlor's gross estate as the same is determined for a federal estate tax purposes, (i) all of such property as to which a federal estate tax marital deduction would not be allowed if it were devised outright to the Settlor's Spouse, and (ii) after giving effect to (i), a sum not to exceed the maximum amount that can pass to the Trust free of Federal Estate Tax, after taking into account all available deductions, exclusions, the unified credit and the state death tax credit (provided use of this credit does not result in an increase in the state death taxes paid) allowable to the Decedent's estate, and after also taking account of property disposed of by previous articles in this Trust and property passing outside of this Trust which is includible in the Decedent's gross estate and which does not qualify for the marital or charitable deduction, and after taking account of charges to principal that are not allowed as deductions in computing the deceased spouse's Federal Estate Tax. This allocation may be satisfied in cash or in kind, including undivided interests in property. Likewise, the Fiduciaries shall assume, in determining the foregoing pecuniary amount, that all dispositions under any inter vivos Trust with respect to which the Settlor hereunder was also the Settlor which are eligible for a QTIP election (under the terms of such Trust) have been allowed as a federal estate tax marital deduction of the Senior's estate, regardless of whether any such election is actually made, or whether any such interests are disclaimed by the Settlor's Spouse.

- (b) The Fiduciaries shall have full authority and discretion to select the assets which shall constitute the principal of the Trust Funds held and administered under this Section; provided, however, that in funding the Trusts created under this Section 3.1, the Fiduciaries shall first allocate thereto property in the Settlor's account which is not subject to inclusion as part of the Settlor's gross estate for federal estate tax purposes, shall next allocate thereto property which is subject to inclusion as part of the Settlor's gross estate for federal estate tax purposes but which cannot qualify for the marital deduction or the charitable deduction under applicable federal, estate tax law, to the extent such property is subject to administration hereunder and available for such funding, and the remaining balance of such required Trust Funds, if any, shall be funded with any and all remaining property in the deceased Settlor's account subject to administration hereunder.
- (c) Anything contained herein to the contrary notwithstanding, in paying over the pecuniary amount necessary to fund the Trust created by Section 3.1 of the ARTICLE III, the Trustees shall utilize date of death values for the assets utilized in such funding being fairly representative of appreciation and depreciation in the Trust estate following the Settlor's death. In addition, if the discretionary selection of assets to fund such trust is deemed by any governmental authority to justify proposed disallowance of all or any portion of the marital deduction (otherwise available to the Settlor's estate), the Trustee shall allocate such property among the Trust Funds under this Section 3.1 and the Marital Trust Funds under Section 3.2 of this ARTICLE III in accordance with the standards required by such governmental

authority in order to preserve the marital deduction with respect to the Marital Trust Funds held under Section B of this ARTICLE III.

- (d) The Trustees shall receive the funds, properties and amounts set forth in Subsection (a) of this Section 3.1, and shall pay over and distribute same in accordance with the remaining provisions of this Section 3.1.
- (e) Distribution Event. Upon the Distribution Event (as defined in ARTICLE I), the Fiduciaries shall administer and distribute all property then held by them in accordance with the provisions of Section 3.3 of this ARTICLE III.

3.2 Allocation for Issue.

A. Specific Bequests:

- 1) The sum of Two Million Dollars (\$2,000,000.00) shall be distributed to my son, CHARLIE LAM, outright and free of Trust, so long as he is then living. If he is not then living, this bequest shall lapse.
- 2) ~~The sum of Twenty Thousand Dollars (\$20,000.00) shall be distributed to my son, VINCE LAM, outright and free of Trust, so long as he is then living. If he is not then living, this bequest shall lapse.~~
- 3) The sum of Twenty Thousand Dollars (\$20,000.00) shall be distributed to my son, TONY LAM, outright and free of Trust, so long as he is then living. If he is not then living, this bequest shall lapse.
- 4) The sum of Twenty Thousand Dollars (\$20,000.00) shall be distributed to my grandson, DENNIS LAM, outright and free of Trust, so long as he is then living. If he is not then living, this bequest shall lapse.
- 5) The sum of Twenty Thousand Dollars (\$20,000.00) shall be distributed to my granddaughter, LISA LAM, outright and free of Trust, so long as she is then living. If she is not then living, this bequest shall lapse.
- 6) The sum of Twenty Thousand Dollars (\$20,000.00) shall be distributed to my grandson, BRYAN LAM, outright and free of Trust, so long as he is then living. If he is not then living, this bequest shall lapse.

- 7) The sum of Twenty Thousand Dollars (\$20,000.00) shall be distributed to my sister, HA THI TRAN, outright and free of Trust, so long as she is then living. If she is not then living, this bequest shall lapse.

B. Distribution of Remaining Trust Estate:

The residual and remaining trust estate, after the payment to the beneficiaries of specific bequests, all Trustee fees, expenses of trust, professional fees, estate tax, and all other taxes required, shall be paid to the NHU TRAN FOUNDATION, INC., a Nevada Non-Profit Corporation.

- C. Last Resort Clause.** In the event that the principal of the Trust administered under this Section 3.3 is not disposed of under the foregoing provisions, the remainder, if any, shall be distributed, outright and free of Trust, equally to the heirs at law of the Settlor, other than creditors and Excluded Persons, their identities and shares to be determined according to the laws of the State of Nevada then in effect relating to the intestate succession of separate property. Notwithstanding the above, a Settlor's separate property shall be distributed free of trust to the heirs at law of the separate property holder rather than divided with the heirs of the other Settlor.

- D. Apportionment of Death Taxes.** All death taxes that are attributable to any generation skipping trust with an inclusion ratio of zero, shall be first charged to a beneficiary's Nonexempt Trust(s) set forth herein, if any.

- 3.3 **Distribution Upon Termination of Trust Period.** Subject always to the provisions of Section 2.4 of ARTICLE II relating to certain powers of appointment, and Sections 3.1 and 3.2 of ARTICLE III relating to the terms of this Settlement which will apply for the surviving spouse of the Settlor upon the Settlor's death, and Section 3.3, above, at the expiration of the Trust Period the undistributed balance (if any) remaining of the Trust Fund or any sub-trust thereof shall be distributed to the respective then income beneficiaries thereof in the proportions in which they are, at such time, entitled to receive the income. However, if the rights to income are not then fixed, distribution under this Section 3.4 shall be made on the basis of the respective account in the Trust Fund to the respective Settlor, and should the said Settlor not then be living, then to the spouse of the Settlor, and should said spouse not then be living, per stirpes to the Settlor's Issue who are then entitled or authorized in the Trustees' discretion to receive income payments, or, if there are no such Issue, in equal shares to the Beneficiaries who are then entitled or authorized in the Trustees' discretion to receive income payments, and if there are no such Beneficiaries, to the Settlor's Heirs-at-Law as set forth herein.

- 3.4 **Coordination With Governmental or Private Assistance.** Except with respect to any

Trust established pursuant to Section 3.2, above, of this ARTICLE III. During any period in which a Beneficiary of a Trust established under this ARTICLE III may be, or is eligible for governmental or private assistance as a result of any physical or mental condition, handicap or disability, the Trust shall be subject to the provisions of this Section 3.6 of this ARTICLE III, and the Trustee, in the administration of the distribution provisions otherwise applicable to the Trust, may, in the discretion of the Trustee, distribute only such part of the income or principal, or both, or neither, of the Trust as may be determined by the Trustee to provide for the extra and supplemental care, maintenance and support of the Beneficiary over and above any benefits the Beneficiary may be eligible to receive as a result of the Beneficiary's condition, handicap, or disability from any local, state or federal government or agency, or from any private agency, it being the Settlor's intent to use the Trust Estate, if at all, only to supplement such other benefits received by the Beneficiary. The Trustee shall not distribute trust income or principal to or upon the direction of a government agency or department, and the Trust shall at all times be free of the claims of such governmental bodies, and, subject to ARTICLE X hereof, but notwithstanding any other provisions of this Instrument to the contrary, the affected Beneficiary's interest in the Trust shall not vest (and the Beneficiary shall have no power of appointment over the Trust otherwise provided hereunder) during the time this Section 3.6 shall be applicable. It is the Settlor's intent that the Trustee not distribute to or apply for the benefit of any such Beneficiary any income or principal of the Trust if such distribution, in the judgment and discretion of the Trustee, would jeopardize the eligibility of the Beneficiary for, or reduce ~~the amount of any financial assistance administered by and state (or political subdivision thereof) or federal agency or department or any private agency, including, but not limited to, Social Security Administration benefits, Medicaid and Supplemental Security Income benefits, unless such distribution, in the discretion of the trustee, would be in the best interests of the Beneficiary, notwithstanding any possible reduction in financial assistance administered by any state (or political subdivision thereof) or Federal agency or department or any private agency.~~

ARTICLE IV
TERMINATION AT TRUSTEES' DISCRETION
FOLLOWING THE DISTRIBUTION EVENT

Following the Distribution Event.

- 4.1 Small Trust Termination. Whenever the principal value of a separate Trust Fund held hereunder -
- (a) is less than FIFTY THOUSAND (\$50,000.00), or
 - (b) for any other reason in the discretion of the Trustees become uneconomical to continue to manage as a Trust Fund with respect to a comparison of all costs and fees to be incurred with the income to be produced, the Trustees may, in their sole discretion, pay such fund, or part thereof, to the Beneficiary of such Trust. If such Beneficiary is a minor, the Trustees may deposit such fund in a financial institution of their choosing, payable to the minor at majority.

- 12 -

P. Sterling Kerr
Attorney at Law
TRAN0083

- 4.2 No Right to Compel Termination. Anything contained herein to the contrary notwithstanding, the right herein conferred upon the Trustees to terminate any trust in whole or in part shall not be construed to confer upon any Beneficiary a right to demand or otherwise compel such a termination.

ARTICLE V PROTECTIVE PROVISIONS

5.1 Spendthrift Provision.

- (a) General. No Beneficiary shall have the right, power or authority to assign, transfer, dispose of, pledge, hypothecate, anticipate, encumber, or in any other manner alienate, impair, or create a charge upon the income, principal, or any other benefit devolving from all or any portion of any Trust created hereunder to which such Beneficiary may be entitled, and likewise, income or principal distributable or which may become distributable to a Beneficiary, or any other benefit devolving on a Beneficiary with respect to any Trust hereunder shall not be subject to seizure, lien, levy, attachment, bankruptcy, transfer, assignment, garnishment, or any other legal process whatsoever, nor shall any such interest in income or principal or any other benefit hereunder be subject to interference or control by any creditor of any Beneficiary, nor subject to any claim for alimony or for the support of a spouse pursuant to a decree of separate maintenance or separation agreement, until distribution is actually made to such Beneficiary; and, to the extent permitted by Applicable Law, the Trust Funds administered hereunder, until actually paid over and distributed to one or more Beneficiaries, as herein provided, shall be held by the Fiduciaries free and clear of all manner of anticipation or voluntary or involuntary alienation.
- (b) Delay of Distribution. Notwithstanding the distribution provisions of Sections 2.1 and 2.2 of Article II, and Sections 3.1, 3.2, and 3.3 of Article III, above, the following powers and directions are given to the Trustee.
- (1) If, upon any of the dates described in Sections 2.1 and 2.2 of Article II, and Sections 3.1, 3.2, and 3.3 of Article III, above, the Trustees for any reason described below determine, in the Trustees' sole discretion, that it would not be in the best interest of the beneficiary that a distribution take place, then in that event the said distribution shall be totally or partially postponed until the reason for the postponement has been eliminated. During the period of postponement, the Trustees shall have the absolute discretion to distribute income or principal to the beneficiary as the Trustees deem advisable for the beneficiary's welfare.
- (2) If said causes for delayed distribution are never removed, then the Trust share of that beneficiary shall continue until the death of the beneficiary and

then be distributed as provided in this Trust Instrument. The causes of such delay in the distribution shall be limited to any of the following.

- (i) The current involvement of the beneficiary in a divorce proceeding or a bankruptcy or other insolvency proceedings.
 - (ii) The existence of a large judgment against the beneficiary.
 - (iii) Chemical abuse or dependency, or the conviction of the beneficiary of a felony, involving drugs or narcotics, unless a five year period has followed said conviction.
 - (iv) The existence of any event that would deprive the beneficiary of complete freedom to expend the distribution from the Trust estate according to his or her own desires.
 - (v) In the event that a beneficiary is not residing in the United States of America at any given time, then the Trustees may decline to transmit to him or her any part or all of the income and shall not be required to transmit to him or her any of the principal if, in the Trustees' sole and uncontrolled judgment, the political and/or economic conditions of such place of residence of the beneficiary are such that it is likely the money would not reach him or her, or upon reaching him or her, would be unduly taxed, seized, confiscated, appropriated, or in any way taken from him or her in such a manner as to prevent his or her use and enjoyment of the same.
 - (vi) The judicially declared incompetency of the beneficiary.
- (c) The Trustees shall not be responsible unless the Trustees have knowledge of the happening of any event set forth above
 - (d) Except there is an intended change in situs pursuant to Section 5.3, to safeguard the rights of the beneficiary, if any distribution from his or her Trust share has been delayed for more than one (1) year, he or she may apply to the District Court in Las Vegas, Nevada, for a judicial determination as to whether the Trustees have reasonably adhered to the standards set forth herein. The Trustees shall not have any liability in the event the Court determines the Trustees made a good faith attempt to reasonably follow the standards set forth above. In the event Trust situs and applicable law has changed pursuant to Section 5.3 herein, the beneficiary may apply of an appropriate court or tribunal in said situs having jurisdiction over this settlement for said judicial determination.
 - (e) During the period in which required distributions are suspended by reason of this provision, the Trustees may, in their sole discretion, make such discretionary distributions of income and/or principal to or for the benefit of the affected Beneficiary, as the Trustees deem advisable to provide adequately and properly for

the support, maintenance, health, medical care (including, but not limited to, dental, chiropractic, cosmetic surgical, and psychiatric care), welfare, education (including, but not limited to, private schools [elementary, preparatory, junior high, and high school], tutoring, college, professional, vocational, language, artistic studies, and other post-graduate education), comfort, and emergency needs of the Beneficiary.

- 5.2 No Action Under Duress. The Settlor directs that this Settlement be administered consistent with its terms, free of judicial intervention and without order, approval, or other action of any court. To the extent any person is granted the power hereunder to do any act or compel any act on the part of one or more of the Trustees, or has authority to render advice to one or more of the Trustees, or to otherwise approve, compel, or veto any action or exercise any power which affects or will affect this Settlement, each Trustee is directed, to the extent the respective Trustee then in office would not be subject to personal liability or personal exposure (for example, by being held in contempt of court or other such sanction by a court having jurisdiction over the respective Trustee). (1) to accept or recognize only instructions or advice or the effects of any approval, veto, or compelled action or the exercise of any power, which are given by or are the result of persons acting of their own free will and not under any manner of compulsion imposed by any legal process, like authority, or otherwise; and (2) to ignore any advice or any directive, veto, order, or like decree, or the results or effects thereof, of any court, administrative body or any tribunal whatsoever or of past or present Trustees, of any Protector hereunder, or of any other person, where. (a) such has been instigated by directive, order, or like decree of any court, administrative body or other tribunal, or (b) the person attempting to compel the act, or attempting to exercise the authority to render advice, or otherwise attempting to compel or veto any action or exercise any power which affects or will affect this Settlement, is not a person either appointed or so authorized or the like pursuant to the terms and conditions of this Settlement. In order to satisfy themselves as to the voluntariness of any person's directive, order, veto, advice, or action pursuant to authority granted under this Settlement, the Trustees may, in their sole and absolute discretion, but shall not be required to, obtain an affidavit or other evidence from the said person to the effect that such person's directive, order, veto, advice, or action is wholly voluntary and not made under duress or court order of any kind. The Trustees shall not be liable for failing to request an affidavit or other evidence of voluntariness in any case. For purposes of this Settlement, a person shall be deemed to be acting under compulsion, and otherwise involuntarily, during any period of Adjudicated Incapacity of said person.

- 5.3 Change in Situs/Applicable Law. Subject to the provisions of Section 5.2 of ARTICLE V, and Section 12.4(b) of ARTICLE XII, the person or persons specified in Schedule V attached hereto and incorporated herein by this reference, in order of priority as therein set forth, subject to the limitations set forth in Section 7.2(a), below, and any exclusions or provisions which may be specified in Schedule V, may, by a written declaration executed by them, at any time or times and from time to time, during the Trust Period, as they deem advisable in their discretion for the benefit or security of this Trust Fund or any portion hereof, remove (or decline to remove) all or part of the assets and/or the situ of administration thereof from one jurisdiction to another jurisdiction and/or declare that this

Settlement shall from the date of such declaration take effect in accordance with the law of some other state or territory in any part of the World and thereupon the courts of such other jurisdiction shall have the power to effectuate the purposes of this Settlement to such extent. In no event, however, shall the law of some other state or territory be any place under the law of which, (1) substantially all of the powers and provisions herein declared and contained would not be enforceable or capable of being exercised and so taking effect; or (2) this Settlement would not be valid as an irrevocable trust. From the date of such declaration the law of the state or territory named therein shall be the Applicable Law, but subject always to the power conferred by this Section 5.3 of this ARTICLE V and until any further declaration be made hereunder. So often as any such declaration as aforesaid shall be made, the Trustees shall be at liberty to make such consequential alterations or additions in or to the powers, discretions and provisions of this Settlement as the Trustees may consider necessary or desirable to ensure that the provisions of this Settlement shall, be so valid and effective as they are under the Applicable Law governing this Settlement at the time the power contained herein is exercised. The determination of the Trustees as to any such removal or change in Applicable Law shall be conclusive and binding on all persons interested or claiming to be interested in this Settlement, and the written declaration executed by the Trustees from time to time effecting any such change in sites or Applicable Law is hereby deemed to be a term or provision of this Settlement as if included herein on the date of execution of this Settlement by the Settlor.

~~5.4 Disclaimers. Subject to any specific provisions herein inconsistent herewith, any person~~
age eighteen (18) or over to whom or for whose benefit any principal or income of the Trust Fund may be liable to be appointed, paid, appropriated, transferred or applied in any manner whatsoever, directly or indirectly, by or in consequence of an exercise of any trust power or discretion vested hereunder in the Trustees, or in any other person, may by declaration in writing signed by him and received by the Trustees during the Trust Period, either revocable during the Trust Period only, or irrevocably, (i) disclaim his interest as an object of such trust power or discretion, either wholly or with respect to any specified part or share; (ii) cease to be a Beneficiary or member of the Appointed Class (as the case may be); or (iii) declare that he shall be an Excluded Person. Such declaration shall have effect from the date that the same is received by one of the Trustees. In the event of any such disclaimer of any interest in any trust created hereunder, the property disclaimed shall be disposed of in the manner provided herein as though the disclaimant had failed to survive the Settlor or other designated person.

5.5 Disregarding Interests of Others. The Trustees, in exercising any of the powers, authorities or discretions hereby conferred in favor of any particular person, are hereby expressly authorized to disregard entirely the interest of any other person who is interested or who may become interested hereunder. Without limiting the generality of the foregoing, no appointment, payment, appropriation, application, transfer or advancement made in exercise of any power herein contained shall be invalid on the grounds that either, (i) an insubstantial, illusory, or nominal share is appointed to any one or more objects of such power, or is left unappointed; or (ii) any object of such power is thereby wholly or partially, revocable or irrevocably excluded,

5.6 Exclusive Property. Except as may be set forth to the contrary in this Deed with respect to

contributions to this Settlement by a Settlor, no benefit devolving on any Beneficiary under this Deed shall form or constitute any portion of any communal or joint estate property of such Beneficiary but such benefit shall be and remain the sole, separate, and exclusive property of such Beneficiary and should such Beneficiary be married or marry in a community property jurisdiction then any benefit so devolving shall be expressly excluded from the community and such benefit shall also be free from the interference, control, or marital power of any spouse of such Beneficiary. For the purposes of this Section 5.6, the word "benefit" shall include moveable and immovable property and the provisions of this Section 5.6 shall apply moreover not only to the benefits actually devolving on any such Beneficiary but also to the property for the time being representing the same and the income thereof.

ARTICLE VI TRUSTEES' POWERS

In addition to the powers vested in them by law and other provisions of this Instrument, the Trustees shall have the following powers, exercisable in their sole and absolute discretion, without court approval, and effective until actual distribution of all property.

- 6.1 Title to Investments. Without regard to any principle of diversification, risk of loss, or ~~lack of productivity, to register any securities or other property held hereunder in the names~~ of Trustees or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustees shall show that all such investments are part of their respective funds.
- 6.2 Consolidating Funds. To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as they may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustees' books of account.
- 6.3 Sale or Lease of Property. For such prices and upon such terms as they deem proper. (i) to sell at public or private sale, or to exchange, any real or personal property; (ii) to give options for any such sales, exchanges, or leases; and (iii) to lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and unitization agreements.
- 6.4 Borrowing. To borrow money, mortgage, hypothecate, pledge or lease Trust assets for whatever period of time Trustees shall determine, even beyond the expected term of the respective Trust; to borrow money at interest rates then prevailing from any individual, bank or other source, irrespective of whether any such individual or bank is then acting as Trustee, and to create security interests in the Trust property by mortgage, pledge, hypothecation, or otherwise, to make a guaranty of, including a third party guaranty.

- 17 -

P. Sterling Kerr
Attorney at Law

TRAN0088

- 6.5 Retaining Form of Property. To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of their discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.
- 6.6 Investment Discretion. To invest and reinvest in their absolute discretion, and they shall not be restricted in their choice of investments to such investments as are permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.
- 6.7 Fund Advancement. To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- 6.8 Lawsuits. To institute, compromise, and defend any actions and proceedings.
- 6.9 Voting of Stock. To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
-
- 6.10 Principal and Income Determination. To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- 6.11 Payments to Disabled Beneficiary. To make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustees, or by direct payment of such beneficiary's expenses.
- 6.12 Additions of Corpus. To accept additions of property to the Trusts, whether made by the Trustor, a member of the Trustor's family, by any beneficiaries hereunder, or by any one interested in such beneficiaries.
- 6.13 Bank Deposits. To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financing institution and in such form of account, whether or not interest bearing, as Trustees may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.
- 6.14 Safety Deposit Box. To open and maintain safety deposit boxes in the name of this Trust.
- 6.15 Statutory Powers. The powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this Instrument.

- 6.16 General Powers Not Limited. The enumeration of certain powers of the Trustees shall not limit their general powers, subject always to the discharge of their fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.
- 6.17 Securities. The Trustees shall have the power to invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transactions will be effected.
- 6.18 Closely Held Business. In regard to the operation of any closely held business of the Trust, the Trustees shall have the following powers.
- (a) The power to retain and continue the business engaged in by the Trust or to recapitalize, liquidate or sell the same.
 - (b) ~~The power to direct, control, supervise, manage, or participate in the operation of the business and to determine the manner and degree of the fiduciary's active~~ participation in the management of the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a beneficiary or Trustee hereunder.
 - (c) The power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement, compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a beneficiary or Trustee hereunder.
 - (d) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.
 - (e) The power to invest or employ in such business such other assets of the Trust estate.
- 6.19 Transactions With Certain Estates.
- (a) Loans And Purchases. Anything herein contained to the contrary notwithstanding, to make loans, of short or long term, with or without security, to the Fiduciary of the Settlor's Estate and/or the estate of any person related to the Settlor by blood or marriage, and/or to the Fiduciary of any trust created by the Settlor or such other related person, and to purchase real or personal property from such Fiduciary (on

any convenient terms) notwithstanding that one or more Trustees may also be such Fiduciary. The Trustees shall not be liable for any loss arising as a result of any loans made or authorized under this Section 6.20. In addition, the propriety of any purchase of assets authorized under this Section 6.20, the amount of such assets purchased, the terms of any such purchase, and the ascertainment of a fair purchase price for said assets, shall be solely within the discretion of the Trustees, and the Trustees shall incur no liability for any loss arising as a result of any such purchase or purchases, regardless of whether the assets purchased constitute investments of a type authorized to be made by Trustees under Applicable Law.

- (b) Payment Of Taxes, Etc. Subject to any specific directions by the Settlor herein, (i) all United States federal, state, or other taxes, penalties, and/or interest thereon payable because of the Settlor's death, and (ii) the funeral and administration expenses allowable as deductions to the Settlor's Estate under §2053 of the Code (regardless of whether such items were deducted for Federal Estate Tax purposes), proportionately allocable to any property then held by or passing to the Trustees hereunder, shall be paid from trust property either directly, or, upon written request, to the domiciliary Personal Representative of the Settlor's estate, without any right of reimbursement from any person or Beneficiary; provided, however, that notwithstanding anything to the contrary contained in this or in any other instrument, that any and all property not included in the Settlor's gross estate for Federal Estate Tax purposes, and any property (or the proceeds thereof) qualifying for the federal estate tax marital or charitable deductions, including property in, or distributable to a Marital Trust hereunder (if any), shall not be used to pay any such taxes, penalties, interest, or any other expenses or obligations of the Settlor's estate. All such taxes on present or future interests shall be paid at such time or times as the Trustees may in their sole discretion deem proper, regardless of whether such taxes are then due, provided that any postponed taxes on future interests (including any Generation Skipping Taxes imposed by §2601) shall only be charged against (and paid from) the principal of the particular trust or share with respect to which the taxes are imposed.

6.20 Directions to Fiduciaries.

- (a) Settlors' Purpose. The Settlors' primary purpose for creating Trust Funds hereunder is to provide for the income Beneficiaries hereof, the rights and interest of remaindermen being subordinate to such purpose. Therefore, the Fiduciaries are directed to consider the Settlors' foregoing purpose for the creation of Trust Funds hereunder in connection with their making any determination regarding invasion of principal of Trust Funds for the benefit of one or more income Beneficiaries thereof.
- (b) Precatory Factors. In making determinations regarding invasion of principal of Trust Funds for the benefit of income Beneficiaries, except as set forth herein, the Fiduciaries may, but shall not be required to, take into consideration the standard of living to which each such Beneficiary was accustomed at the time of commencement of such Trust Fund, and all other income and resources available to such Beneficiary together with any and all other factors which the Fiduciaries deem

relevant in their sole and absolute discretion.

- (c) Trustees' Exercise Of Discretionary Powers. The Trustees shall exercise the powers and discretions vested in them as they shall think most expedient for the benefit of all or any of the persons actually or prospectively interested under this Settlement. The Trustees may exercise (or refrain from exercising) any power or discretion for the benefit of any one or more of such persons without being obligated to consider the interests of the others or other. Subject to the previous provisions of this Section 6.21, and subject to ARTICLE XIII, Section 13.2 hereof, every discretion vested in the Trustees shall be absolute and uncontrolled; every power vested in them shall be exercisable in their sole, absolute and uncontrolled discretion; and the Trustees shall have such discretion in deciding whether or not to exercise any such power.

- 6.21 Additional Powers. The additional Trustees' powers and provisions, if any, which are set forth in Schedule VI attached hereto and incorporated herein by this reference, shall have effect as if fully set forth in this ARTICLE VI. However, in no event shall any power or provision (wheresoever set forth in this Settlement) be exercisable after the expiration of the Trust Period or in such a way so as to infringe any applicable rule against perpetuities or rule against excessive accumulations, or to benefit any Excluded Person.

- ~~6.22 Power to Appoint Agent. The Trustees are authorized to employ attorneys, accountants,~~
investment managers, specialists, and such other agents as the Trustees shall deem necessary or desirable. The Trustees shall have the authority to appoint an investment manager or managers to manage all or any part of the assets of the Trust, and to delegate to said investment manager the discretionary power to acquire and dispose of assets of the Trust. The Trustees may charge the compensation of such attorneys, accountants, investment managers, specialists, and other agents against the Trust, including any other related expenses.

- 6.23 Broad Powers Of Distribution. Upon any division or partial or final distribution of the Trust estate, the successor Trustees shall have the power to partition, allot and distribute the Trust estate in undivided interest or in kind, or partly in money and partly in kind, at valuations determined by the Trustees, and to sell such property as the Trustees, in the Trustees' discretion, considers necessary to make such division or distribution. In making any division or partial or final distribution of the Trust estate, the Trustees shall be under no obligation to make a pro rata division or to distribute the same assets to beneficiaries similarly situated. Rather, the Trustees may, in the Trustees' discretion, make non pro rata divisions between Trusts or shares and non pro rata distributions to beneficiaries as long as the respective assets allocated to separate trusts or shares or the distributions to beneficiaries have equivalent or proportionate fair market value. The income tax basis of assets allocated or distributed non pro rata need not be equivalent and may vary to a greater or lesser amount, as determined by the Trustees, in his or her discretion, and no adjustment need be made to compensate for any difference in basis.

- 6.24 Apply For Government Assistance. The Trustees shall have the power to deal with

governmental agencies. To make applications for, receive and administer any of the following benefits, if applicable. Social Security, Medicare, Medicaid, Supplemental Security Income, In-Home Support Services, and any other government resources and community support services available to the elderly.

- 6.25 Merger of Identical Trusts. Should the Trustee of any separate trust hereunder at any time also be the Trustee of a trust having substantially identical dispositive provisions for the benefit of the same beneficiary or beneficiaries but created under some other trust agreement, such two identical trusts may, in the discretion of such Trustee, be merged together and thereafter administered as one single trust under the trust agreement having the earliest rule against perpetuities savings clause date. Where such a merger would be thus authorized but for differences in the identity of the contingent remainder beneficiaries of such otherwise mergeable trusts, such trusts may instead be consolidated together in a new trust created by the Trustee of such otherwise mergeable trusts under a new trust instrument executed by it having all of the same provisions as would apply to such a merger except those provisions relating to contingent remainder interests, which provisions shall be written in such manner as to preserve the relative interests of the different contingent remainder beneficiaries having an interest therein on the basis of the fair market value of the net assets of each trust entering into such consolidation as of the effective date of such consolidation as reasonably determined by such Trustee.

ARTICLE VII

APPOINTMENT OF AND PROVISIONS RELATING TO FIDUCIARIES

7.1 Appointments; Resignations.

- (a) Initial Appointment. The initial trustees hereunder shall be the persons identified in Schedule I attached hereto and incorporated herein by this reference.
- (b) Successor Appointments. If no Successor Trustee is designated to act in the event of the death, incapacity or resignation of the Trustee then acting, or no Successor Trustee accepts the office, then the person or persons specified in Schedule V attached hereto and incorporated herein by this reference, in order of priority as therein set forth, may by an executed written declaration appoint one or more other persons to serve as successor. All appointments made herein or by any person howsoever empowered are subject to any exclusions or provisions which may be specified in Schedule V. Subject to such possible limitations, exclusions, and/or provisions, successor Trustees may be resident or domiciled anywhere in the world, so long as at least one Trustee of the Trust meets the requirements of N.R.S. §166.025, as amended from time to time, unless there is an intended change in situs and applicable law pursuant to Section 5.3. In addition to other causes of inability, an individual during any period of Adjudicated Incapacity of such person, and a corporation which is insolvent or winding-up its affairs, shall be deemed unable to serve as a Trustee hereunder.

- (c) Resignation Of Trustees. Any Trustee may resign by delivering notice containing an effective date not earlier than thirty (30) days from the date said notice is received by the person specified in this sentence (unless such notice period is waived or reduced in writing by the Protector), in the manner set forth in Section 7.2(c), below, to the person specified in Schedule V having for the respective time the power to appoint successor or additional Trustees hereof. Such notice shall be executed by the resigning Trustee himself, or in the case of a corporate Trustee by any of its duly appointed officers or directors, and the same shall be effective on the date specified in the preceding sentence or, if receipt cannot be established, at the expiration of forty (40) days from the date of posting the same by a method specified in Section 7.2(c) to the last known address of the addressee. Upon the effective date of said notice, the resigning Trustee shall cease to be a Trustee hereof for all intents and purposes, except for such acts or deeds as may be reasonably necessary for the proper vesting of the Trust Fund in the continuing or successor Trustees or otherwise as the case may require. Notwithstanding the foregoing provisions of this Section 7.1(c), if at any time there is only one (1) Trustee remaining in office, and such remaining Trustee wishes to resign and has given the notice required by this Section 7.1(c) which notice has not resulted in the appointment of a successor Trustee by the person having the power to appoint such successor, then, under such circumstances, such remaining Trustee may itself appoint a Trustee in its stead, subject to the limitations set forth in Section 7.2(a)(2), ~~to hold the position of Trustee pending the appointment of another Trustee by the~~ person having the power so to do. Written notice of the retiring Trustee's selection and appointment of successor Trustee shall be given to any persons to whom the notice of resignation was originally given.

7.2 Additional Succession Provisions.

(a) Appointment of Additional Or Successor Trustees. Limitation.

- (1) Vacancy. Should a vacancy occur in the office of Trustee hereunder by resignation, death, incapacity, or otherwise (other than through removal pursuant to section 7.2(a)(1), above), where no person specified in Schedule V is willing and able to appoint a successor Trustee, or if such a person is willing and able, such person otherwise does not act prior to the effective date of such vacancy, the then serving Trustee shall have the power to fill such vacancy by appointment of any person, resident anywhere in the World, as successor Trustee, so long as at least one Trustee of the Trust meets the requirements of N.R.S. §166,025, as amended from time to time, unless there is an intended change in Trust situs and applicable law pursuant to Section 5.3. In the event that Trustee acting pursuant to this Section 7.2(a)(2) is a resigning sole Trustee, the resigning trustee shall make a reasonable effort to appoint a successor hereunder in accordance with the provisions of Section 7.1(c), above; however, the failure of said effort shall not affect the validity of the resigning Trustee's retirement pursuant to this provision.

(b) Additional Provisions Relating To Notice.

- (1) In the event that there is more than one member of a class of persons specified in Schedule V for the relevant time having the power to act pursuant thereto, then any notice required to be given pursuant to this ARTICLE VII by a Trustee to a person then authorized to act under Schedule V may be given to any member of such then empowered class.
- (2) In the event a class referred to in the preceding sentence consists of Beneficiaries, then, in selecting such class member to whom notice shall be given, priority shall be given to any person known to have received directly or indirectly distributions of income from the Trust, PROVIDED THAT the giving by the Trustee of written notice to a Beneficiary without such priority shall not affect the validity of such notice and such notice shall be valid and effectual provided such notice was given in good faith.
- (3) In the event that any person receiving notice pursuant to this ARTICLE VIII is found to be incompetent or of unsound mind, or a minor, or in the case of a corporation, to be in liquidation, then notice shall be served upon that person's or that corporation's legal representative or guardian.

(c) Formality Required.

- (1) Any resignation, removal, or appointment of a Trustee hereunder, or any other notice required by this ARTICLE VII, shall be effected by the execution and delivery of a written document by and to the appropriate interested parties, which document may, but shall not be required to, unless so required by another provision of this Instrument, specify the effective date thereof or the event upon which the same shall become effective. In the event an effective date or event is not so specified, in the case of a removal of a Trustee hereunder, the same shall be effective upon receipt of notice of removal by the Trustee so removed or by the Protector, and, in any other case, upon receipt of notice by the Protector or by a Trustee. Any document specified in this Section 7.2(c) shall not be effective unless set by certified or registered mail or by courier, postage and/or fees prepaid, return receipt requested, by facsimile transmission (where receipt is capable of being determined), or by hand delivery.
- (2) Upon there being any change in Trustees, a memorandum shall be endorsed on or permanently affixed to this Settlement wherein the names of the Trustees for the time being shall be set forth. The memorandum shall be signed by the persons so named. Anyone dealing with the Trust Fund or this Settlement shall be entitled to rely upon such memorandum as sufficient evidence that the Trustees named therein are the duly constituted Trustees for the time being. In the case of there being more than one memorandum, anyone dealing with the Trust Fund or this Settlement shall be entitled to

rely upon the memorandum which is most recent in time.

(d) Additional Succession Provisions.

- (1) Power Of Attorney. Each Trustee hereby irrevocably grants the Protector its power of attorney, for the purpose of executing any document transferring title of any asset belonging to the Trust fund from the outgoing Trustee to the new Trustee; on his resignation, inability to act, or removal as a Trustee. The Protector may exercise such power without notice to the Trustee, *provided however*, that the exercise of this power of attorney under this Section 7.2(d)(1) shall thereby grant an irrevocable release and indemnity to the outgoing Trustee as set forth in Section 7.9(a), below. Notwithstanding the foregoing, the exercise by the Protector of the power of attorney granted by this Section 7.2(d)(1) of this ARTICLE VIII shall always be subject to the provisions of Section 5.2 of ARTICLE V, and Section 13.2(b) of ARTICLE XI, and, if notice has not been given by the Protector acting pursuant to the second sentence of this Section 7.2(d)(1), above, then, in such event, any document under which the within power of attorney shall be exercised shall contain (or be accompanied by) the Protector's statement under oath to the effect that the action being taken by the Protector is wholly voluntary, and not pursuant to or as a result of duress or court order of any kind. ~~The authority of the Protector to exercise the power of attorney granted~~ under this Section 7.2, and the ability of any person to rely and act upon same without incurring liability to any person howsoever interested in this Settlement or in any accounts, securities, properties and/or assets held hereunder, shall be evidenced by a copy of this Section 7.2(d)(1) attached to a document specifically referring to this Section 7.2(d)(1), and which document shall be executed, in one or more counterparts (if necessary and as shall be expedient), by any one Protector hereof. In the event a Protector is acting pursuant to the power of attorney granted under this Section 7.2(d)(1), then, in order to expeditiously effectuate the power granted herein to transfer title to assets belonging to the Trust Fund, and not in limitation or derogation of any power of the Protector granted elsewhere in this Instrument, the Protector shall have the power and authority to execute and deliver any document, take any action, and do any thing said Protector deems necessary to effectuate the provisions of this Section 7.2(d)(1). Any person acting in reliance on this Section 7.2(d)(1) is hereby held harmless and indemnified with respect to liability to any person howsoever interested in this Settlement or in any accounts, securities, properties and/or assets held hereunder.
- (2) Merger Or Consolidation Of Corporate Trustee. In the event a corporation herein named as Fiduciary, or any successor corporate Fiduciary, shall cease to have legal existence because of merger, consolidation or other transfer of substantially all of its trust business to a successor corporation, then such successor, if duly authorized to engage in such business within the

jurisdiction of its predecessor, shall, upon such succession, also become successor Fiduciary hereunder without any further action or appointment by any person.

- (3) Successor Trustee - Powers, and Discretions. Each successor Trustee shall automatically acquire, as of the effective date of his appointment, or as of the date of the occurrence of a vacancy regarding his predecessor, all of the title to each asset of the trust estate, and all powers and discretions which are then vested in his predecessor, without the necessity of any conveyance or transfer, but any predecessor trustee shall execute all documents and perform all acts necessary to vest and indicate such title in such successor Trustee.

- (4) Expenses of Succession. Security. Upon the death, resignation, or removal of any Trustee, such Trustee (or his estate or other successor(s), as the case may be) shall be entitled to reimbursement from the trust assets for all reasonable expenses incurred in the settlement of its accounts and in the transfer to its successor of the Trust assets and documents, including an executed copy of this Instrument and all attachments and endorsements thereto. An outgoing Trustee who is liable as a Trustee or former Trustee hereof for any taxes or like charges (wherever imposed and of whatever nature) shall be entitled to reasonable security with respect to any such liability, in accordance with Section 7.9(a), below.

7.3 Waiver of Security. No Fiduciary serving hereunder shall be required to post any bond or furnish sureties in any jurisdiction, and the Settlor hereby specifically waives any and all requirements therefor.

7.4 Fiduciaries' Responsibility.

- (a) General. No Fiduciary of any trust created hereunder shall be liable for any loss to the Trust Estate or its income, however caused, unless it results from willful fraud or dishonesty by such Fiduciary. No successor Fiduciary shall be liable for the acts or defaults of any predecessor Fiduciary, nor for any loss, liability, damage, or expense resulting from anything done or neglected to be done by any predecessor Fiduciary, nor shall any such successor be required to inquire into or take notice of the prior administration of the Trust Fund, but such successor Fiduciary shall be liable under this Section only with respect to property received by him as Fiduciary after the date he actually received it. Any successor Fiduciary who shall be then acting as Fiduciary pursuant to a notice of vacancy shall not be guilty of any wrongdoing merely because he is acting as successor Fiduciary if it shall later be discovered that another has been designated as successor Fiduciary pursuant to any provision hereof. Any corporate Trustee or trust company shall have the power and authority to act by and through its duly appointed and proper officers or directors, and no officer or director of a company which is one of the Trustees hereof shall be liable for any loss not attributable either to the willful fraud or dishonesty of that officer/director or to the willful commission or omission of an act known by that

officer/director to be willful fraud or dishonest. In addition, no such person nor any such officer/director shall be bound to take any proceedings against a co-trustee or co-director (or officer) for any willful fraud or dishonesty or allegations thereof committed by that co-trustee or co-director (or officer) not involving the willful fraud or dishonesty by that co-trustee or co-director (or officer).

- (b) Responsibility For Agents. No Trustee shall be liable for any loss, liability, expense, or damage to any Trust created hereunder howsoever occurring resulting from any act or omission (whether willfully fraudulent, or willfully dishonest or grossly negligent, or otherwise) of any solicitor, attorney, agent, banker, accountant, auditor, stockbroker, investment advisor, or other agent or power of attorney employed or appointed in good faith by such Trustee.
- (c) Responsibility for Co-Trustees. In the event that there is more than one Trustee, a co-Trustee shall not be liable for any loss, liability, expense, or damage howsoever occurring resulting from any act or omission (whether willfully dishonest, willfully fraudulent, or grossly negligent, or otherwise) of any other co-Trustee.
- (d) Assets Not Effectively Transferred. Where any asset included in the Trust Fund is found not to have been properly transferred into the Trust Fund, or if properly transferred such transfer is subsequently avoided, then no Trustee shall be liable to any person or entity claiming the return or reconveyance of that property for any loss suffered by virtue of the fact the Trustee has already exercised any of the trusts or powers hereof in relation to that property.

7.5 Transactions With Related Parties. The Fiduciaries may enter into any contract, transaction, or other matter on an equitable and arms' length basis, with any partnership in which any one or more of them is a partner, any corporation in which any one or more of them is a stockholder, director, officer, or employee, or any other entity in which any one or more of them has any interest as a Fiduciary or otherwise.

7.6 General Action of Fiduciaries. Except as may otherwise be set forth in this Instrument regarding discretionary distributions of income and principal to the Settlor-husband and the Settlor-wife, any and all actions to be made and taken hereunder by the Fiduciaries shall be made and taken by the affirmative vote of a majority of the Fiduciaries then serving and eligible hereunder to make and take each such action. If there shall be an even number of such Fiduciaries then serving, any and all such actions shall be made and taken by the affirmative vote of one more than one-half of the number of Fiduciaries then serving and eligible hereunder to make and take such action. If only two (2) Fiduciaries are authorized to vote on a matter, the affirmative vote of both shall be required. Such majority may act without the concurrence or prior knowledge of the other Trustee(s). Any such exercise shall be valid and effective as if all Fiduciaries had concurred therein. If there shall be only two (2) Fiduciaries authorized to vote on a matter, and they shall not agree, said matter shall be submitted to the Protector for his vote or to any other person acceptable to both Fiduciaries (as indicated in a written instrument signed by them), and the Protector's vote (or the vote

of such other person so selected), subject to Section 5.2 of ARTICLE V, shall be given effect with respect to said matter, as if there had been three (3) Fiduciaries authorized to vote (except that said Protector or such other selected person shall incur no liability whatsoever for acting or failing to act pursuant to this sentence). Subject to the preceding provisions of this Section 7.6, the failure to obtain a majority shall be treated as if the Fiduciaries failed to act. Any Fiduciary who shall cast a negative vote with respect to any action or any failure to act shall not question, by court action or otherwise, the action or failure to act with respect to which he shall have cast his negative vote and he shall in no way be liable or responsible for such action or failure to act. The provisions of this Section 7.6 shall apply to the Fiduciaries inter se, and no third party shall have any obligation or standing whatsoever to inquire into compliance with the provisions of this Section 7.6. Wherever a person is prohibited hereunder from exercising a power or making an election or taking any action because such person is a Beneficiary hereunder or a Related or Subordinate Party, such person shall not be entitled to vote or be considered a Trustee in matters related to the exercise of such power, election, or action.

- 7.7 Accounting And Qualification. To the extent permitted by law, the Settlor hereby waives compliance with the provisions of any law requiring the qualification of, or accounting by, the Trustees to any court. The Trustees, however, shall furnish (within ninety [90] days), at the written request of a Beneficiary, but not more frequently than annually, a full and complete accounting to such trust Beneficiary (or his legal representative) then receiving or ~~being credited with income of any and all Trust Funds held hereunder for his benefit. Such~~ Beneficiary, or legal representative, shall state in writing his objections to such accounting, if any, and shall deliver such objections to the Trustees within sixty (60) days after receipt of such accounting. The failure to raise such timely objections in the manner herein set forth shall constitute a waiver of such objections, and such waiver shall be binding as to all matters stated in such accounting or as shown by it upon all persons, whether or not they are then lives in being, or may thereafter become eligible to receive principal or income of the Trust Fund for which such accounting is made.

7.8 Compensation.

- (a) Each corporate and/or non-corporate Fiduciary shall receive such compensation as shall be set forth in a written agreement between (i) such corporate and/or non-corporate Fiduciary and (ii) the Settlor (executed prior to or simultaneously with the execution of this Instrument) or the individual Fiduciaries, relating to such compensation; or if no such agreement shall be in effect or if any such corporate and/or non-corporate Fiduciary shall be required to perform services which are not customary or usual, such Fiduciary shall receive such compensation as shall be determined to be fair and reasonable by agreement of the parties, or by arbitration, if necessary. If no such agreement shall be in effect and if any such corporate Fiduciary shall be required to perform only customary or usual services, then such Fiduciary shall receive such compensation as shall be determined in accordance with its schedule of fees in effect from time to time during which services are performed hereunder. In any event, each corporate and/or non-corporate Fiduciary shall receive reimbursement for all necessary and reasonable out-of-pocket expenses incurred during the performance of service in accordance herewith.

- (b) Each non-corporate Fiduciary or successor non-corporate Fiduciary (other than a member of the Settlor's family as hereinafter provided) shall receive reasonable compensation for such services and shall be reimbursed for any and all ordinary and necessary out-of-pocket expenses incurred in connection with the administration of the Trust Funds hereunder and such person's services as Fiduciary hereunder. If such person is a practicing accountant, attorney, investment advisor, or other professional, then the amount of such compensation shall be based upon and shall be equal to such person's usual and customary fees for professional services rendered to clients generally determined on an hourly basis; and if such person is not an attorney, accountant, investment advisor, or other professional, but is otherwise regularly employed, then such compensation shall be based upon and shall be equal to the same compensation then received by such person in his or her usual and customary occupation, determined on an hourly basis, during the periods of time over which such services are rendered. Notwithstanding the foregoing, if such person also renders professional services to the Fiduciaries hereunder, such person shall be entitled to receive compensation for such professional services at the usual and customary amounts charged by such person to clients generally for the time actually expended in rendering such professional services to the Fiduciaries hereunder; provided, however, that with respect to all time expended by such person either as a Fiduciary or as a professional rendering services to the Fiduciaries, such person shall be compensated as either a Fiduciary or a professional but not as both with respect to each hour of service rendered.

- (c) Except as otherwise specifically set forth herein, the Settlor hereby directs that in no event shall any member of the Settlor's family or any Beneficiary hereunder serving as a Fiduciary receive any compensation for services rendered as such Fiduciary; however, any such person shall nevertheless be reimbursed for any and all reasonable out-of-pocket expenses incurred in connection with the administration of Trust Funds and the performance of such person's services as Fiduciary hereunder. For purposes of this provision, the term "member of the Settlor's family" shall mean any person who is related by blood or marriage to the Settlor or any Issue of the Settlor.

- (d) If the Protector is of the opinion that any commission, fee, charge, or expense levied under this Section 7.8 is excessive the Protector may make application for its review under Applicable Law and for these limited purposes the Trustees unconditionally and irrevocably agree that the Protector shall be deemed to be the "person on whose behalf the work was performed" and waive all objection to locus standi.

7.9 Miscellaneous.

- (a) Reimbursement/Indemnification. The Fiduciaries shall be entitled to reimburse themselves from any trust created hereunder and they shall be indemnified out of the Trust Fund for all reasonable expenses and liabilities incurred by them in performing their duties hereunder or in connection with the establishment or

administration of this Trust or their association with this Trust in any way, and they shall have a lien on the Trust Fund for such reimbursement and/or indemnity. The preceding sentence shall not apply with respect to any trustee for any loss, liability, expense, damage, or other item which results in any manner from an action or inaction for which the Trustee would be liable under Section 7.4, above, of this ARTICLE VII. In addition, in any contract or agreement made by the Trustees on behalf of any trust created hereunder, the Trustees may provide against the personal liability of the Trustees and that of any other individual, and the rights or obligations created under and by virtue of such contract or agreement shall belong to or be the obligation of such trust; the Trustees shall be reimbursed from the trust estate for any tax, penalty, and/or interest thereon paid by the Trustees during the existence of a separate trust or thereafter, and if such trust estate is insufficient or if such trust be then terminated, such Trustees shall be reimbursed by the person or persons to whom the property of such trust shall have been distributed to the extent of the amount received by each such person (and, before making any distribution of either income or corpus, the Trustees may accordingly require an undertaking by the distributee in a form satisfactory to the Trustees to reimburse the Trustees for all such taxes, penalties, and/or interest or the Trustees may withhold distribution of an amount reasonably required to meet any taxes, interest and penalties thereon pending release of any tax lien or the final determination of any tax controversy); the Trustees may secure from any Beneficiary or the Protector a full and complete

~~release and indemnity from any and all liabilities whatsoever attributable to any note~~
by the Trustees or any decisions by the Trustees (other than with respect to any loss, liability, expense, or damage for which the Trustee would be liable under Section 7.4, above, of this ARTICLE VII), to act or to refrain from acting in any manner whatsoever with respect to the investment of the assets of the trust estate, retention of any or all trust assets, and the sale or disposition of any or all trust assets; the Trustees may secure the written approval of the Protector or any Beneficiary of any account or statement; settle the account of a deceased, incapacitated or resigned Trustee, and the Trustees, the Protector, or any Beneficiary of any trust created hereunder may, without liability to any present or future Beneficiary or any other person, approve the accounts of any deceased, incapacitated or resigned Trustee; any approval, release, indemnity, or discharge given under this Section 7.9(a) shall be conclusively binding on all persons then or thereafter having any interest in such trust, including each Beneficiary and all of said Beneficiary's descendants (including then unborn descendants), heirs or appointees who may then have or thereafter acquire any interest in such trust.

- (b) Reliance Upon Communication. The Fiduciaries may rely, in performing their duties hereunder, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, facsimile, cable, electronic mail, wireless or radio message, if believed by the Fiduciary to be genuine, and believed to be signed, sealed, acknowledged, presented, sent, delivered, or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.
- (c) Assumptions. The Fiduciaries may assume, in the absence of written notice to the

contrary from the person or persons concerned, that a fact or an event, by reason of which an interest in any trust created hereunder shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

- (d) Third Parties. No person dealing with any Fiduciary of any separate trust or receiving any documents executed by such Fiduciary on behalf of any trust shall be obligated to inquire as to the powers of such Fiduciary or to see to the application of any money or property delivered to such Fiduciary. Such Fiduciary shall not be required to obtain authority from, or approval of, any court in the exercise of any power conferred upon him hereunder. Any person dealing with the Fiduciary may rely on the opinion of counsel as to such Fiduciary's rights and powers hereunder.
- (e) Instruments Executed By Fiduciaries. Any certificate signed by any person purporting to be an acting Fiduciary concerning the number or identity of the Fiduciaries, the necessity, validity or propriety of any action or instrument, the fact that any instrument delivered or action taken by the Fiduciary is valid and authorized hereunder, or the existence or nonexistence of any fact or circumstance which in any manner relates to the affairs hereof, shall be conclusive evidence as to the matters so certified in favor of any person dealing with the person purporting to be a Fiduciary hereunder.

-
- 7.10 Disclosure. Subject to the second sentence of Section 7.7 of this ARTICLE VII, but otherwise notwithstanding any rule of law or equity to the contrary, no Trustee shall have any duty to divulge any information concerning any aspect of this Trust including, without limiting the generality of this provision, its existence, the existence of any entitlement whether vested or contingent of any Beneficiary, or any decision of the Trustee, to any person including, without limiting the generality of this provision, any Beneficiary provided that the Trustee shall supply such information as is requested to the Settlor, the Protector, or any person authorized by either of them, and such Trustee shall have discretion to provide information concerning any aspect of the Trust to any Beneficiary, whether existing or contingent if, in the Trustee's opinion, it is in the interests of the Trust so to do.

ARTICLE VIII TRUST IRREVOCABLE

This Settlement and the trusts created pursuant to this Instrument are irrevocable. The Settlor does not reserve the right in any respect to alter, amend, modify, revoke, or terminate this Settlement or any trust created hereunder.

ARTICLE IX RECEIPT OF PROPERTY BY TRUSTEES

- 9.1 Initial Trust Contribution. The initial property settled in trust by each Settlor pursuant

- 31 -

P. Sterling Kerr
Attorney at Law

TRAN0102

hereto is hereby accepted by the Trustees, and the contributions made by the Settlor, whether presently or at any time hereafter, and all accumulations and accretions thereto, shall each be recorded and maintained in an account for each Settlor in the Trust Fund.

- 9.2 **Subsequent Trust Contributions.** With the consent of the Trustees, a Settlor and any other persons may, at any time and from time to time, increase the corpus of any Trust established pursuant to the terms of this Instrument, by contributing thereto insurance policies, cash, securities, or other property of any type. All such contributions shall be subject to the terms of this Trust Instrument in the same manner and to the same extent as if they had been delivered to the Trustees as part of the corpus of the Trust estate at the time of the execution of this Instrument.
- 9.3 **Nature of Trust Property.** It is agreed and acknowledged that each Settlor is contributing to the Trust Fund property which is either his or her separate property or community property under the laws of the State of domicile of the Settlor, as set forth on Schedule II hereto. It is further agreed and acknowledged that future contributions by the Settlor or either of them shall be separate property, quasi-community property or community property under the laws of the State of domicile of the Settlor. All property now or hereafter settled in the Trust Fund by the Settlor to be held by the Trustees pursuant to this Settlement of Trust which was community property, quasi-community property or separate property at the time of such contribution shall remain, respectively, community property, ~~quasi-community property, or the separate property of the respective Settlor, as shall its~~ appreciation, accretion, income, growth or the like, notwithstanding the commingling or separate investing of the Settlor's accounts in the Trust Fund. Present and future contributions by each Settlor of his or her interest in property, whether separate, community or quasi-community, shall be credited to the Settlor's respective account in the Trust Fund, unless the respective Settlor shall direct otherwise in writing at the time of the contribution.
- 9.4 **Provision for Existing Obligations.** Notwithstanding any other provisions set forth herein, the Settlor does not intend for this trust to frustrate the rights of a creditor under Nevada's Fraudulent Transfer Act.
- (a) As to any transfer of property that is adjudicated to be void or voidable as a fraudulent transfer under Nevada law within two (2) years of the transfer, the Trustees are directed to comply with the order of a court of competent jurisdiction with respect to the return or transfer of the property constituting the void or voidable transfer, together with any accretions or additions thereto or substitutions thereof; provided that the property to be returned or otherwise transferred shall be limited to property.
- (1) Having a value not exceeding the amounts which are ultimately and finally judicially determined to be properly due and owing to such a creditor from the Settlor(s) making the transfer; or
- (2) With Respect to which each Settlor making the transfer has voluntarily and not under duress agreed to the payment or settlement thereof;

- (b) Notwithstanding anything herein to the contrary, including the provisions of paragraph 9.4(a), no payment shall be made by the Trustees unless at the time payment is made by the Trustees, the Settlor making the transfer is legally bound to pay such debt, and no payment may be made in excess of the lesser of.
- (1) The amount of the property originally transferred by the Settlor making the transfer, together with any accretions or additions thereto, or substitutions thereof; or
 - (2) The maximum amount the Trustees are required to pay under Nevada law, including Nevada's Fraudulent Transfer Act and Spendthrift Trust Act.
- (c) As to any transfer of property that is adjudicated to be void or voidable as a fraudulent transfer under Nevada law more than two (2) years after the transfer, the Trustees shall not return any property and shall not otherwise pay or satisfy any claim of any creditor except as required under Nevada law.

ARTICLE X ACCUMULATIONS AND PERPETUITIES

~~Notwithstanding any provisions of this Instrument to the contrary, neither shall property be~~
held in a separate trust (or any share or portion thereof) longer than, nor shall any estate or trust created by the exercise of any power of appointment hereunder terminate beyond the Trust Period (or, if sooner, the Rule Against Perpetuities of the Applicable Law), and if, at the expiration of such period, any property continues to be held in a separate trust, or any share or portion thereof, or any estate therein has not vested, the Trustees shall cease to accumulate any net income thereof, and such separate trust, or share or portion thereof, or such estate, shall vest in, and immediately be distributed to, the income Beneficiary thereof or, if there shall be more than one income beneficiary thereof, to the income Beneficiaries thereof in equal shares.

ARTICLE XI (RESERVED)

ARTICLE XII POWERS OF APPOINTMENT

- 12.1 General. Unless otherwise expressly provided, the donee of any power of appointment created by this Instrument may in the exercise of such power appoint.
- (a) to any one or more of the objects of the power, to the exclusion of other such objects;
 - (b) to, or for the benefit of, children or grandchildren or more remote descendants, even

- 33 -

P. Sterling Kerr
Attorney at Law

TRAN0104

though the parents, grandparents, or ancestors of such appointees are then living;

- (c) general or limited interests, present or future, including life estates and remainders;
- (d) in cash or kind, including a direction to the Trustee to distribute specific property, outright to, or to a trustee or trustees to hold in trust, in which case the said donee of the power may select a trustee(s) who need not be an object of the power, and confer such administrative and dispositive powers upon any trustee so selected as are deemed by the donee appropriate;
- (e) subject to such conditions and such lawful spendthrift and other restrictions as are specified by the said donee;
- (f) by creating in any object of the power a general power of appointment or a special power to appoint among objects of the original power;
- (g) substitute (but only if said donee himself shall not thereafter be a beneficiary of such trust) or add any one or more objects of the power as beneficiaries of the trust.

Provided, however, that notwithstanding anything to the contrary contained herein, no interest, power, or condition shall be created to benefit any person who is not an object of the ~~power being exercised, or who is an excluded person.~~

12.2 Operating Rules.

- (a) Testamentary Powers. Any power exercisable by Will (a "testamentary power") may be so exercised, unless otherwise provided herein, only by a specific reference to said power and its source herein in the donee's valid Will or Codicil admitted to probate, executed subsequent to the date on which such power was created whether before or after the date of the Settlor's death, and delivered to the Trustee. Delivery to the Trustees of a duly certified copy of a Will or Codicil (or such other document as may be authorized herein) on file in the appropriate court or other official depository shall be equivalent to delivery of the original document.
 - (1) Acting Upon Probated Instrument. No Trustee hereunder shall incur any liability to any person for relying on any instrument admitted to probate in any jurisdiction as the valid Will or Codicil of a donee of a testamentary power.
 - (2) No Document Located. If, within ninety (90) days after the date of death of the donee of a testamentary power, the trustees shall have no notice or knowledge of the existence of a valid Will or Codicil of said donee purporting to exercise the power, the Trustees shall incur no liability for acting upon the assumption that said donee failed to exercise such testamentary power, and in making allocation or distribution accordingly of the part of the Trust Estate subject to such power of appointment; provided, however, that any such allocation or distribution shall be without prejudice

to the rights of any appointee of said donee to recover the allocated or distributed property from any persons or persons to whom such allocation or distribution shall have been made in the event that after such allocation or distribution there should be found a valid Will or Codicil in which said donee shall have validly executed such power of appointment.

- (3) Two Documents Purporting To Exercise Power. If, within ninety (90) days after the date of death of the donee of a testamentary power, more than one document purporting to exercise a testamentary power held by such deceased donee has been brought to the attention of the Trustees, the Trustees shall distribute such property in accordance with the document last in date that effectively exercises the power.
- (b) Inter Vivos Power Of Appointment. Except as may be provided in Sections 3.1 and/or 3.2, and Section 15.2, if applicable, there are no inter vivos powers of appointment in this Instrument, and not withstanding anything else in the event an Instrument, inter vivos power of appointment exists under Sections 3.1, 3.2, or 15.2, the power shall be exercised by the donee thereof by deliver during the lifetime of such donee of a written instrument (in the manner set forth in Section 7.2(c)(1)) to the appropriate Fiduciary, which instrument shall make specific reference to the power being exercised and its source herein, and shall state in specific terms the form, manner and extent of the exercise thereof.
- (c) Release Or Renunciation. All powers created by this Instrument are releasable or renounceable by the donee thereof, in whole or in part, or may be reduced by the donee of such power in such manner as to reduce or limit the objects in whose favor the power would otherwise be exercised. In addition to any other method of renunciation, release or reduction recognized by law, any power may be renounced, released or reduced by the donee of such power by a written instrument declaring such intent signed by the donee and delivered (in the manner set forth in Section 7.2(c)(1)) to all Trustees of the Trust to which such renunciation, release or reduction applies. Any renunciation, release or reduction of a power as aforesaid shall be delivered to any beneficiary of the appropriate trusts hereunder.
- (d) Restrictions On Exercise Of Limited Power Of Appointment. Unless and except as otherwise expressly provided herein, no power of appointment granted hereunder shall be exercised or exercisable to any extent in favor of the donee of such power, or the estate of such donee, the creditors of such donee, or the creditors of the estate of said donee, or to discharge or satisfy a legal obligation of said donee, or for the pecuniary benefit of said donee, and no exercise of any power of appointment by the donee thereof shall be effective unless the written instrument or the valid Will or Codicil of the donee in which the donee exercises such power (a) shall be executed subsequent to the date on which such power was created; and (b) shall specifically refer to and expressly exercise such power.

- (e) Law Governing. So far as is allowable, all questions relating to powers of appointment created hereby shall be resolved in accordance with Nevada law, except in the event Trust situs and applicable law has changed pursuant to Section 5.3.
- (f) Perpetuities. No power created hereunder may be exercised beyond or in such a manner as to be effective, and no such power may be exercised to create another power which may be exercised beyond or in such a manner as to be effective, with respect to any period subsequent to a time which would violate the Rule Against Perpetuities, if any, then in effect in the State of Nevada, except in the event Trust situs and applicable law has changed pursuant to Section 5.3.

ARTICLE XIII SUBSTITUTION OF PROPERTY

- 13.1 Substitution of Property. At any time during a Settlor's life, the Settlor shall have the non-fiduciary power to reacquire any or all of the Trust corpus by substituting other assets of equivalent value, without the approval of the Trustees. The Trustees must certify, in writing, that the substituted property is of equivalent value to the acquired property, and the Trustees may independently verify the valuation. Any dispute between the Settlor and Trustees may be resolved in court.
-

13.2 Veto Power of Settlor.

- (a) Subject to Section 13.4(b), below, of this ARTICLE XIII, but notwithstanding any other provision of this Instrument to the contrary, and, in particular, notwithstanding anything conferring an absolute or uncontrolled discretion on the Trustees hereof, each and every power and discretion vested in the Trustees by such provisions of this Settlement as are specified in Schedule VIII attached hereto and incorporated herein by this reference shall only be exercisable by them subject always to the power of the Settlor to veto any exercise by the Trustees of such power or discretion, and, accordingly, the Trustees shall be required to provide the Settlor with sufficient prior notice of their intent to exercise any such powers or discretions to permit the Settlor reasonable advance opportunity within which to consider the factors relevant to his determination to veto or refrain from vetoing the exercise of the power or discretion. The Settlor's exercise or non-exercise of this veto power shall be communicated in writing to the Trustees and failure to so communicate in a timely fashion provided notice is actually received by the Settlor shall be treated by the Trustees as a veto of the proposed exercise of the power or discretion; *provided however*, if the Settlor is also a Trustee, or if one or more of the Trustees reasonably believes that failure by the Settlor to so communicate is due to the Settlor being restrained or enjoined from doing so, then such failure to communicate shall be deemed to be an acquiescence by the Settlor. If deemed necessary by the Settlor in order to implement the foregoing veto power, the Settlor may at any time, or from time to time, require the establishment of (and the transfer of the Trust Estate or any portion thereof to) Trust bank and/or brokerage accounts, and/or other forms of

ownership under which both the Settlor's signature and the signature of one or more of the Trustees (as specified by the Settlor) would be required to effect any transfer or conveyance.

- (b) Notwithstanding anything to the contrary otherwise herein expressed or implied, each discretion or power conferred upon the Settlor, or upon any other person by this Settlement, or by any rule of law, or arising in consequence of the exercise of any power conferred upon the Settlor, or any other person by this Settlement, shall be subject to Section 5.2, and nothing contained herein shall operate, so as to cause the Settlor, or any other person by this settlement, to be successful in ordering or vetoing any action or causing any result which is not of the Settlor, or any other person by this settlement, own free will, or which is otherwise the result of the Settlor, or any other person by this settlement, acting under the duress or influence of an outside force.

- 13.3 Waiver of Veto Power. The Settlor may, from time to time, by written notice to the Trustees (a memorandum of which shall be endorsed on or permanently attached to this Settlement) declare (either generally or in relation to any particular act or acts, and either permanently or for such period as shall be specified in the notice) that any act or acts herein declared to be subject to the veto power of the Settlor shall not be so subject and the said notice shall be effective according to its terms.

ARTICLE XIV SPENDTHRIFT SAVINGS CLAUSE

Except there is an intended change in situs and applicable law pursuant to Section 5.3, it is intended that this Trust qualify as a self settled spendthrift trust under the Spendthrift Trust Act of Nevada. The Trustees shall administer the Trust in such manner as to comply with the provisions of the statute and any amendments thereto which may be promulgated from time to time. To the extent any provision of this Trust is inconsistent or noncompliant with the provisions of the Spendthrift Trust Act of Nevada, the provisions of the Spendthrift Trust Act shall apply, superceding such inconsistent or noncompliant Trust provisions. No person shall have, or participate in the exercise of, any power, granted under the law of any state or otherwise, which would in any way cause the Trust not to qualify as such a spendthrift trust. The Trustees are hereby authorized to institute such actions and execute and deliver such instruments as the Trustees, in the Trustees' discretion, may determine to be necessary for the qualification of the Trust. If the Trustees determine that any amendment or reformation might reduce the benefits payable to any Beneficiary, the Trustees may, in the Trustee's absolute discretion, request a written opinion of counsel that such amendment or reformation is necessary to the qualification of the Trust. Nevertheless, no such request or opinion shall prevent any amendment or reformation from being effective as of the moment necessary to assure qualification as a spendthrift trust.

ARTICLE XV ADDITIONAL PROVISIONS IF TRUST SITUS CHANGED

- 37 -

P. Sterling Kerr
Attorney at Law

FBAN0108

TO FOREIGN JURISDICTION

In the event Trust situs and applicable law has changed pursuant to Section 5.3, to a jurisdiction outside of the United States, the following provisions shall apply.

- 15.1 Court Supervision. If a Fiduciary is a resident of or domiciled in the same country as the Settlor, then a court in the country of the Settlor shall be able to exercise primary supervision over the administration of the Trust. In addition, a court in the country of a Fiduciary which is not a resident of or domiciled in the same country as the Settlor, shall be able to exercise primary supervision over the administration of the Trust. In the event that there is no Fiduciary which is a resident of or domiciled in the country of the Settlor, then a court in the country of the sole remaining Fiduciary, if there is only one remaining Fiduciary, or if there are two or more remaining Fiduciaries, a court in the country of each such Fiduciary, shall be able to exercise primary supervision over the administration of the Trust.
- 15.2 Inter vivos Power of Appointment. Subject to Section 2.5 of Article II, and subject to Article V hereof, during the lifetime of each Settlor the Trustees shall distribute the Settlor's account in the Trust Fund or any part thereof to such one or more members of the Appointed Class, on such terms and condition, either outright or in trust, as the Settlor may from time to time appoint by a written instrument executed by the Settlor and delivered to ~~one or more of the Trustees, with such instrument specifically referring to and exercising~~ this power of appointment. In addition to any restrictions, and notwithstanding anything to the contrary herein contained, this power of appointment may not be exercised outright and free of trust in favor of the Settlor's Spouse.
- 15.3 Actions of Fiduciaries Supplemental Provision. In the event this Article XV is in effect, Section 7.6 shall be totally amended to read as follows. "Except as set forth in this Instrument regarding discretionary distributions of income and principal to the Settlor-husband and the Settlor-wife, any and all actions to be made and taken hereunder by the Fiduciaries shall be made and taken by the affirmative vote of a majority of the Fiduciaries then serving and eligible hereunder to make and take each such action. If there shall be an even number of such Fiduciaries then serving, any and all such actions shall be made and taken by the affirmative vote of one more than one-half of the number of Fiduciaries then serving and eligible hereunder to make and take such action. If only two (2) Fiduciaries are authorized to vote on a matter, the affirmative vote of both shall be required unless at such time one (1) of the Fiduciaries is a resident of or domiciled in the same country as Settlor and the other of the Fiduciaries is not a resident of or domiciled in the same country as Settlor, in which case the determination of the Fiduciary who is a resident of or domiciled in the same country as Settlor shall govern. Such majority may act without the concurrence or prior knowledge of the other Trustee(s). Any such exercise shall be valid and effective as if all Fiduciaries had concurred therein. If no Fiduciary is a resident of or domiciled in the same country as the Settlor, and if there shall be only two (2) Fiduciaries authorized to vote on a matter, and they shall not agree, said matter shall be submitted to the Protector for his vote or to any other person acceptable to both Fiduciaries (as indicated in a written instrument signed by them), and the Protector's vote (or the vote of such other person so selected), subject to Section 5.2 of ARTICLE V, shall be given effect with respect to said

matter, as if there had been three (3) Fiduciaries authorized to vote (except that said Protector or such other selected person shall incur no liability whatsoever for acting or failing to act pursuant to this sentence). Subject to the preceding provisions of this Section 7.6, the failure to obtain a majority shall be treated as if the Fiduciaries failed to act. Any Fiduciary who shall cast a negative vote with respect to any action or any failure to act shall not question, by court action or otherwise, the action or failure to act with respect to which he shall have cast his negative vote and he shall in no way be liable or responsible for such action or failure to act. The provisions of this Section 7.6 shall apply to the Fiduciaries inter se, and no third party shall have any obligation or standing whatsoever to inquire into compliance with the provisions of this Section 7.6. Wherever a person is prohibited hereunder from exercising a power or making an election or taking any action because such person is a Beneficiary hereunder or a Related or Subordinate Party, such person shall not be entitled to vote or be considered a Trustee in matters related to the exercise of such power, election, or action."

15.4 Settlor's Veto Power Void. Sections 13.2 and 13.3 shall be void and Settlor shall no longer hold the powers set forth in such Sections.

15.5 Registration in Foreign Jurisdiction. In the event Trust sites and applicable law has changed pursuant to Section 5.3, to a jurisdiction outside of the United States, and the laws of the foreign jurisdiction require that the Trust, in order to be established under the laws of the foreign jurisdiction, be registered, then the Trustees shall register the Trust as required by the applicable laws of the foreign jurisdiction.

15.6 Managing Trustee and Custodial Trustee. The Committee may designate trustees to act as Managing Trustee(s) and Custodial Trustee(s), in the Committee's discretion. The Committee may set forth in writing the respective powers of each Trustee, which powers may include and shall not conflict with any applicable law of the foreign jurisdiction. Also, in the event that there are separate Managing and Custodial Trustees serving, and a Managing Trustee for any reason becomes unable or unwilling to so serve, leaving no other Managing Trustee, and a successor is not appointed by the Committee as herein set forth, then the then acting Custodial Trustee(s) shall also become the Managing Trustee(s) with all the powers and obligations of such Managing Trustee. And in the event that a Custodial Trustee for any reason becomes unable or unwilling to so serve, leaving no other Custodial Trustee, and a successor is not appointed by the Committee as herein set forth, then the then acting Managing Trustee(s) shall also become the Custodial Trustee(s) with all the powers and obligations of such Custodial Trustee.

15.7 Veto Power of Protector/Committee. In the event this Article XV is in effect, Section 11.4 shall be totally amended to read as follows.

- (a) Subject to Section 11.4(b), below, of this ARTICLE XI, but notwithstanding any other provision of this Instrument to the contrary, and, in particular, notwithstanding anything conferring an absolute or uncontrolled discretion on the Trustees hereof, each and every power and discretion vested in the Trustees by such provisions of this Settlement as are specified in Schedule VIII attached hereto and incorporated

herein by this reference shall only be exercisable by them subject always to the power of the Protector to veto any exercise by the Trustees of such power or discretion, and, accordingly, the Trustees shall be required to provide the Protector with sufficient prior notice of their intent to exercise any such powers or discretions to permit the Protector reasonable advance opportunity within which to consider the factors relevant to his determination to veto or refrain from vetoing the exercise of the power or discretion. The Protector's exercise or non-exercise of this veto power shall be communicated in writing to the Trustees and failure to so communicate in a timely fashion provided notice is actually received by the Protector shall be treated by the Trustees as a veto of the proposed exercise of the power or discretion; *provided however*, if the Protector is also a Trustee, or if one or more of the Trustees reasonably believes that failure by the Protector to so communicate is due to the Protector being restrained or enjoined from doing so, then such failure to communicate shall be deemed to be an acquiescence by the Protector. If deemed necessary by the Protector in order to implement the foregoing veto power, the Protector may at any time, or from time to time, require the establishment of (and the transfer of the Trust Estate or any portion thereof to) Trust bank and/or brokerage accounts, and/or other forms of ownership under which both the Protector's signature and the signature of one or more of the Trustees (as specified by the Protector) would be required to effect any transfer or conveyance.

~~(b) Notwithstanding anything to the contrary otherwise herein expressed or implied,~~
each discretion or power conferred upon the Protector, or upon any other person by this Settlement, or by any rule of law, or arising in consequence of the exercise of any power conferred upon the Protector, or any other person by this Settlement, shall be subject to Section 5.2, and nothing contained herein shall operate, so as to cause the Protector to be successful in ordering or vetoing any action or causing any result which is not of the Protector's own free will, or which is otherwise the result of the Protector acting under the duress or influence of an outside force.

- 15.8 Waiver of Veto Power. The Protector may, from time to time, by written notice to the Trustees (a memorandum of which shall be endorsed on or permanently attached to this Settlement) declare (either generally or in relation to any particular act or acts, and either permanently or for such period as shall be specified in the notice) that any act or acts herein declared to be subject to the veto power of the Protector shall not be so subject and the said notice shall be effective according to its terms.

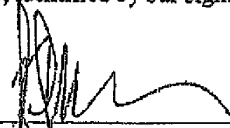
EXECUTED in Clark County, Nevada, on the 15th day of October, 2009.

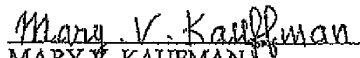


NHU THI TRAN

ACCEPTANCE BY CO-TRUSTEES

We certify that we have read the foregoing Declaration of Trust and understand the terms and conditions upon which the Trust estate is to be held, managed, and disposed of by us as Co-Trustees. We accept the Declaration of Trust in all particulars and acknowledge receipt of the trust property described in Schedule II attached hereto, identified by our signatures.

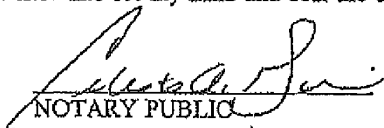

P. STERLING KERR

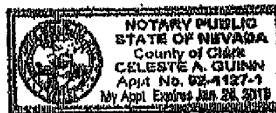

MARY V. KAUFMAN
F MK

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

On the 10th day of October, 2009, before me, the undersigned, a Notary Public in and for ~~such County and State, personally appeared NHI THI TRAN, known to me to be the Trustor whose~~ name is subscribed to the within instrument and who acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.


NOTARY PUBLIC



STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

On the 15th day of October, 2009, before me, the undersigned, a Notary Public in and for such County and State, personally appeared P. STERLING KERR and MARY V. KAUFMAN, known to me to be the Co-Trustees whose names are subscribed to the within instrument and who acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

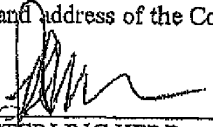



Celeste A. Gurnea
NOTARY PUBLIC

TRUST COMMITTEE
Nhu Thi Tran
NHU THI TRAN

SCHEDULE I
TO THE
NT LEGACY TRUST

are: The name and address of the Co-Trustees referenced on page 1 of this Settlement of Trust

1. 
P. STERLING KERR
2. 
MARY V. KAUFMAN
F. M. K.

SCHEDULE II
TO THE
NT LEGACY TRUST

The money and/or other property initially settled hereby and referred to in the recitals to this Settlement of Trust are as follows:

1. By Assignment, Settlor transfers any and all personal property, cash, securities, jewelry and all other valuables to this Trust.
2. Settlor hereby grants to the Trust by Assignment all right, title, and interest in and to Settlor's membership interests in Tran Enterprises, LLC, and any Series, LLC, under the master LLC, Tran Enterprises.

SCHEDULE III
TO THE
NT LEGACY TRUST

The Beneficiaries referenced in ARTICLE I, Section 1.4(a), of this Settlement of Trust are as follows:

The Settlor, NHU THI TRAN;

Any other beneficiaries specifically mentioned in specific bequests under this Trust; and

The NHU TRAN FOUNDATION, INC.

SCHEDULE IV
TO THE
NT LEGACY TRUST

The Excluded Persons referenced in Article I, Section 1.4(c) of this Settlement of Trust are:

1. None
2. None

SCHEDULE V
TO THE
NT LEGACY TRUST

Appointment of Trustees under ARTICLE VII of this Settlement of Trust, shall be made by the following persons in the order specified:

1. The Settlor, and in the event the Settlor shall be deceased, unable or unwilling to so act, thereby a court of competent jurisdiction upon motion by an interested party, beneficiary or otherwise.

SCHEDULE VI
TO THE
NT LEGACY TRUST

Subject always to any restrictions contained in this Settlement, the additional Co-Trustees' powers are provisions referenced in ARTICLE VI, Section 6.21, of this Settlement of Trust are as follows:

1. The Co-Trustees shall have power and authority to permit any Beneficiary or member of the Appointed Class to reside in any dwelling house or other improved real property (whether directly owned or represented by the ownership of shares in a cooperative), to occupy any land, or to have the custody and use of any chattels which may for the time constitute part of the Trust Fund, upon such conditions as to payment or non-payment of rent, rates, taxes and other expenses, and generally upon such terms and conditions as the Trustees in their absolute discretion shall think fit. Except as otherwise provided in this Settlement, the Trustees are expressly authorized to invest in unproductive or under productive property, or to retain property in such state, if the Trustees deem such to be consistent with the Settlor's overall intentions and goals.
- ~~2. With respect to the account of a Settlor hereunder, and only during the Settlor's~~
lifetime, the Co-Trustees may seek the assistance of the Courts in all matters affecting the administration of this Trust or its properties, including any technical or conforming alterations to the provisions of this Settlement, advice on the interpretation of the Trust or for settlement of any account by invoking the jurisdiction of any District Court with jurisdiction (including quasi-in-rem jurisdiction) over the Trust, the Co-Trustees, or the Trust res, in a nonadversary exparte proceeding. The decision of the Court shall be binding upon all interested parties who were given written mailing notice of the proceedings to their last known address.
3. The Powers and provisions of N.R.S. §163.265 to §163.410, inclusive, are incorporated herein by this reference. In the event of any conflict between a power, authority or discretion of the Trustees as set forth in this Settlement, and as set forth in N.R.S. §163.265 to §163.410, to the extent the Nevada statute is not obligatory with respect thereto, the power, authority or discretion hereof shall govern.
4. The powers of Co-Trustee, Mary V. Kaufman, are herein limited, such that she cannot bind the assets of the Trust without the signature of her Co-Trustee, P. Sterling Kerr.
5. The powers of Co-Trustee, P. Sterling Kerr, are herein increased such that he can bind the assets of the Trust without the signature of a Co-Trustee. Any third party doing business with the Trust may rely on the signature of P. Sterling Kerr to bind the Trust.

SCHEDULE VII
TO THE
NT LEGACY TRUST

Appointment of new Trust Protector under Article XI, Section 11.2, of this Settlement of
Trust:

1. The Protector
 2. The Co-Trustees
 3. The Adult Beneficiaries
-

SCHEDULE VIII
TO THE
NT LEGACY TRUST

Powers, authorities and discretions of the Trustees which shall be subject to the Protector's veto or the Settlor's veto power as referenced in ARTICLE XI, Section 11.4, of this Settlement of Trust, or as referenced in Article XIII, Section 13.2, of this Settlement of Trust, as the case may be, so long as, and during such periods as, the Protector or Settlor, as the case may be, is not acting as the result of or subject to duress or compulsion of any nature:

1. With respect to the body of the Settlement, those mentioned or referenced in ARTICLE H, Section 2.1 (Income Distribution), 2.2 (Principal Distribution), and 2.3 (Discretionary Distributions); ARTICLE III, Section 3.3 (Distribution upon Termination of Trust Period); ARTICLE V, Sections 5.3 (Change in Situs/Applicable Law); ARTICLE VI, Sections 6.3 (Disposition of Property), and 6.4 (Borrow or Pledge Property); ARTICLE VII, Section 7.2(a)(i) (Removal of Trustee).
2. With respect to those mentioned or referenced in Schedule VI, hereof, Clause 1, and Clause 2.
3. The powers, authorities and discretions to change the investment comprised in the Trust Fund from time to time, to be exercised by the Protector consistent with the Settlor's overall goals and intentions as set forth in the Settlement of Trust.

SCHEDULE IX
TO THE
NT LEGACY TRUST

The special provisions referenced in ARTICLE I, Section 1.27, of this Settlement of Trust are as follows:

1. None
2. None

- 51 -

P. Sterling Kerr
Attorney at Law

TRAN0122

EXHIBIT 2

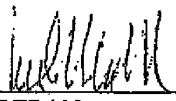
EXHIBIT 2

ASSIGNMENT

Assignor hereby assigns all right, title, and interest in and to any and all personal property of the Assignor, including cash, securities, jewelry, and all other valuables to THE NT LEGACY TRUST dated the 13th day of October, 2009, P. STERLING KERR and MARY V. KAUFMAN, Co-Trustees.

In addition, Assignor hereby grants to the NT LEGACY TRUST dated the 13th day of October, 2009, P. STERLING KERR and MARY V. KAUFMAN, Co-Trustees, all right, title and interest to certain membership interests in TRAN ENTERPRISES, LLC, currently owned by NHU THI TRAN, and any and all interests owned by NHU THI TRAN in TRAN ENTERPRISES, LLC, any Series LLC's under the master LLC.

DATED this 15th day of October, 2009.



NHU THI TRAN

TRAN0137

EXHIBIT 3

EXHIBIT 3

OPERATING AGREEMENT

OF

TRAN ENTERPRISES, LLC

The undersigned, all of the initial members of TRAN ENTERPRISES, LLC, a Nevada limited liability company, hereinafter referred to as the "company", agree as follows:

ARTICLE 1 - OFFICES

Section 1.1. Principal Office. The principal office and place of business of the company shall be 1055 Whitney Ranch Drive, #110, Henderson, Nevada 89014.

Section 1.2 Registered Agent. The registered agent of the company shall be the LAW OFFICES OF P. STERLING KERR. The registered office shall be 1055 Whitney Ranch Drive, #110, Henderson, Nevada 89014.

ARTICLE 2 - MEMBERS

Section 2.1 Initial Members. The initial members of the company, their contributions to the company and their interests in the company are set forth below:

MEMBER

INTEREST

NHU THI TRAN

100%

Section 2.2 Admission of New Members. A person, or any other legal entity in accordance with the Nevada Limited Liability Company Act ("Act"), may be admitted as a new member only upon the written consent of all members.

Section 2.3 Substituted Members. The interest of each member may be transferred or assigned; however, except as expressly provided otherwise in the Act, the transferee of a member's interest shall have no right to become a member of the company unless all of the other members of the company (other than the member proposing to dispose of his, her or its interest), by their unanimous written consent, approve of the proposed transfer or assignment and agree to admit the transferee as a substituted member of the company. A substituted member shall have all the rights and powers, and shall be subject to all the restrictions and liabilities of the transferor. The substitution of the transferee shall not release the transferor from any liability to the company.

Section 2.4 Transferee Not Admitted. If the transferee of the member's interest is not admitted as a substituted member, the transferee shall have no right to participate in the management of the business and affairs of the company, and shall only be entitled to receive the share of profits or other compensation by way of income and the return of contributions to which the transferor would have been entitled if the transfer had not occurred.

Section 2.5 Annual Meeting. The annual meetings of the members for the election of managers and for the transaction of such other business as may properly come before the meetings shall be held on August 1 of each year. If the election of managers shall not be held on the day designated herein for any annual meeting of the members, or at any adjournment thereof, the managers shall cause the election to be held at a special meeting of the members as soon thereafter as may be convenient.

Section 2.6 Special Meetings. Special meetings of the members for any purpose, unless otherwise prescribed by statute, may be called by any manager or by the holders of not less than one-half (1/2) of the interests of the company entitled to vote at the meetings.

Section 2.7 Place of Meeting. Meetings shall be held at any office of the company designated by the managers or at such other place designated by the managers, either within or outside the State of Nevada, as the place for such meeting.

Section 2.8 Notice of Meeting. Written notice stating the place, day and hour of the meeting, and, in case of a special meeting, the purpose for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of any manager or the person calling the meeting to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed delivered as to any member when deposited in the United States mail, addressed to the member with postage prepaid. If requested by the manager or persons lawfully calling a special meeting, the managers shall give notice thereof, at company expense.

Section 2.9 Waiver of Notice. A waiver of notice of any meeting signed by the person entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice. By attending a meeting, a member:

(a) Waives objection to lack of notice or defective notice of such meeting unless the member, at the beginning of the meeting, objects to the holding of the meeting or the transaction of business at the meeting; and

(b) Waives objection to consideration at such meeting of a particular matter not within the purpose or purposes described in the meeting notice unless the member objects to considering the matter when it is presented.

Section 2.10 Quorum. A majority of interest of the members entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of members. In the absence of a quorum at any such meeting, a majority in interest so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

Section 2.11 Manner of Acting. If a quorum is present, the affirmative vote of the majority in interest represented at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater proportion or number or voting by classes is required by law, the Articles of Organization, this Operating Agreement, or amendments thereto. Cumulative voting for managers is not permitted.

Section 2.12 Proxies. At all meetings of members, a member may vote by proxy executed in writing by the member or by his or her duly authorized attorney in fact. Such proxy shall be filed with the managers before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

Section 2.13 Action by Members Without a Meeting. Any action required or permitted to be taken at a meeting of the members may be taken without a meeting if each member entitled to vote with respect to the subject matter thereof has executed a written consent describing the action taken.

Section 2.14 Telephonic Meeting. Members of the company may participate in any meeting of the members by means of conference telephone or similar communication, if all persons participating in such meeting can hear one another for the entire discussion of the matters to be voted upon. Participating in a meeting pursuant to this Section shall constitute presence in person at such meeting.

Section 2.15 Voting by Ballot. Voting on any question or in any election may be by voice vote unless the presiding manager shall order, or any member shall demand, that voting be by ballot.

Section 2.16 Information and Accounting. A member shall have the right to:

- (a) Inspect and copy company records required to be kept under Section 3.7 below;
- (b) Have a formal accounting of the company affairs whenever circumstances render it just and reasonable;
- (c) Obtain from the managers, from time to time, subject to reasonable demand for any purpose reasonably related to the member's interest as a member;
 - (i) True and full information regarding the state of business and financial

condition of the company and any other information regarding the affairs of the company; and

(ii) Promptly after becoming available a copy of the company's federal, state and local income tax returns for each year.

Section 2.17 Resignation. A member may resign at any time by written notice to the other members but such resignation shall not entitle the resigning member to receive the fair value of his or her member interest in the company. After resignation, the resigning member shall have only the rights of a transferee not admitted as a member.

ARTICLE 3 - MANAGEMENT

Section 3.1 Managers. Management of the company's business and affairs shall be vested in the managers, except as otherwise provided herein or as provided by law, or the Articles of Organization. There shall be two managers. Each must be at least eighteen (18) years of age but need not be a member of the company or a resident of the State of Nevada. The initial members named in the Articles of Organization shall hold office for a term of five (5) years or until their successors are elected at the next annual meeting of members following their term. Thereafter, managers shall be elected at each annual meeting of members and shall office until the next succeeding annual meeting of members or until their successors have been elected and qualified.

Section 3.2 Removal of Managers. At a meeting expressly called for that purpose, all managers or a lesser number may be removed, with or without cause, by a vote of a majority in interest of members then entitled to vote at an election of managers.

Section 3.3 Resignation of Manager. Any manager may resign at any time by giving written notice to the other manager or managers then holding office. Such resignation shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. When one or more managers then holding office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation(s) shall become effective.

Section 3.4 Vacancies. Any vacancy occurring in the group of managers may be filled by written agreement of a majority of the remaining managers. A manager chosen to fill a vacancy shall serve the unexpired term of his or her predecessor in office. Any manager's position to be filled by reason of an increase in the number of managers shall be filled by election at an annual meeting or at a special meeting of members called for that purpose. A manager chosen to fill a position resulting from an increase in the number of managers shall hold office until the next annual meeting of members and until his successor has been elected and qualified.

Section 3.5 Powers and Duties of Managers. Each manager is an agent of the company for the purpose of its business and the act of one manager shall bind the company. No debt shall be

contracted or liability incurred by, or on behalf of, the company, except by one or more of its managers. A manager shall perform his or her duties in good faith, in a manner he or she reasonably believes to be in the best interests of the company and with such care as an ordinarily prudent person in like position would use under similar circumstances. A person who so performs his or her duties shall not have any liability by reason of being or having been a manager of the company.

Section 3.6 Management Services. For their services as managers in managing the initial and ongoing affairs of the company, the managers shall be paid a management fee out of the preferred capital for their initial five-year term as managers, commensurate to the reasonable value of the service rendered by them to the Company.

Section 3.7 Records. The managers shall keep, at the principal office of the company, which are subject to inspection and copying at the reasonable request and at the expense of any member during ordinary business hours:

- (a) A current list of the full name and last known address of each member and manager, both past and present;
- (b) A copy of the Articles of Organization, and all amendments thereof, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;
- (c) Copies of the company's federal, state and local income tax returns and reports for the three most recent years;
- (d) Copies of any currently effective operating agreements, copies of any writings permitted or required under Section 7-80-502 of the Act (regarding members' obligations to contribute cash or property, or perform services) and copies of any financial statements of the company for the three most recent years;
- (e) Minutes of every annual and special meeting of members and any meeting ordered by a court pursuant to Section 7-80-707 of the Act and any written consents obtained from members.
- (f) Unless otherwise contained herein or in a writing permitted or required under Section 7-80-502 of the Act, a statement prepared and certified as accurate by a manager of the company which describes:
 - (i) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute in the future;

...

(ii) The terms at which or events on the happening of which any additional contributions agreed to be made by each member are to be made.

(iii) If agreed upon, the terms at which or events on the happening of which a member may terminate his membership in the company and the amount of, or method of determining, the distribution to which he or she may be entitled respecting his or her membership interest and the terms and conditions of the termination and distribution; and

(iv) Any right of a member to receive distributions which include a return of all of any part of a member's contribution.

ARTICLE 4 - FINANCE

Section 4.1 Liability of Members and Managers. Members and managers are not liable, in any manner, for a debt, obligations or liability of the company.

Section 4.2 Capital Contributions. The members have made the contributions set forth above in cash or property. The members have not agreed to make any additional contributions. No additional contributions shall be required unless all members agree in writing to make such additional contributions.

Section 4.3 Preferred Capital Contributions. One or more of the members have made contributions to the operating capital of the company, as set forth above in Section 2.1. These contributions shall be treated as preferred contributions of the contributing party and shall entitle the contributing party to preferred guaranteed payments from the profits of the company as hereinafter provided.

Section 4.4 Sharing of Profits and Losses. The profits and losses, together with all other income, gain, loss or deduction (or item thereof) shall be allocated as follows:

(a) The profits of the company shall be allocated among the members in proportion to their interests in the company.

(b) The losses of the company, if any, shall be allocated pro rata among the members in proportion to their positive capital accounts.

(c) The purchase price of the Participation Agreement shall be amortized among the members according to their capital contributions as set forth above in Section 2.1.

(d) Any federal, state or local tax credits shall be allocated to the members who were, or will be, charged with the expenses or deductions that generated the credit.

(e) In the event any member contributes real or personal property to the company, the member's distributive shares of income, gain, loss and deduction shall be determined so as to take account of the variation between the adjusted tax basis and the fair market value of such property as required by Treasury Regulations.

(f) In no event shall losses be allocated in a manner other than as allowed by applicable Treasury Regulations.

Section 4.5 Capital Accounts. A separate capital account shall be maintained for each member in accordance with Treasury Regulations.

Section 4.6 Distributions. After making reasonable reserves as determined by the managers, at least annually, all available funds shall be distributed to members as follows:

(a) To the extent that any members have made preferred capital contributions to the company, the distributions to the company members shall first be made to the preferred capital holders in an amount not to exceed the total amount of the preferred capital contributions on a pro rata basis to retire or redeem the preferred capital interests.

(b) Thereafter, in proportion to and to the extent of each member's ownership interest in the company.

Section 4.7 Monthly Obligations. The members of this limited liability company hereby agree that a substantial portion of the limited liability company's business shall be the purchase and maintenance of certain real property. The members hereto understand and agree that to the extent that the limited liability company cannot maintain loan payments or other real estate related expenses from its general account, then the Members shall contribute to the limited liability company on a 50/50 basis (excluding P. Sterling Kerr) the required loan payments or other real estate related expenses. These payments are to be made by the members (excluding P. Sterling Kerr) on or before the 10th day of each month during such time as the limited liability company is obligated. The Member who is late with a payment of his fifty percent (50%) share shall incur any late charges as his responsibility. In the event a member does not make his required payment, then that member shall after six (6) months without reimbursement, shall forfeit one-half (½) or fifty percent (50%) of his respective membership interest to the paying member at the conclusion of 12 months without reimbursement. The member shall forfeit the remaining fifty percent (50%) to the other paying member.

Section 4.8 Distribution Upon Dissolution. After dissolution and satisfaction of the company's liabilities, the assets of the company shall be distributed first to the holders of preferred capital interests to the extent that there are preferred capital interests which have not been retired and second to members in proportion to, and to the extent of, their capital accounts. In the event assets are to be distributed which exceed members' capital accounts, the excess shall be distributed to members in proportion to their interests in the company.

Section 4.9 Limitations on Distribution. A member may not receive a distribution from the company to the extent that, after giving effect to the distribution, all liabilities of the company, other than liabilities to members on account of their membership interests, would exceed the fair value of the company assets. Furthermore, if a member receives a return on any part of his contribution, the Act makes the member liable, under certain circumstances, to the company for such returned contribution.

Section 4.10 Business Transactions With the Company Any member or manager may lend money to, act as surety for, and transact business with the company and has the same rights and obligations with respect thereto as a person who is not a member or manager; except this Section shall not be construed to relieve a manager from any of his or her duties as specified above.

Section 4.11 Company Property. Real and personal property owed or purchased by the company shall be held and owned in the company name.

Section 4.12 Indemnification. The company shall indemnify to the extent allowed by the Act, against liability incurred in any proceeding an individual made a party to the proceeding because he or she is or was a manager.

Section 4.13 Fiscal Year. The fiscal year of the corporation shall be the calendar year.

ARTICLE 5 - DISSOLUTION

Section 5.1 Events Causing Dissolution. The company shall be dissolved upon the occurrence of any of the following events:


- (a) When the period fixed in the Articles of Organization for the duration of the company expires;
- (b) By the unanimous written agreement of the members; or
- (c) Upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member, or the occurrence of any other event which terminates the continued membership of a member in the company, unless there are at least two remaining members and the business of the company is continued by the written consent of all the remaining members within ninety (90) days after the termination.

Section 5.2 Effect of Dissolution. As soon as possible following the occurrence of any event causing the dissolution of the company, managers shall execute a statement of intent to dissolve and file it with the Nevada Secretary of State. The filing of the statement shall not affect the limited liability of members. Upon such filing, the company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until the articles of dissolution have been filed with the Nevada Secretary of State.

Any series under this Master limited liability company shall have the power to own, encumber, convey and otherwise manage real property owned in the series' name. In addition, each series limited liability company shall have all the rights, powers and duties given to any regular limited liability company set up under Nevada Revised Statutes Chapter 86.

This Operating Agreement is signed by each initial member effective on this 3rd day of October, 2009.

MEMBER:



NHU THI TRAN

EXHIBIT 4

EXHIBIT 4

RESIGNATION OF TRUSTEE

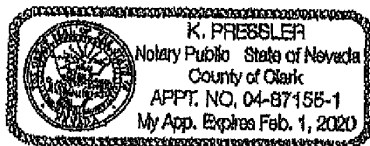
The undersigned, as a current Co-Trustee of the "NT LEGACY TRUST" dated October 15, 2009, hereby resigns as Co-Trustee with limited powers, as set forth in paragraphs 4 and 5 of Schedule VI to the NT LEGACY TRUST, effective upon signature herein.

DATED this 3 day of May, 2016.

Mary V. Kauffman
Mary V. Kauffman

STATE OF NEVADA }
 } ss.
COUNTY OF CLARK }

On this 03 day of ^{June} ~~May~~, in the year 2016, before me, Mary V. Kauffman, personally appeared Mary V. Kauffman personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that she executed it. I declare under penalty of perjury that the person whose name is ascribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.



K. Pressler
NOTARY PUBLIC

TRAN0062

EXHIBIT 5

EXHIBIT 5

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
VITAL STATISTICS

CERTIFICATE OF DEATH

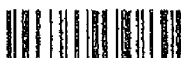
CASE FILE NO. 3937085

2017001464
STATE FILE NUMBER

TYPE OR PRINT IN PERMANENT BLACK INK	1a. DECEASED NAME (FIRST, MIDDLE, LAST, SUFFIX) Nhu Thi TRAN		2. DATE OF DEATH (Mo/Day/Year) January 25, 2017		3a. COUNTY OF DEATH Clark	
	3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas		3c. HOSPITAL OR OTHER INSTITUTION - Name (If not other, give street or P.O. Box, or inst. Indicate DOA, OPI, Emer. Rm. Inpatient (Specify)) 3635 Hammock Street Home		4. SEX Female	
DECEDENT	5. RACE (Specify) Vietnamese		6. AGE - Last Birthday (Years) 83		7. UNDER 1 YEAR MO/ DAY/ HOURS UNDER 1 DAY	
	8a. STATE OF BIRTH (If not USA, name country) Vietnam		8b. CITIZEN OF WHAT COUNTRY United States		8c. DATE OF BIRTH (Mo/Day/Year) October 10, 1933	
IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING DEATH CERTIFICATE OF RESIDENCE ITEMS	9a. SOCIAL SECURITY NUMBER [REDACTED]		9b. USUAL OCCUPATION (Give kind of work done during most of life) Owner		9c. SURVIVING SPOUSE'S NAME (Last name prior to last marriage) Divorced	
	10a. RESIDENCE - STATE Nevada		10b. COUNTY Clark		10c. CITY, TOWN OR LOCATION Las Vegas	
PARENTS	11a. FATHER/PARENT - NAME (First Middle Last Suffix) Thai TRAN		11b. MOTHER/PARENT - NAME (First Middle Last Suffix) Mien VU		11c. STREET AND NUMBER 3635 Hammock Street	
	12a. INFORMANT - NAME (Type or Print) Charlie LAM		12b. MAILING ADDRESS (Street or R.F.D. No. City or Town, State, Zip) 3635 Hammock Street Las Vegas, Nevada 89147		12c. LOCATION City or Town State Las Vegas Nevada 89101	
DISPOSITION	13a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Cremation		13b. CEMETERY OR CREMATORY - NAME Desert Crematory		13c. LOCATION City or Town State Las Vegas Nevada 89101	
	14a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) CHRIS WALTERS		14b. FUNERAL DIRECTOR LICENSE NUMBER 04		14c. NAME AND ADDRESS OF FACILITY Desert Memorial Cremation and Burial	
TRADE CALL	15a. NAME AND ADDRESS Signature AUTHENTICATED		15b. NAME AND ADDRESS OF FACILITY 1111 Las Vegas Blvd N Las Vegas NV 89101		15c. SIGNATURE AUTHENTICATED	
	16a. DATE SIGNED (Mo/Day/Year) January 27, 2017		16b. HOUR OF DEATH 21:50		16c. SIGNATURE AUTHENTICATED	
CERTIFIER	17a. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print) Timothy Dutra MD		17b. DATE RECEIVED BY REGISTRAR (Mo/Day/Year) January 27, 2017		17c. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
	18a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Timothy Dutra MD 1704 Pinto Lane Las Vegas, NV 89108		18b. LICENSE NUMBER 13502		18c. SIGNATURE AUTHENTICATED	
REGISTRAR	19a. REGISTRAR (Signature) NANCY BARRY		19b. DATE RECEIVED BY REGISTRAR (Mo/Day/Year) January 27, 2017		19c. SIGNATURE AUTHENTICATED	
	20a. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).) Atherosclerotic And Hypertensive Cardiovascular Disease		20b. INTERVAL BETWEEN ONSET AND DEATH Interval between onset and death		20c. SIGNATURE AUTHENTICATED	
CAUSE OF DEATH	21a. DUE TO, OR AS A CONSEQUENCE OF: (b) DUE TO, OR AS A CONSEQUENCE OF:		21b. INTERVAL BETWEEN ONSET AND DEATH Interval between onset and death		21c. SIGNATURE AUTHENTICATED	
	22a. DUE TO, OR AS A CONSEQUENCE OF: (c) DUE TO, OR AS A CONSEQUENCE OF:		22b. INTERVAL BETWEEN ONSET AND DEATH Interval between onset and death		22c. SIGNATURE AUTHENTICATED	
CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE STATING THE UNDERLYING CAUSE LAST	23a. PART II: OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part I.		23b. AUTOPSY (Specify Yes or No) No		23c. WAS CASE REFERRED TO CORONER (Specify Yes or No) Yes	
	24a. ADD. SURGE, WOUND, UNDER, OR PENDING INQUIRY (Specify) [REDACTED]		24b. DATE OF INJURY (Mo/Day/Year) [REDACTED]		24c. HOUR OF INJURY [REDACTED]	
LOCAL REGISTRAR	25a. INJURY AT WORK (Specify Yes or No) [REDACTED]		25b. PLACE OF INJURY - At home, farm, street, factory, office building, etc. (Specify) [REDACTED]		25c. LOCATION STREET OR R.F.D. No. CITY OR TOWN STATE [REDACTED]	
	26a. DATE OF INJURY (Mo/Day/Year) [REDACTED]		26b. HOUR OF INJURY [REDACTED]		26c. DESCRIBE HOW INJURY OCCURRED [REDACTED]	

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

VR-6-Rev-26 (200509)



413858

DATE ISSUED:

MAY 31 2017

Registrar of Vital Statistics

By:

Deborah White

This copy not valid unless prepared on watermarked security paper displaying date, seal and signature of Registrar.
SOUTHERN NEVADA HEALTH DISTRICT • P.O. Box 3902 • Las Vegas, NV 89127 • 702-760-1017 • Fax 702-760-1018 • Tax ID # 88-0151578



TRAN0128

EXHIBIT 6

EXHIBIT 6

Law Offices of P. STERLING KERR

March 22, 2017

Charles Lam
Acting Manager
Tran Properties, LLC
P.O. Box 27738
Las Vegas, NV 89126

Re: Trust Estate of Nhu Thi Tran

Mr. Lam:

I was sorry to hear of the passing of Mrs. Tran last month. As you know she and I had a long history as attorney and client on many matters. As a result of her death, my role as successor trustee of her Trust has come to the forefront. Accordingly, I have a duty to follow the wishes of Mrs. Tran as expressed in her estate plan and proceed to administer her Trust Estate.

The estate plan of Mrs. Tran consists of the following:

- 1) NT Legacy Trust (Irrevocable Trust under NRS Chapter 166). This Trust holds 100% of the membership interest in a Nevada limited liability company (Tran Enterprises, LLC). I am the successor trustee of this trust.
- 2) NT Revocable Trust (this Trust holds a limited amount of real property). Charles Lam is the Trustee of this Trust. By the terms of the NT Revocable Trust, all Trust assets pour into the NT Legacy Trust.
- 3) Tran Enterprises, LLC (a Nevada limited liability company). This entity owns a significant amount of real property. Charles Lam is the manager of the entity. As stated above, all of the membership interest is held in the name of NT Legacy Trust. A small minority percentage membership interest was potentially to be assigned to Charles Lam (at the discretion of the successor trustee to the NT Legacy Trust). I currently hold the executed original membership assignment.
- 4) In addition, a charitable non-profit entity was formed but is currently in revoked status. This non-profit was to accomplish the stated goal of Mrs. Tran in the NT Legacy Trust.

As you can see, the estate plan was complicated and will require my investigation to ascertain all of the assets and prepare a plan of distribution. Ultimately, the administration of the trust will require the sale of all the real property held in the trust. I have begun putting together a list of the real property and other assets.

In your role as manager of Tran Enterprises, LLC during Mrs. Tran's lifetime and successor trustee of the NT Revocable Trust, I am formally requesting that you provide to me the following documents for my review:

2450 St. Rose Parkway • Suite 120 • Henderson, NV 89074
Phone: (702) 451-2055 • Fax: (702) 451-2077
www.sterlingkerrlaw.com

TRAN0124


- 1) 2011 through 2016 tax returns for Tran Enterprises, LLC
- 2) 2016 through to the present bank statements for any Tran Enterprises, LLC bank account
- 3) Copies of any Purchase Agreements, covering any of the Tran Enterprises, LLC or NT Revocable Trust properties currently under contract and in escrow
- 4) All listing agreements with any real estate company or broker covering land held by Tran Enterprises, LLC or the NT Revocable Trust
- 5) All files maintained on each such piece of real property held by Tran Enterprises, LLC and the NT Revocable Trust

There will likely be other documents which I will need you to provide as I proceed with the trust administration and I expect your full cooperation. Please provide the requested documents to my office or via email to sterling@sterlingkerrlaw.com no later than April 4, 2017.

Finally, be advised that you are hereby terminated as manager of Tran Enterprises, LLC. Contemporaneously with this letter I am filing an amended List of Managers and Members with the Nevada Secretary of State formalizing your removal as manager. Be advised that as successor trustee of the NT Legacy Trust which holds 100% of the membership interest of Tran Enterprises, LLC I have the authority to effect your termination as manager. The termination means that you are not to act on behalf of Tran Enterprises, LLC in any capacity. You are not to sign any conveyances, enter into any agreements or incur any debt on behalf of Tran Enterprises, LLC.

I would like to discuss the transition of the management of Tran Enterprises, LLC and conference with you concerning your ongoing role, if any, in the administration of Mrs. Tran's Trust Estate.

Sincerely,


P. Sterling Kerr
Successor Trustee of the NT Legacy Trust

TRAN0125

**Delivery Work Order**

JunesLegal.com

702-579-6300

630 S 10th St #B, Las Vegas NV 89101

DR-242444



Submitted: 2017-03-22 17:11:55

Law Firm/Attorney: STERLING KERR

Complete By:

Phone Number: 702-451-2055

Case Number:

Attention/Status: LISA

Internal Tracking #: Tran

Email: lisa@sterlingkerrlaw.com

DISTRICT <input type="checkbox"/>	PROBATE <input type="checkbox"/>	FAMILY <input type="checkbox"/>	
ARB <input type="checkbox"/>	DISC <input type="checkbox"/>	M/C <input type="checkbox"/>	D.A. <input type="checkbox"/>
M/C <input type="checkbox"/>	D.A. <input type="checkbox"/>	TPO <input type="checkbox"/>	TVS <input type="checkbox"/>
E-FILE <input type="checkbox"/>	CRIM. <input type="checkbox"/>	E-FILE <input type="checkbox"/>	
JUSTICE <input type="checkbox"/>		HN JUSTICE <input type="checkbox"/>	FEDERAL <input type="checkbox"/>
CIVIL <input type="checkbox"/>	MUNI. <input type="checkbox"/>	HN MUNI. <input type="checkbox"/>	BANKRUPTCY <input type="checkbox"/>
CRIM. <input type="checkbox"/>	D.A. <input type="checkbox"/>	NLV JUSTICE <input type="checkbox"/>	RECORDER <input type="checkbox"/>
TRAFFIC <input type="checkbox"/>	DROP AT DEPT. <input type="checkbox"/>	NLV MUNI. <input type="checkbox"/>	SEC. OF STATE <input type="checkbox"/>
E-FILE <input type="checkbox"/>		ATTORNEY GNRL <input type="checkbox"/>	APPEALS/HRNG OFF. <input type="checkbox"/>
R.O.C. <input type="checkbox"/>	COURTESY COPY <input type="checkbox"/>	CONSTABLE <input type="checkbox"/>	PUBLIC DEFENDER <input type="checkbox"/>

Item Description: ENVELOPE

Junes Legal Service

Pick Up Location: 2450 ST. ROSE PKWY #120 -- HENDERSON, NV 89074 MAR 29 2017

Routed

Drop Off Location: PLEASE DELIVER ENVELOPE TO VALLEY WEST REALTY TO CHARLES LAM AT
 1896 E. SAHARA AVENUE, SUITE 210 -- LAS VEGAS, NV 89104 - OTHER LOCATION:
 Please deliver to Valley West Realty to Charles Lam

Special Instructions:

PLEASE DELIVER ENVELOPE TO VALLEY WEST REALTY TO CHARLES LAM AT 1896 E. SAHARA
 AVENUE, SUITE 210
 LAS VEGAS, NV 89104

Received By:

Date:

Time:

Copyright © 2016 Junes Legal Service Inc. and Outside The Box

SCHEDULED PICKUP	RETURNED	DOCUMENTS DELIVERED	UNSCHEDULED PICKUP	RUSH	RETURN SPECIAL DELIVERY	WAIT TIME (5 MINUTES) BILLABLE

TRAN0126

EXHIBIT 7

EXHIBIT 7

Charles Lam
% Nhu Thi Tran
P.O. Box 27738
Las Vegas, NV 89126

April 4, 2017

Law Office of P. Sterling Kerr, P.C.
2450 St. Rose Parkway
Henderson, NV

Re: Your Letter dated March 22, 2017

Counsel Kerr:

In reply to your Letter; First of all, I still am much in grievance and mourning of my dearest Mother's passing within the one hundred days in memoriam according to our culture. Therefore, I shall not oblige to your requirements.

Secondly, I would suggest that you shall not remove my capacity and title in Tran Enterprises, LLC. with the Secretary of State since I have been the Front man and the Hands-on active Mother and Son partnership, helping her business venture and carrying-on her successful legacy as a business woman for the last thirty years in Nevada, let alone other ten years in other business in California. Everyone in the Las Vegas Investment Community, including you, the Fed, the State, the County and the City know who I am in such representation role and talk-man for my Mother since she did not read nor write English and brokenly speak the language.

In addition, I currently have to handle three public nuisance abatement matters which involved homeless folks camping out on Tran Enterprises' parcels and one Zoning matter in Clark County. I had done that for years as long as my Mother and I had been in business together. Can you do that and advance the costs in the ten of thousand of dollars with your own money and time? I doubt it!

Last, you have written your Letter in such a commanding and punctual tone which concerned and worried me that you had done my Mother's Estate plan all with your own idea which lend me a suspicion that you had planned it all along with your own hidden agenda. Your Letter had further inflicted greater emotional distress to me in addition to the existing ones and had rendered me sleepless nights in the last two.

Truly,

Charles Lam

TRAN0127

251

EXHIBIT 8

EXHIBIT 8

Steven D. Grierson

1 **COMP**
2 J. MICHAEL OAKES, ESQ.
3 Nevada Bar No. 1999
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 (702) 384-2070 - office
8 (702) 384-2128 - facsimile
9 mike@foleyoakes.com
10 *Attorneys for Plaintiffs*

11 DISTRICT COURT
12 ***
13 CLARK COUNTY, NEVADA

14 Case No. A-17-760853-B
15 Dept. No. Department 13

16 CHARLES LAM, individually and derivatively)
17 on behalf of TRAN ENTERPRISES, LLC, a)
18 Nevada limited liability company, and as)
19 Trustee of the NT REVOCABLE LIVING)
20 TRUST, dated the 15th day of October, 2009)

21 **COMPLAINT**

22 *Plaintiffs,*

23 **Business Court Assignment**
24 **Requested - E.D.C.R. 1.61(a)(1)**
25 **and (a)(2)(ii)**

26 vs.

27 P. STERLING KERR, individually and as)
28 Trustee of the NT LEGACY TRUST, dated the)
15th day of October, 2009; Mary V. Kaufman, as)
Trustee of the NT Legacy Trust, dated the 15th)
day of October, 2009; and DOES I through V)
individuals; and ROE VI through X)
Corporations and Partnerships,)

29 **Exempt from Arbitration**
30 **(Declaratory Relief and Equitable**
31 **Relief)**

32 *Defendants.*

33 COMES NOW Plaintiffs, CHARLES LAM, individually and derivatively on behalf of
34 TRAN ENTERPRISES, LLC, a Nevada limited liability company ("Tran Enterprises"), and as
35 Trustee of the NT REVOCABLE LIVING TRUST, dated the 15th day of October, 2009 (the
36 "Revocable Trust"); by and through its attorneys, J. Michael Oakes, Esq. of FOLEY & OAKES,
37 PC., as and for a Complaint hereby allege as follows:
38

**FOLEY
&
OAKES**

1
2 **GENERAL ALLEGATIONS**

3 1. Plaintiff Charles Lam ("Charles") is a resident of Clark County, Nevada. At all
4 times relevant hereto, Plaintiff is and was a duly licensed real estate agent in the State of Nevada.

5 2. Trans Enterprises is a Nevada limited liability company doing business in Nevada.
6 Tran Enterprises owns real property in Clark County, Nevada.

7 3. The Revocable Trust is a trust established by Nhu Tran that owns real property in
8 Clark County, Nevada. Charles is the successor trustee of the Revocable Trust.

9 4. Defendant P. Sterling Kerr ("Kerr") is a Nevada licensed attorney and a resident of
10 Clark County, Nevada. He claims to be the Trustee of the NT Legacy Trust, and, as such, has
11 asserted that such trust is the member of Tran Enterprises, and, based thereon, he terminated
12 Charles Lam as manager, and has proceeded to liquidate its real property. Mary V. Kaufman is
13 believed to be a co-trustee of the NT Legacy Trust. Any demand upon Kerr or Kaufman would be
14 futile, so to the extent that the Plaintiffs are asserting derivative claims, this derivative action is
15 proper.
16

17 5. This action affects title to real property, in that Defendant Kerr has asserted he is
18 manager of Tran Enterprises, and has engaged in selling its real property without authority to do
19 so, and has also asserted he has authority to sell real property owned by the Revocable Trust. He
20 has already conveyed properties knowing his authority is disputed, and stated that he intends to
21 continue to do so.
22

23 6. The true names and capacities, whether individual, corporate, associate or otherwise
24 of Defendant DOES I through V and ROES VI through X are unknown to Plaintiff who therefore
25 sues said Defendant by and with such fictitious names and Plaintiff will amend its Counterclaim to
26 show the true names and capacities of said Defendant when the same shall have been ascertained.

27 7. Charles is the son of the decedent Nhu Tran, who died on January 27, 2017. Under
28 the laws of intestate succession, he and his brothers Tony and Vince would be her sole heirs.

1 Charles and Nhu Tran resided together, as Charles took care of her, managed her affairs, and did
2 not marry or have children of his own.

3 8. During her lifetime, Nhu Tran acquired numerous parcels of real property. As of the
4 date of her death those parcels were mostly free and clear of liens. As of the date of her death, 7
5 parcels were owned in the name of the Revocable Trust and 24 parcels were owned in the name of
6 Tran Enterprises. Those parcels are within the County of Clark, State of Nevada. Charles Lam was
7 the manager of Tran Enterprises from its inception, and is the successor trustee of the Revocable
8 Trust.
9

10 9. Kerr performed legal work for Nhu Tran, and prepared a will and the trust
11 documents for the Revocable Trust and the NT Legacy Trust. Promptly following the death of Nhu
12 Tran, Kerr wrote to Charles on March 23, 2017, stating, pursuant to the documents he had
13 prepared for Nhu Tran as her attorney, that now that she had died he was the successor trustee of
14 the NT Legacy Trust, that the NT Legacy Trust now owned 100% of the membership interest in
15 Tran Enterprises, and that he was terminating Charles as manager of Tran Enterprises. He also said
16 that the assets of the Revocable Trust had poured into the NT Legacy Trust. Charles wrote to Kerr
17 on April 4, 2017, telling him that he was still grieving his mother's death, that he should not be
18 removed, that Kerr had set this up for his own benefit without his mother's understanding as she
19 did not read or write the English language, and that Kerr's letter had caused him emotional
20 distress.
21

22 10. Kerr has since explained his position further, claiming that because the Revocable
23 Trust says its assets would be distributed to the NT Legacy Trust by the Trustee upon the death of
24 Nhu Tran, he has the right to do what he has done. As trustee of the Revocable Trust, however,
25 Charles never made any such distribution of assets from the Revocable Trust to the NT Legacy
26 Trust, such distribution does not happen automatically, and Charles had made it clear to Kerr that
27 he disagreed with Kerr's assertion. There has been no distribution of assets from the Revocable
28

1 Trust to the NT Legacy Trust, and, therefore, all actions taken by Kerr on behalf of Tran
2 Enterprises are unauthorized and null and void.

3 11. Whatever authority Kerr may have given himself under the documents he created
4 was revoked by a Revocation of Power of Attorney and Assignment, signed and notarized by Nhu
5 Tran on September 4, 2013 (the "Revocation"). That Revocation also extended to Mary V.
6 Kaufman.

7
8 12. The Plaintiffs have never seen a full copy of the trust agreement for the NT Legacy
9 Trust. Charles has a copy of the operating agreement for Tran Enterprises, and it shows that the
10 member is Nhu Tran, not the Revocable Trust. Even if the revocable Trust is the majority member
11 of Tran Enterprises, Charles, as trustee of the Revocable Trust never distributed, transferred, or
12 agreed to transfer that membership interest to the NT Legacy Trust. Further, as trustee of the
13 Revocable Trust, Charles never distributed, transferred, or agreed to transfer any of the real
14 property owned by the Revocable Trust to the NT Legacy Trust.

15
16 13. The plan that Kerr seeks to implement benefits only himself, rather than benefitting
17 the heirs of Nhu Tran, and Kerr failed to adequately disclose this to Nhu Tran, who was not fluent
18 in English. Kerr's failure to adequately disclose the conflicts of interest he had renders him
19 ineligible to serve as trustee or manager of any entity, or to receive any benefits therefrom. This
20 would be so even absent the written Revocation.

21 14. Following receipt of the April 4, 2017 letter from Charles, instead of filing an
22 action to determine his authority that would have allowed him to act under Court supervision, Kerr
23 engaged in self-help and began the process of seeking to liquidate the properties owned by the
24 Revocable Trust and Tran Enterprises. This was done without the knowledge of Charles or any of
25 the other heirs of Nhu Tran.

26
27 15. On or about August of 2017, Charles learned that Kerr had actually completed the
28 sale of four properties belonging to Tran Enterprises. Tran Enterprises sold APN's 176-16-601-

1 048 and 176-16-601-049 to Edward Homes, Inc., on August 4, 2017 for \$550,000 and sold APN's
2 176-21-501-027 and 176-21-501-028 to Edward Homes, Inc., on August 4, 2017 for \$250,000, for
3 a combined price of \$800,000. Immediately following the sale of those four properties, Edward
4 Homes, Inc. sold those same four properties to Buffalo Wing, LLC for \$1,200,000. This was a
5 double escrow transaction, with all three deeds being recorded on August 4, 2017 as instrument
6 numbers 2075, 2076, and 2077.
7

8 16. The sale of the four properties by Tran Enterprises, as directed by Kerr, was for
9 \$400,000 less than their true market value as evidenced by the deeds recorded in the double escrow
10 transaction.

11 17. Plaintiffs are informed of another double escrow closing on August 31, 2017, and
12 believe that it has resulted in a loss to Tran Enterprises of well over \$1,000,000.

13 18. Kerr has been asked to provide information to demonstrate the steps taken to market
14 these four properties, or to provide appraisals justifying the sales price paid to Tran Enterprises,
15 but has refused to do so.
16

17 19. Kerr has informed Charles that thirteen other properties are currently under contract
18 to be sold with various parties, and that he intends to proceed forward with those transactions.
19 Kerr has refused to explain what steps were taken to market those properties, has refused to
20 provide any appraisals, and has refused to provide the names of any parties, the title companies,
21 the sales prices, or any other information concerning those sales. Plaintiffs have no idea whether
22 those additional transactions, if allowed to go forward, would be double escrows or sales for prices
23 below fair market value.
24

25 20. There is no urgency relating to the sale of those properties. None of them are in
26 default on any indebtedness. None of the beneficiaries have been demanding money.
27
28

1 21. Kerr has refused to provide copies of the trust documentation for the NT Legacy
2 Trust and the documentation upon which he is relying to support his taking control of the assets
3 belonging to the Revocable Trust and Tran Enterprises as hereinabove alleged.

4 22. Tran Enterprises currently owns the following described real properties:

<u>APN Number</u>	<u>Property Description</u>
161-28-301-006	Hacienda Avenue and Morris Street
126-10-501-015	Iron Mountain and Patricia Avenue
176-35-501-035	South Jones Blvd and West Levi Street
176-35-501-034	South Jones Blvd and West Levi Street
176-35-501-033	South Jones Blvd and West Levi Street
176-13-501-130	Mohaw Street and Shelbourne Avenue
176-16-601-048	Shelbourne Avenue and Buffalo Drive
161-28-401-013	Nellis Blvd and Rawhide Avenue
176-36-201-001	Jones Blvd and Somerset Hills Avenue
177-17-701-012	Ford Avenue and Ensworth Street
177-17-701-011	Ford Avenue and Ensworth Street
140-08-601-013	Nellis Blvd and Gowan Road
139-16-310-017	Cartier Avenue and Martin L. King Blvd
126-03-801-002	Dolan Martin and O'Hare Avenue
126-01-501-004	Trails End Avenue and McKinister Road
176-13-501-036	Mohawk Street and Mistral Avenue
176-16-601-049	Camero Avenue and Buffalo Drive
176-21-501-028	Northeast of Agate and Cimarron Road
179-27-605-005	Roan Road and Derby Drive

179-27-605-004	Derby Drive
179-27-605-003	Pinto Road and Colt Drive
176-21-501-027	Cimarron Road and Agate Avenue
177-17-701-013	Ford Avenue and Ensworth Street
161-28-401-009	US-95 and Denning Street

23. The Revocable Trust currently owns the following described real properties:

<u>APN Number</u>	<u>Property Description</u>
040-13-401-001	Moapa Valley
161-18-510-033	Sandhill and Sunset Village
034-00-002-020	Bunkerville
139-16-310-055	Hyde Avenue and West Street
042-09-000-003	Moapa Valley
139-23-211-020	Fifth Street and McCovert Avenue
161-18-510-052	Sandhill and Sunset Village

24. All of the foregoing parcels of real property are unique. Plaintiffs are presently unsure which of these properties have already been sold in double escrow transactions.

25. This is an urgent matter requiring prompt court intervention, either in terms of injunctive relief, removal of Kerr as trustee and manager of all entities, or appointment of a receiver for the properties.

26. Upon receipt of the documentation relied upon by Kerr, the Plaintiffs anticipate that they may assert more claims than those asserted herein, and anticipate asking for leave to amend after further investigation.

(Breach of Fiduciary Duty)

27. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs, and hereby incorporate the same by reference as part of this cause of action.

28. Defendant owed a fiduciary duty to the Plaintiffs, including a duty to disclose that he intended to proceed with sale of the properties despite knowing that his authority was disputed.

29. Defendant breached that fiduciary duty by concealing his actions and by selling the four properties as hereinabove alleged for a price that was \$400,000 or more below its fair market value. Any sale of additional properties would likewise be a breach of fiduciary duty.

30. As a direct and proximate result, thereof, Plaintiffs have suffered damages in an amount in excess of \$10,000.

31. Plaintiffs have been required to retain an attorney to prosecute this action, and are therefore entitled to recover their reasonable attorney's fees.

32. Based upon the breach of fiduciary duty that has already occurred, the failure to provide documentation to support his position, the failure to adequately market the properties, the failure to provide information concerning the sales, the failure to obtain court approval of his status as Trustee or Manager while knowing that his authority to act was disputed, and his conflict of interest, Kerr is unfit to serve as Manager of Trustee of any of the entities described herein, and Kerr should be removed from any such positions. Furthermore, Kerr and Kaufman should be removed due to the revocation signed by Nhu Tran during her lifetime.

SECOND CLAIM FOR RELIEF

(Negligence)

33. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs, and hereby incorporate the same by reference as part of this cause of action.

1 34. Kerr had an obligation to act in a reasonably prudent business manner in selling the
2 properties, both as a result of his asserted position as manager of Tran Enterprises, and his asserted
3 position as Trustee of NT Legacy Trust, claiming to own the assets of the Revocable Trust.

4 35. Plaintiffs dispute Kerr's authority to act on behalf on any of the Trusts or on behalf
5 of Tran Enterprises, but as to the sale of the four properties that has already occurred, Kerr's sale
6 of the properties without conducting an adequate investigation of their true fair market value, and
7 without conducting an adequate investigation of how to market the properties, was negligent.
8

9 36. As a direct and proximate result of such negligence, Plaintiffs have suffered
10 damages in an amount in excess of \$10,000.

11 37. Plaintiffs have been required to obtain the services of any attorney in order to
12 prosecute this action and are therefore entitled to recover their reasonable attorney's fees.
13

14 **THIRD CLAIM FOR RELIEF**

15 (Declaratory Relief)

16 38. Plaintiffs repeat and reallege each and every allegation contained in the foregoing
17 paragraphs, and hereby incorporate the same by reference as part of this cause of action.

18 39. As described in the foregoing allegations, there is a real dispute and actual
19 controversy concerning the interpretation of the trust documents, the operating agreements,
20 whether those documents are consistent with the decedent's intentions, and whether all of the
21 authority of Kerr was terminated by the Revocation. Furthermore, there is a dispute and actual
22 controversy concerning the manner by which the assets titled in the name of Tran Enterprises and
23 the Revocable Trust should be distributed.

24 40. This matter is right for judicial determination.

25 41. Plaintiffs are entitled to declaratory relief, setting forth the rights of the parties and
26 their authority to act on behalf of NT Legacy Trust, the Revocable Trust, and Tran Enterprises, as
27 hereinabove alleged.
28

FOURTH CLAIM FOR RELIEF
(For Equitable and Extraordinary Relief)

42. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs, and hereby incorporate the same by reference as part of this cause of action.

43. The real property that is owned by Tran is unique. If such property is to be sold on the market, it should be done in an orderly manner, and it may well turn out that some of those properties would be deeded directly to one or more of the Plaintiffs.

44. The continued liquidation of such properties by Kerr would give rise to irreparable injury.

45. The Plaintiffs are entitled to injunctive relief, appointment of a receiver and removal of Kerr and Kaufman as Trustee of any trusts, and the removal of Kerr as Manager of Tran Enterprises. In addition, Plaintiffs are entitled to an order determining that any and all sales of real property belonging to any of the entities named herein should be subject to court approval.

WHEREFORE, Plaintiffs respectfully prays for relief as follows:

1. For declaratory relief, determining the rights of the parties under each of the trust documents, and the operating agreement for Tran Enterprises;
2. For injunctive relief, removal of Kerr and Kaufman as trustee or manager of all entities, and/or appointment of a receiver;
3. For damages in an amount in excess of \$10,000;
2. For interest on the aforesaid damages at the statutory rate;
3. For attorney's fees and costs in prosecuting this action; and
4. For such other and further relief as this Court deems just and proper.

DATED this 1st day of September 2017.

Submitted by:

FOLEY & OAKES, PC

**FOLEY
&
OAKES**

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

/s/ J. Michael Oakes
J. Michael Oakes, Esq.
Nevada Bar No. 1999
626 So. 8th Street
Las Vegas, NV 89101
(702) 384-2070
Attorneys for Plaintiffs

**FOLEY
&
OAKES**

EXHIBIT 9

EXHIBIT 9

Electronically Filed
9/1/2017 3:28 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 MTN
2 J. MICHAEL OAKES, ESQ.
3 Nevada Bar No. 1999
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 (702) 384-2070 - office
8 (702) 384-2128 - facsimile
9 mike@foleyoakes.com
10 Attorneys for Plaintiffs

11 DISTRICT COURT
12 ***
13 CLARK COUNTY, NEVADA

DEPARTMENT XIII
NOTICE OF HEARING
DATE 9/6/17 TIME 9am
APPROVED BY MR

14 CHARLES LAM, individually and derivatively)
15 on behalf of TRAN ENTERPRISES, LLC, a)
16 Nevada limited liability company, and as)
17 Trustee of the NT REVOCABLE LIVING)
18 TRUST, dated the 15th day of October, 2009)

19 *Plaintiffs,*

20 vs.

21 P. STERLING KERR, individually and as)
22 Trustee of the NT LEGACY TRUST, dated the)
23 15th day of October, 2009; Mary V. Kaufman, as)
24 Trustee of the NT Legacy Trust, dated the 15th)
25 day of October, 2009; and DOES I through V)
26 individuals; and ROE VI through X)
27 Corporations and Partnerships,)

28 *Defendants.*

Case No. A-17-760853-B
Dept. No. XIII

**MOTION FOR REMOVAL OF
KERR AND KAUFMAN AS
TRUSTEE AND AS MANAGER
ON ORDER SHORTENING
TIME**

Date:
Time:

29 Plaintiffs, CHARLES LAM, individually and derivatively on behalf of TRAN
30 ENTERPRISES, LLC, a Nevada limited liability company, and as Trustee of the NT
31 REVOCABLE TRUST, dated the 15th day of October, 2009, collectively herein referred to as
32 ("the Plaintiffs"), hereby move to remove Defendants Kerr and Kaufman as Trustees of the NT
33 Legacy Trust and to remove Kerr from his asserted position as manager of Tran Enterprises.
34 Plaintiffs are requesting an Order Shortening Time to hear this motion.

RECEIVED

SEP 01 2017

DISTRICT COURT DEPT#13

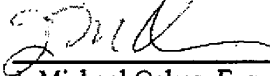
FOLEY
&
OAKES

1 This Motion is based upon the following Memorandum of Points and Authorities, the
2 Declaration of Charles Lam, the Motion for Temporary Restraining Order filed
3 contemporaneously herewith, and such argument as will be heard at the time of hearing this matter
4 or any subsequent proceeding.

5 DATED this 1st day of September, 2017.
6
7

8 Submitted by:

9 FOLEY & OAKES, PC

10 

11 J. Michael Oakes, Esq.
12 Nevada Bar No. 1999
13 626 So. 8th Street
14 Las Vegas, NV 89101
15 (702) 384-2070
16 *Attorneys for Plaintiffs*
17
18
19
20
21
22
23
24
25
26
27
28

FOLEY
&
OAKES

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

3

4
5

6
7
8
9
10

11
12
13
14

15

16

17
18
19

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

ORDER SHORTENING TIME

Good cause appearing therefor,

IT IS HEREBY ORDERED that the time for hearing of the following Motion For
and Plaintiff's Motion to Remove Trustee
Removal of Kerr and Kaufman as Trustees and As Manager shall be heard on the 6th day of

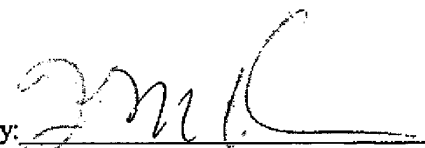
September, 2017, at the hour of 9:00 a.m./p.m. in Department XIII.

DATED this 1st day of September, 2017.


DISTRICT COURT JUDGE

Respectfully Submitted:

FOLEY & OAKES, PC

By: 
J. Michael Oakes, Esq.
Nevada Bar No. 1999
850 East Bonneville Avenue
Las Vegas, Nevada 89101
(702) 562-8820 Telephone
(702) 562-8821 Facsimile
Attorneys for Plaintiffs

FOLEY
&
OAKES

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

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

The Court Should Remove Kerr and Kaufman as Trustees of any Trusts, and Remove Kerr as Manager of Tran Enterprises

The basis for this Motion is fully set forth in the Motion for Temporary Restraining Order, filed contemporaneously herewith, as well as the Declaration of Charles Lam. Plaintiffs incorporate all of the evidence and arguments from those other pleadings.

The Settlor of the Trusts at issue herein, Nhu Tran, revoked all of the authority of Kerr and Kaufman to act on behalf of her entities during her lifetime. The Revocation of Power of Attorney and Assignment, was signed and notarized on September 4, 2013. The Revocation says "the undersigned hereby revokes any and all General or Special Powers of Attorney to act as Trustee or in any other capacities...if any, previously granted to Mary V. Kaufman, Individual, and P. Sterling Kerr, Esq." (See the Declaration of Charles Lam, filed contemporaneously herewith).

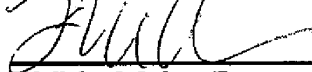
That Revocation should be enforced.

Furthermore, based upon the gross negligence and willful misconduct of Kerr, additional grounds support his removal from all capacities.

Kerr and Kaufman should be removed from all positions. The Court can appoint the decedents's son and lifelong confidante, Charles Lam, or an independent third party. All sales of real property could and should be made subject to Court order.

DATED this 1st day of September, 2017.

FOLEY & OAKES, PC


J. Michael Oakes, Esq.
Nevada Bar No. 1999
626 So. 8th Street
Las Vegas, NV 89101
(702) 384-2070
Attorneys for Plaintiffs

FOLEY
&
OAKES

EXHIBIT 10

EXHIBIT 10

Steven D. Grierson

1 MTN
2 J. MICHAEL OAKES, ESQ.
3 Nevada Bar No. 1999
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 (702) 384-2070 - office
8 (702) 384-2128 - facsimile
9 mike@foleyoakes.com
10 Attorneys for Plaintiffs

11 DISTRICT COURT
12 ***
13 CLARK COUNTY, NEVADA

14 CHARLES LAM, individually and derivatively)
15 on behalf of TRAN ENTERPRISES, LLC, a)
16 Nevada limited liability company, and as)
17 Trustee of the NT REVOCABLE LIVING)
18 TRUST, dated the 15th day of October, 2009)

19 *Plaintiffs,*

20 vs.

21 P. STERLING KERR, individually and as)
22 Trustee of the NT LEGACY TRUST, dated the)
23 15th day of October, 2009; Mary V. Kaufman, as)
24 Trustee of the NT Legacy Trust, dated the 15th)
25 day of October, 2009; and DOES I through V)
26 individuals; and ROE VI through X)
27 Corporations and Partnerships,)

28 *Defendants.*

Case No. A-17-760853-B
Dept. No. XIII

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

29 Plaintiffs, CHARLES LAM, individually and derivatively on behalf of TRAN
30 ENTERPRISES, LLC, a Nevada limited liability company, and as Trustee of the NT
31 REVOCABLE TRUST, dated the 15th day of October, 2009, collectively herein referred to as
32 ("the Plaintiffs"), hereby apply for a Temporary Restraining Order and Preliminary Injunction,
33 preventing Kerr and Kaufman from taking any other steps to dispose of real property as Trustees
34 of the NT Legacy Trust, or as manager of Tran Enterprises.

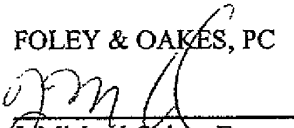
**FOLEY
&
OAKES**

1 This Motion is based upon the following Memorandum of Points and Authorities, the
2 Declaration of Charles Lam and such argument as will be heard at the time of hearing this matter
3 or any subsequent proceeding.

4 DATED this 1st day of September, 2017.
5
6

7 Submitted by:

8 FOLEY & OAKES, PC

9 
J. Michael Oakes, Esq.

10 Nevada Bar No. 1999

11 626 So. 8th Street

12 Las Vegas, NV 89101

13 (702) 384-2070

14 Attorneys for Plaintiffs
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 The facts in this case are egregious and warrant immediate equitable relief. This is truly an
3 urgent matter, as evidenced by the fact that another double escrow closing occurred just yesterday, to
4 the detriment of Tran Enterprises, and its primary member, which is either the NT Legacy Trust or the
5 Revocable Trust.

6 Contemporaneously, Plaintiffs have filed a Motion to Remove Kerr and Kaufman as Trustees
7 or Any Other Capacity, and have asked that it be heard on Order Shortening Time.

8 That motion seeks to remove Defendants Kerr and Kaufman as Trustees of the NT Legacy
9 Trust, and from any other capacities for the entities named herein. The basis for removal is the signed
10 Revocation of Power of Attorney and Assignment signed and notarized by Nhu Tran, the Settlor of
11 the trusts, on September 4, 2013. The Revocation says "the undersigned hereby revokes any and all
12 General or Special Powers of Attorney to act as Trustee or in any other capacities...if any,
13 previously granted to Mary V. Kaufman, Individual, and P. Sterling Kerr, Esq." (Emphasis added).
14 (See the Declaration of Charles Lam, filed contemporaneously herewith, which attached the
15 Revocation as an Exhibit).
16

17 This motion seeks a temporary restraining order, preventing them from taking any further
18 actions to dispose of real properties owned by Tran Enterprises or the Revocable Trust.
19

20 This is necessary to put a stop to the rushed liquidation of 31 parcels of real property that were
21 accumulated by Nhu Tran during her lifetime, 23 of which were titled in the name of Tran
22 Enterprises, LLC and 8 of which are titled in the name of NT Revocable Living Trust.

23 The essence is that Defendant Kerr, following the death of his client, Nhu Tran, has seized
24 control of all of her assets, asserting that the documents he prepared gave him full power and control
25 over all of the entities he created.
26

27 Using that control and knowing it was disputed, Kerr has been selling the properties in double
28 escrow transactions, where Tran Enterprises sells the property and its Buyer sells it again to someone

1 else on the same day for a much greater price. This conduct amounts to gross negligence or willful
2 misconduct.

3 The first double escrow closed on August 4, 2017. The result of that double escrow was that
4 Tran Enterprises, LLC received consideration of \$800,000 for the four properties, and on that same
5 day, the buyer of those properties sold them to a third party for \$1,200,000. These facts are a matter
6 of public record and are set forth in the Declaration of Charles Lam, filed simultaneously herewith. As
7 a result, Tran Enterprises received \$400,000 less than the fair market value for those properties.
8

9 Another double escrow closed on August 31, with at least a \$450,000 difference - and
10 probably a \$1,200,000 difference - between the price paid to Tran Enterprises and the price
11 paid to its buyer!

12 The remaining properties are essentially owned free and clear, and there is absolutely no
13 reason whatsoever for a rush to sale. Even so, Kerr has informed the Plaintiff Charles Lam that they
14 have 13 other properties under contract for sale, and intend to sell them on or after September 9, 2017.
15 (It may be 7 or 8 properties now, due to yesterday's double escrow sale, which they rushed through,
16 not waiting for their own stated September 9 date).
17

18 Kerr and Kaufman should be stopped from taking any further actions as Trustees, or in the
19 capacity as disputed manager of Tran Enterprises.

20 II.

21 STATEMENT OF FACTS

22 The facts of this matter are set forth in the Declaration of Charles Lam, filed
23 simultaneously herewith. For ease of reference, we have restated them below:

24 1. I am one of the three sons of Nhu Tran. The other sons are Tony Lam ("Tony") and
25 Vince Lam ("Vince"). Tony and Vince live out of town. My mother and I resided together for the
26 last thirty years. As she grew older, she was diabetic, and I cared for her up until the time when
27 she died on January 27, 2017.
28

1 2. I am a Nevada licensed real estate agent. During my mother's lifetime, I managed
2 her affairs. She acquired numerous properties, and as of the date of her death, Tran Enterprises,
3 LLC "(Tran Enterprises)" owned 24 parcels of real property and the NT Revocable Living Trust,
4 dated the 15th day of October, 2009 ("the Revocable Trust") owned seven parcels of real property.
5 I had assisted my mother in negotiating and concluding all of the property acquisitions.

6 3. For Tran Enterprises, I was the manager since its very inception on October 22,
7 2009. As far as I am concerned, I am still the Manager but the Defendant, Sterling Kerr ("Kerr")
8 has asserted that he is the manager and has filed an amended annual list stating that he is Manager.
9 I believe I am also a 10% Member of Tran Enterprises.

10 4. For the Revocable Trust, I was originally named as the Successor Trustee and that
11 was never revised. Therefore, based upon the death of my mother, I am now the Trustee of the
12 Revocable Trust.
13

14 5. Shortly following my mother's death on January 27, 2017, I received a letter from
15 Kerr, dated March 22, 2017. A copy of the letter is attached as Exhibit 1. In the letter, he
16 informed me that, due to my mother's death, a new trust identified as the NT Legacy Trust now
17 owned 100% of the membership interest in Tran Enterprises, that he was the Successor Trustee,
18 that I was being fired as manager of Tran Enterprises, and that the assets of the Revocable Trust
19 "pour into the NT Legacy Trust."
20

21 6. At the time of receipt of that letter, I was still grieving my mother's death. It took
22 me as a complete shock, because I had always managed her affairs during her lifetime and I was
23 capable of doing so following her death. She never informed me that I would be removed from my
24 positions, and in fact, often discussed with me what I would do with the properties once she passed
25 away. If any documents ever provided that I was to be removed from all positions having
26 authority over the properties, I believe my mother did not understand that.
27

28 7. I wrote to Kerr on April 4, 2017 and expressed my displeasure about his letter. I

1 told him that I should not be removed from my positions. I never heard from him after sending
2 that letter.

3 8. The next thing I heard was in August of 2017, when I was informed by third parties
4 that properties belonging to Tran Enterprises had been sold by Kerr. I was given enough
5 information to learn which properties were involved and, based thereon, I was able to locate the
6 deeds.

7
8 9. There are three deeds relating to the transaction, and they are attached to this
9 declaration as Exhibits 2-A, 2-B, and 2-C. As shown by the deeds, Kerr had actually completed
10 the sale of four properties belonging to Tran Enterprises. Tran Enterprises sold APN's 176-16-
11 601-048 and 176-16-601-049 to Edward Homes, Inc., on August 4, 2017 for \$550,000 and sold
12 APN's 176-21-501-027 and 176-21-501-028 to Edward Homes, Inc., on August 4, 2017 for
13 \$250,000, for a combined price of \$800,000. Immediately following the sale of those four
14 properties, Edward Homes, Inc. sold those same four properties to Buffalo Wing, LLC for
15 \$1,200,000. This was a double escrow transaction, with all three deeds being recorded on August
16 4, 2017 as instrument numbers 2075, 2076, and 2077.

17
18 10. I contacted Kerr's office and was told to speak to his attorney, Lars Evensen of
19 Holland & Hart. I met with him and was provided a letter dated August 21, 2017, a copy of which
20 is attached as Exhibit 3. During the meeting, I expressed my displeasure over what had happened,
21 but he would not provide me any information concerning any of the other properties.

22 11. In a subsequent letter dated August 23, 2017, attached as Exhibit 4, he told me that
23 they intend to sell all of the other properties owned by Tran Enterprises and NT Legacy Trust. He
24 also told me that thirteen of the properties are currently under contract, with some of them starting
25 to close on or after September 9, 2017. He refused to provide me any information at all
26 concerning which properties were to be sold, their pricing, or any other information concerning the
27 sale. I had asked for information concerning the manner in which the properties had been
28

1 marketed or whether there were any appraisals to justify the sales prices. They have refused to
2 provide me any such information.

3 12. To the best of my knowledge, there are no appraisals, and the properties were never
4 listed through the multiple listing service.

5 13. The letter of August 23, 2017 gave me two pages from what they say was the Trust
6 Agreement for the NT Legacy Trust. They would not provide me the complete Trust and they
7 redacted some of the information they gave me.

8 14. My mother became unhappy with Kerr in 2013. She asked me to prepare a
9 Revocation whereby all of the rights of Kerr and Mary V. Kaufman would be revoked. I did so,
10 and my mother signed that document on September 4, 2013, and her signature was notarized at
11 Wells Fargo Bank. A copy of the Revocation is attached as Exhibit 5.

12 15. I am still the Trustee of the Revocable Trust. I have never made any distributions of
13 assets owned by the Trust. Specifically, I have never distributed any of the real property owned by
14 that Trust, and I never distributed the membership interest, if any, of the Revocable Trust in Tran
15 Enterprises.
16

17 16. Today I was informed by a third party that Kerr just sold other properties belonging
18 to Tran Enterprises in another double escrow transaction, whereby Tran Enterprises received
19 \$1,500,000 less than the same day sale by its buyer to a third party. This was from the same
20 source who told me about the first sale, which all turned out to be true. I have not been able to pull
21 those deeds yet to verify if this is true.
22

23 17. Tran Enterprises currently owns the following described real properties:
24

<u>APN Number</u>	<u>Property Description</u>
161-28-301-006	Hacienda Avenue and Morris Street
126-10-501-015	Iron Mountain and Patricia Avenue
176-35-501-035	South Jones Blvd and West Levi Street

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

176-35-501-034	South Jones Blvd and West Levi Street
176-35-501-033	South Jones Blvd and West Levi Street
176-13-501-130	Mohaw Street and Shelbourne Avenue
176-16-601-048	Shelbourne Avenue and Buffalo Drive
161-28-401-013	Nellis Blvd and Rawhide Avenue
176-36-201-001	Jones Blvd and Somerset Hills Avenue
177-17-701-012	Ford Avenue and Ensworth Street
177-17-701-011	Ford Avenue and Ensworth Street
140-08-601-013	Nellis Blvd and Gowan Road
139-16-310-017	Cartier Avenue and Martin L. King Blvd
126-03-801-002	Dolan Martin and O'Hare Avenue
126-01-501-004	Trails End Avenue and McKinister Road
176-13-501-036	Mohawk Street and Mistral Avenue
176-16-601-049	Camero Avenue and Buffalo Drive
176-21-501-028	Northeast of Agate and Cimarron Road
179-27-605-005	Roan Road and Derby Drive
179-27-605-004	Derby Drive
179-27-605-003	Pinto Road and Colt Drive
176-21-501-027	Cimarron Road and Agate Avenue
177-17-701-013	Ford Avenue and Ensworth Street
161-28-401-009	US-95 and Denning Street

18. The Revocable Trust currently owns the following described real properties:

<u>APN Number</u>	<u>Property Description</u>
-------------------	-----------------------------

040-13-401-001	Moapa Valley
161-18-510-033	Sandhill and Sunset Village
034-00-002-020	Bunkerville
139-16-310-055	Hyde Avenue and West Street
042-09-000-003	Moapa Valley
139-23-211-020	Fifth Street and Mccovern Avenue
161-18-510-052	Sandhill and Sunset Village

19. All of the foregoing parcels of real property are unique.

III.

ARGUMENT

The Court Should Issue a Temporary Restraining Order to Prevent Kerr and Kaufman from Acting As Trustees Without A Court Order

NRCP 65 states, in pertinent part, as follows:

...(b) **Temporary Restraining Order; Notice; Hearing; Duration.** A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 15 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at

1 the earliest possible time and takes precedence of all matters
2 except older matters of the same character; and when the motion
3 comes on for hearing the party who obtained the temporary
4 restraining order shall proceed with the application for a
5 preliminary injunction and, if the party does not do so, the court
6 shall dissolve the temporary restraining order. On 2 days' notice to
7 the party who obtained the temporary restraining order without
8 notice or on such shorter notice to that party as the court may
9 prescribe, the adverse party may appear and move its dissolution or
10 modification and in that event the court shall proceed to hear and
11 determine such motion as expeditiously as the ends of justice
12 require.

13 (c) **Security.** No restraining order or preliminary injunction shall
14 issue except upon the giving of security by the applicant, in such
15 sum as the court deems proper, for the payment of such costs and
16 damages as may be incurred or suffered by any party who is found
17 to have been wrongfully enjoined or restrained. No such security
18 shall be required of the State or of an officer or agency thereof.

19 (d) **Form and Scope of Injunction or Restraining Order.**
20 Every order granting an injunction and every restraining order
21 shall set forth the reasons for its issuance; shall be specific in
22 terms; shall describe in reasonable detail, and not by reference to
23 the complaint or other document, the act or acts sought to be
24 restrained; and is binding only upon the parties to the action, their
25 officers, agents, servants, employees, and attorneys, and upon
26 those persons in active concert or participation with them who
27 receive actual notice of the order by personal service or otherwise.

28 As explained in *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987):

A preliminary injunction to preserve the status quo is normally
available upon a showing that the party seeking it enjoys a
reasonable probability of success on the merits and that the
defendant's conduct, if allowed to continue, will result in
irreparable harm for which compensatory damages is an
inadequate remedy.

Land is unique, and the loss of land is an irreparable injury.

In order to preserve the status quo while the issues raised herein are litigated, the Court
should issue a temporary restraining order, followed by setting a hearing on the request for a
preliminary injunction.

1 **Certification Regarding Notice**

2 Lars Evensen of Holland and Hart has represented Kerr relative to this matter. By signing
3 this pleading, counsel for Plaintiffs hereby certifies that he will email copies of the pleadings filed
4 herein to Lars Evensen by 1:30 today, and will call him to follow up on that. No further notice
5 should be required.

6 DATED this 1st day of September, 2017.

7
8 FOLEY & OAKES, PC

9 

10 J. Michael Oakes, Esq.

11 Nevada Bar No. 1999

12 626 So. 8th Street

13 Las Vegas, NV 89101

14 (702) 384-2070

15 Attorneys for Plaintiffs

EXHIBIT 11


EXHIBIT 11

REVOCATION OF POWER OF ATTORNEY AND ASSIGNMENT

The undersigned hereby revokes any and all General or Special Powers of Attorney to act as Trustee or in any other capacities and Assignments of right, title and interest, if any, previously granted to MARY V. KAUFMAN, an Individual and P. STERLING KERR, Esq. who represented myself in drafting the formation and creation, in TRAN ENTERPRISES, LLC., a Nevada Limited Liability Company and any Series LLC's thereunder, NT REVOCABLE LIVING TRUST, a Nevada Trust, NT LEGACY TRUST, a Nevada Trust, NHU TRAN FOUNDATION, INC., a Nevada Nonprofit Corporation.

This Revocable of Power of Attorney and Assignment is effective immediately upon my signature herein subscribed.

DATED this 4th day of September, 2013.



NHU THI TRAN

STATE OF NEVADA)

COUNTY OF CLARK) ss:

On the 4th day of September, 2013, personally appeared before me, a Notary Public in and for said County and State, NHU THI TRAN, known to me to be the person described above and who acknowledged to me that SHE executed the foregoing Revocation freely and voluntarily.

WITNESS my hand and official seal.





NOTARY PUBLIC

EXHIBIT 12

EXHIBIT 12

SECRET OF THE COURT
Albert B. Green

J. MICHAEL OAKES, ESQ.
Nevada Bar No. 1999
FOLEY & OAKES, PC
626 So. 8th Street
Las Vegas, Nevada 89101
(702) 384-2070 - office
(702) 384-2128 - facsimile
mike@foleyoakes.com
Attorneys for Plaintiffs

CHARLES LAM, individually and derivatively
on behalf of TRAN ENTERPRISES, LLC, a
Nevada limited liability company, and as
Trustee of the NT REVOCABLE LIVING
TRUST, dated the 15th day of October, 2009

Plaintiffs,

vs.

P. STERLING KERR, individually and as
Trustee of the NT LEGACY TRUST, dated the
15th day of October, 2009; Mary V. Kaufman, as
Trustee of the NT Legacy Trust, dated the 15th
day of October, 2009; and DOES I through V
individuals; and ROE VI through X
Corporations and Partnerships,

Defendants.

Plaintiffs having brought their Motion for Temporary Restraining Order and Preliminary Injunction (hereinafter the "Motion") before the above-entitled Court, this Court, having considered the pleadings on file herein, finds as follows:

Case Number: A-17-760853-B

**FOLEY
&
OAKES**

1 1. The Plaintiffs have sought to remove the Defendants Kerr and Kaufman as Trustees
2 of the NT Legacy Trust, an entity that claims to own Tran Enterprises as a result of the death of
3 Nhu Tran. Plaintiffs are also seeking to remove Defendant Kerr as manager of Tran Enterprises.

4 2. The letter from counsel for Kerr says that 13 properties are under contract for sale by
5 Tran Enterprises, to start closing on or about September 9, 2017.

6 3. At least 2 sales of real property belonging to Tran Enterprises have already occurred,
7 with evidence that there were double escrow same day sales by Tran's buyer to a second buyer
8 for more money.

9 4. The Plaintiffs have provided evidence to show that there is a legitimate dispute as to
10 the authority of Defendants Kerr and Kaufman to act in any capacity, based on the Revocation
11 signed on September 4, 2013 by Nhu Tran, the settlor of the trusts. Although the Court is not
12 expressing an opinion on the ultimate merits of the case, the ² Plaintiffs have shown ^{that} a
13 ~~reasonable~~ ^{they may be able to demonstrate a} likelihood of success on the merits.

14 5. Land is unique. Injunctive relief is appropriate to prevent immediate and irreparable
15 harm caused by unauthorized sales of real property.

16 6. A balancing of the relative hardships weighs in favor of preventing the Defendants
17 from taking further actions on behalf of the Trust and the LLC. Preventing them from doing so
18 will preserve the status quo while the parties litigate their differences.

19 7. Pursuant to NRCP Rule 65(c): "No restraining order or preliminary injunction shall
20 issue except upon the giving of security by the applicant, in such sum as the court deems proper,
21 for the payment of such costs and damages as may be incurred or suffered by any party who is
22 found to have been wrongfully enjoined or restrained."

23 8. The bond should be minimal, and this Court finds that the amount of \$250,000 will
24 adequately serve the purposes of NRCP 65(c).
25
26
27
28

1 Good cause appearing therefore:

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that P. Sterling Kerr and
3 Mary V. Kaufman are restrained and enjoined from taking any further actions on behalf of the
4 NT Legacy Trust, and, also, that P. Sterling Kerr is restrained and enjoined from taking any
5 further actions on behalf of Tran Enterprises, LLC.

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all Defendants, their
7 agents and servants, agents, and employees, and all those acting in concert with them, and each
8 of them, are subject to the foregoing injunction.
9

10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for
11 Preliminary Injunction shall be heard before this Court on September 21 2017
12 at 9:00 o'clock. (non-emergency)

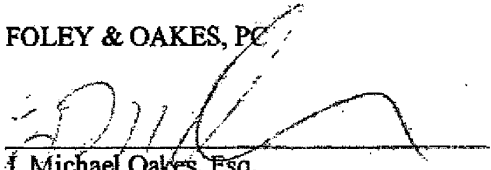
13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall post a
14 bond or cash in lieu of bond in the amount of \$250,000 for the payment of such costs and
15 damages as may be incurred or suffered by any party who is found to have been wrongfully
16 enjoined or restrained.

17 DATED this 6th day of September, 2017.

18
19
20
21 
DISTRICT COURT JUDGE

22 Respectfully submitted by:

23 FOLEY & OAKES, PC

24 
25 J. Michael Oakes, Esq.
26 626 So. 8th Street
27 Las Vegas, Nevada 89101
28 Attorneys for Plaintiffs

FOLEY
&
OAKES

EXHIBIT 13

EXHIBIT 13

A-17-760853-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NRS Chapters 78-89

COURT MINUTES

September 21, 2017

A-17-760853-B Charles Lam, Plaintiff(s)
vs.
P. Sterling Kerr, Defendant(s)

September 21, 2017 09:00 AM All Pending Motions

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 03D

COURT CLERK: Knight, Marwanda

RECORDER: Gerold, Jennifer

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

APPEARANCES: John M. Oakes and Dan Foley, Attorneys
Charles Lam, Pltf
Lars Evensen, Attorney for Deft, Sterling Kerr
Sterling Kerr, Deft/Trustee

Relative to the Pltfs Motion for Preliminary Injunction, COURT stated it was not consolidating the Motion with trial on the merits and that it was not conducting an evidentiary hearing today.

PLTF'S MOTION FOR REMOVAL OF KERR AND KAUFMAN AS TRUSTEE AND AS MANAGER ON ORDER SHORTENING TIME

COURT referenced EDCR 4.03 as to referring the matter to the Probate Commissioner as Special Master relative to the status of Kerr and Kaufman as Trustee. Colloquy held regarding the Court having jurisdiction. Following argument by counsel regarding the Motion, COURT ORDERED matter REFERRED to the Probate Commissioner and DIRECTED Mr. Oakes to submit an order accomplishing the referral to the Probate Commissioner for a RECOMMENDATION on this issue.

PLTF'S MOTION FOR PRELIMINARY INJUNCTION

COURT STATED ITS FINDINGS, and ORDERED Motion GRANTED relative to any and all properties that are the subject of the upcoming sale. If counsel wants to seek expungement of the lis pendens a motion can be filed.

COURT FURTHER ORDERED, bond SET at \$5,000.00.

Mr. Oakes to submit the order.

Printed Date: 9/29/2017

Page 1 of 1

Minutes Date:

September 21, 2017

Prepared by: Marwanda Knight

EXHIBIT 14

EXHIBIT 14



1 **LISP**
2 J. MICHAEL OAKES, ESQ.
3 Nevada Bar No. 1999
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 (702) 384-2070 - office
8 (702) 384-2128 - facsimile
9 mike@foleyoakes.com
10 Attorneys for Plaintiffs

11
12 DISTRICT COURT
13 ***
14 CLARK COUNTY, NEVADA
15

16 CHARLES LAM, individually and derivatively)
17 on behalf of TRAN ENTERPRISES, LLC, a)
18 Nevada limited liability company, and as)
19 Trustee of the NT REVOCABLE LIVING)
20 TRUST, dated the 15th day of October, 2009)

21 *Plaintiffs,*

22 vs.

23 P. STERLING KERR, individually and as)
24 Trustee of the NT LEGACY TRUST, dated the)
25 15th day of October, 2009; Mary V. Kaufman, as)
26 Trustee of the NT Legacy Trust, dated the 15th)
27 day of October, 2009; and DOES I through V)
28 individuals; and ROE VI through X)
Corporations and Partnerships,)

Defendants.

Case No. A-17-760853-B
Dept. No. XIII

**NOTICE OF PENDENCY OF
ACTION (LIS PENDENS)**

TO: All persons claiming an interest in the property as described herein:

PLEASE TAKE NOTICE that an action has commenced and is now pending in the above-entitled court under the docket number set forth above by and between Plaintiff and Defendant. Plaintiff's Complaint affects title to certain parcels of real property owned by Trans Enterprises, LLC and the NT Revocable Living Trust, dated the 15th day of October, 2009, located in Clark County, Nevada, described as follows:

**FOLEY
&
OAKES**

<u>APN Number</u>	<u>Property Description</u>
161-28-301-006	Hacienda Avenue and Morris Street
126-10-501-015	Iron Mountain and Patricia Avenue
176-13-501-130	Mohaw Street and Shelbourne Avenue
161-28-401-013	Nellis Blvd and Rawhide Avenue
177-17-701-012	Ford Avenue and Ensworth Street
177-17-701-011	Ford Avenue and Ensworth Street
140-08-601-013	Nellis Blvd and Gowan Road
139-16-310-017	Cartier Avenue and Martin L. King Blvd
126-03-801-002	Dolan Martin and O'Hare Avenue
126-01-501-004	Trails End Avenue and McKinister Road
176-13-501-036	Mohawk Street and Mistral Avenue
179-27-605-005	Roan Road and Derby Drive
179-27-605-004	Derby Drive
179-27-605-003	Pinto Road and Colt Drive
177-17-701-013	Ford Avenue and Ensworth Street
161-28-401-009	US-95 and Denning Street

1. The Revocable Trust currently owns the following described real properties:

<u>APN Number</u>	<u>Property Description</u>
040-13-401-001	Moapa Valley
161-18-510-033	Sandhill and Sunset Village
034-00-002-020	Bunkerville
139-16-310-055	Hyde Avenue and West Street

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

042-09-000-003	Moapa Valley
139-23-211-020	Fifth Street and Mccovern Avenue
161-18-510-052	Sandhill and Sunset Village

DATED this 1st day of September, 2017.

FOLEY & OAKES, PC

/s/ J. Michael Oakes
J. Michael Oakes, Esq.
Nevada Bar No. 1999
850 E. Bonneville Avenue
Las Vegas, Nevada 89101

**FOLEY
&
OAKES**

EXHIBIT 15

EXHIBIT 15



1 **LISP**
2 J. MICHAEL OAKES, ESQ.
3 Nevada Bar No. 1999
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 (702) 384-2070 - office
8 (702) 384-2128 - facsimile
9 mike@foleyoakes.com
10 Attorneys for Plaintiffs

11
12 DISTRICT COURT
13 ***
14 CLARK COUNTY, NEVADA

15 CHARLES LAM, individually and derivatively
16 on behalf of TRAN ENTERPRISES, LLC, a
17 Nevada limited liability company, and as
18 Trustee of the NT REVOCABLE LIVING
19 TRUST, dated the 15th day of October, 2009

20 *Plaintiffs,*

21 vs.

22 P. STERLING KERR, individually and as
23 Trustee of the NT LEGACY TRUST, dated the
24 15th day of October, 2009; Mary V. Kaufman, as
25 Trustee of the NT Legacy Trust, dated the 15th
26 day of October, 2009; and DOES I through V
27 individuals; and ROE VI through X
28 Corporations and Partnerships,

Defendants.

Case No. A-17-760853-B
Dept. No. XIII

AMENDED NOTICE OF
PENDENCY OF ACTION (LIS
PENDENS)

TO: All persons claiming an interest in the property as described herein:

PLEASE TAKE NOTICE that an action has commenced and is now pending in the above-entitled court under the docket number set forth above by and between Plaintiff and Defendant. Plaintiff's Complaint affects title to certain parcels of real property owned by Trans Enterprises, LLC and the NT Revocable Living Trust, dated the 15th day of October, 2009, located in Clark County, Nevada. This Amended Notice of Pendency of Action amends the

**FOLEY
&
OAKES**

1 Notice recorded on September 1, 2017 as Instrument #0001994, and corrects a typographical
2 error concerning one of the APN numbers.

3 Any and all interest in APN No. 176-13-501-130 is hereby released.

4 This Notice of Pendency of Action relates to the following parcels, with the corrected
5 parcel number shown below in **BOLD**:

6 Tran Enterprises Properties:

<u>APN Number</u>	<u>Property Description</u>
161-28-301-006	Hacienda Avenue and Morris Street
126-10-501-015	Iron Mountain and Patricia Avenue
176-13-501-030	Mohaw Street and Shelbourne Avenue
161-28-401-013	Nellis Blvd and Rawhide Avenue
177-17-701-012	Ford Avenue and Ensworth Street
177-17-701-011	Ford Avenue and Ensworth Street
140-08-601-013	Nellis Blvd and Gowan Road
139-16-310-017	Cartier Avenue and Martin L. King Blvd
126-03-801-002	Dolan Martin and O'Hare Avenue
126-01-501-004	Trails End Avenue and McKinister Road
176-13-501-036	Mohawk Street and Mistral Avenue
179-27-605-005	Roan Road and Derby Drive
179-27-605-004	Derby Drive
179-27-605-003	Pinto Road and Colt Drive
177-17-701-013	Ford Avenue and Ensworth Street
161-28-401-009	US-95 and Denning Street

1 NT Revocable Living Trust properties:

2

<u>APN Number</u>	<u>Property Description</u>
3 040-13-401-001	Moapa Valley
4 161-18-510-033	Sandhill and Sunset Village
5 034-00-002-020	Bunkerville
6 139-16-310-055	Hyde Avenue and West Street
7 042-09-000-003	Moapa Valley
8 139-23-211-020	Fifth Street and Mccovern Avenue
9 161-18-510-052	Sandhill and Sunset Village

10

11

12 DATED this 27th day of September, 2017.

13 FOLEY & OAKES, PC

14 /s/ J. Michael Oakes

15 J. Michael Oakes, Esq.

16 Nevada Bar No. 1999

17 850 E. Bonneville Avenue

18 Las Vegas, Nevada 89101

19
20
21
22
23
24
25
26
27
28
FOLEY
&
OAKES

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that I am an
3 employee of Foley & Oakes, PC, and that on the 27th day of September, 2017, I served the
4 following document(s):

5
6 **AMENDED NOTICE OF PENDENCY OF ACTION (LIS PENDENS)**

7 I served the above-named document(s) by the following means to the person s as listed
8 below:

9 ☐ **By United States Mail**, postage fully prepaid to person(s) and addresses as
10 follows:

11 ☒ **By Electronic Transmission through the ECF System:**

12
13 Lars Evensen, Esq.
14 Lance Earl, Esq.
15 Holland & Hart
16 9555 Hillwood Drive, 2nd floor
17 Las Vegas, NV 89134
18 Attorneys for Defendants

19 ☐ **By Direct Email** (as opposed to through the ECF system (list persons and email
20 addresses). Based upon the written agreement of the parties to accept service by email or a court
21 order, I caused the document(s) to be sent to the persons at the email addresses listed below. I
22 did not receive, within a reasonable time after the transmission, any electronic message or other
23 indication that the transmission was unsuccessful.

24 ☐ **By Facsimile Transmission** to person(s) and addresses as follows: I faxed the
25 document(s) to the persons at the fax numbers listed herein. No error was reported by the fax
26 machine that I used. A copy of the record of the fax transmission is attached.

27 I declare under the penalty of perjury that the foregoing is true and correct.

28 **/s/ Elizabeth Lee Gould**
An employee of FOLEY & OAKES, PC

**FOLEY
&
OAKES**

EXHIBIT 16

EXHIBIT 16

ASSIGNMENT OF INTEREST

For valuable consideration, the receipt of which is acknowledged, the undersigned hereby assigns ten percent (10%) of her membership interest in TRAN ENTERPRISES, LLC, a Nevada Limited Liability Company, to CHARLIE LAM.

This Assignment of Interest is effective only upon presentation to CHARLIE LAM from my attorney, P. STERLING KERR, ESQ.

DATED this 2nd ^{December} day of November, 2009.

TRAN ENTERPRISES, LLC

By: [Signature]

NHU THI TRAN,

STATE OF NEVADA)

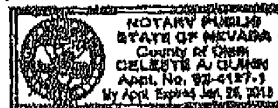
) ss:

COUNTY OF CLARK)

On the 2nd ^{December} day of November, 2009, personally appeared before me, a Notary Public in and for said county and state, NHU THI TRAN, know to me to be the person described above and who acknowledged to me that she executed the foregoing Assignment freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

[Signature]
NOTARY PUBLIC



TRAN0136

EXHIBIT 17

EXHIBIT 17

F4512077

March 24. 2010

Dear Mr Sterling KERR
 I writing this letter to let you
 know charlie LAM does not accept
 100% and manager position in Tran
 Enterprises, LLC. A Nevada limited
 liability company
 when the land sold only. When
 Tran can sign.

Thank you very much

hllllll

IVH2 TH1 TRAN

TRAN035*



1 NOH
2 MARK A. SOLOMON, ESQ.
3 Nevada Bar No. 0418
4 Email: msolomon@sdfnvlaw.com
5 ALEXANDER G. LEVEQUE, ESQ.
6 Nevada Bar No. 11183
7 Email: aleveque@sdfnvlaw.com
8 SOLOMON DWIGGINS & FREER, LTD.
9 Cheyenne West Professional Centre
10 9060 West Cheyenne Avenue
11 Las Vegas, Nevada 89129
12 Telephone: (702) 853-5483
13 Facsimile: (702) 853-5485
14 *Attorneys for P. Sterling Kerr, Trustee of the*
15 *NT LEGACY Trust, dated October 15, 2009*

10 DISTRICT COURT

11 COUNTY OF CLARK, NEVADA

P-17-093391-T

12 In the Matter of the:

Case No.:

Dept. No.: XXVI/PROBATE

13 NT LEGACY TRUST; dated
14 October 15, 2009

Hearing Date: December 1, 2017

Hearing Time: 9:30 a.m.

16 NOTICE OF HEARING

17 PLEASE TAKE NOTICE that a hearing on the PETITION TO ASSUME IN REM
18 JURISDICTION OVER THE NT REVOCABLE TRUST, DATE OCTOBER 15, 2009,
19 PETITION TO CONFIRM TRUSTEE AND FOR INSTRUCTIONS; AND PETITION FOR
20 A DECLARATION THAT THE NT LEGACY TRUST IS THE SOLE MEMBER OF TRAN
21 ENTERPRISES, LLC AND PETITION TO EXPUNGE LIS PENDENS ; has been set on said
22 Petition has been set for the 1 day of December, 2017 at the hour of 9:30 a.m. at the
23 Regional Justice Center, in a Courtroom to be determined by the Probate Court, 200 Lewis
24 Avenue, Las Vegas, Nevada, 89155. All persons interested in said estate are notified to
25 appear and show cause why said Petition should not be granted. Further details concerning
26 this Petition can be had by reviewing the Court file at the office of the County Clerk at the
27
28

SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

1 Regional Justice Center, or by contacting the attorney, whose name and address and telephone
2 number is:

3
4 **MARK A. SOLOMON, ESQ.**
5 **ALEXANDER G. LEVEQUE, ESQ.**
6 **SOLOMON DWIGGINS FREER, LTD.**
7 **9060 West Cheyenne Avenue**
8 **Las Vegas, NV 89129**
9 **702-853-5483**

10 **YOU DO NOT NEED TO APPEAR UNLESS YOU WISH TO RAISE AN OBJECTION.**

11 **DATED** October 26th, 2017.

12 **SOLOMON DWIGGINS & FREER, LTD.**

13 */S/ ALEXANDER G. LEVEQUE*

14 By: _____

15 **MARK A. SOLOMON, ESQ.**
16 Nevada Bar No. 0418
17 Email: msolomon@sdfnvlaw.com
18 **ALEXANDER G. LEVEQUE, ESQ.**
19 Nevada Bar No. 11183
20 Email: aleveque@sdfnvlaw.com
21
22
23
24
25
26
27
28



1 **NOH**
MARK A. SOLOMON, ESQ.
2 Nevada Bar No. 0418
Email: msolomon@sdfnvlaw.com
3 ALEXANDER G. LEVEQUE, ESQ.
4 Nevada Bar No. 11183
Email: aleveque@sdfnvlaw.com
5 SOLOMON DWIGGINS & FREER, LTD.
Cheyenne West Professional Centre
6 9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
7 Telephone: (702) 853-5483
Facsimile: (702) 853-5485
8 *Attorneys for P. Sterling Kerr, Trustee of the*
9 *NT LEGACY Trust, dated October 15, 2009*

10 **DISTRICT COURT**

11 **COUNTY OF CLARK, NEVADA**

12 In the Matter of the:

Case No.: P-17-093391-T
Dept. No.: XXVI/PROBATE

13 NT LEGACY TRUST, dated
14 October 15, 2009

Hearing Date: December 1, 2017
Hearing Time: 9:30 a.m.

15 **CERTIFICATE OF MAILING**

16
17 PURSUANT TO NRCP 5(b), I HEREBY CERTIFY that on November 1, 2017, I served a true
18 and correct copy of the **PETITION TO ASSUME *IN REM* JURISDICTION OVER THE NT**
19 **LEGACY TRUST, DATED OCTOBER 15, 2009, PETITION TO CONFIRM TRUSTEE AND**
20 **FOR INSTRUCTIONS, AND PETITION FOR A DECLARATION THAT THE NT LEGACY**
21 **TRUST IS THE SOLE MEMBER OF THE TRAN ENTERPRISES LLC AND PETITION TO**
22 **EXPUNGE LIS PENDENS AND NOTICE OF HEARING** to the following, in the manner set
23 forth below:
24

25 By U.S. Mail, postage prepaid certified mail to:
26
27
28

SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

1 Charles Lam, c/o
2 J. Michael Oakes, Esq.
3 FOLEY & OAKES, PC
4 626 S. Eighth Street
5 Las Vegas, NV 89101

6 Tony Lam
7 5956 Seville Avenue
8 Huntington Park, CA 90255

9 Lisa Lam
10 5956 Seville Avenue
11 Huntington Park, CA 90255

12 Dennis Lam
13 629 Shenandoah Road
14 Corona, CA 95762

15 Vince Lam
16 629 Shenandoah Road
17 Corona, CA 92879

18 Ha Thi Tran
19 10990 High Land Meadow Village Dr.
20 Apt. 807
21 Houston, TX 77089

22 Bryan Lam
23 5956 Seville Avenue
24 Huntington Park, CA 90255

25 Mary Kaufman
26 2036 Laggia Court
27 Las Vegas, NV 89117

/s/ Renee L. Guastafarro

An Employee of SOLOMON DWIGGINS & FREER, LTD

Steven D. Grierson

DEPARTMENT XIII
NOTICE OF HEARING
DATE 11/27/17 TIME 9:00 AM
APPROVED BY ST

1 MTN
2 J. Michael Oakes, Esq.
3 Nevada Bar No. 1999
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 Tel.: (702) 384-2070
8 Fax: (702) 384-2128
9 mike@foleyoakes.com
10 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

9 CHARLES LAM, individually and derivatively)
10 on behalf of TRAN ENTERPRISES, LLC, a)
11 Nevada limited liability company, and as)
12 Trustee of the NT REVOCABLE LIVING)
13 TRUST, dated the 15th day of October, 2009)

13 *Plaintiffs,*

14 vs.

15 P. STERLING KERR, individually and as)
16 Trustee of the NT LEGACY TRUST, dated the)
17 15th day of October, 2009, Nhu Tran)
18 Foundation, Inc., a Nevada non-profit)
19 corporation; and DOES I through V individuals;)
20 and ROE VI through X Corporations and)
21 Partnerships,)

21 *Defendants.*

Case No. A-17-760853-B
Dept. No. XIII

**MOTION TO CONSOLIDATE
CASES, AND TO STAY
PROCEEDINGS IN SECOND
CASE ON ORDER
SHORTENING TIME**

Date:
Time:

22 In the matter of the)
23 NT LEGACY TRUST, dated October 15, 2009)
24)
25)
26)
27)
28)

TO BE CONSOLIDATED WITH
Case No. P-17-093391-T
Dept. No. XXVI

RECEIVED
NOV 13 2017

DISTRICT COURT DEPT# 13

FOLEY
&
OAKES


1 **MOTION TO CONSOLIDATE CASES, AND TO STAY PROCEEDINGS IN SECOND**
2 **CASE ON ORDER SHORTENING TIME**

3 COMES NOW Plaintiff CHARLES LAM, individually and derivatively on behalf of
4 TRAN ENTERPRISES, LLC, a Nevada limited liability company, and as Trustee of the NT
5 REVOCABLE LIVING TRUST, dated the 15th day of October, 2009 by and through his
6 attorney, J. Michael Oakes, Esq., of FOLEY & OAKES, PC, and hereby moves this Court to
7 consolidate case numbers A-17-760853-B and P-17-093391-T into one action, since they have
8 common and identical questions of fact and law, and to stay the proceedings in the second case.

9 This Motion is made and based on the prior rulings from this Court, NRCP 42(a) and
10 EDCR 2.50, EDCR 4.03, the following Memorandum of Points and Authorities, the pleadings
11 and papers on file herein, and any arguments of counsel that may be entertained at the hearing of
12 this motion.
13

14 DATED this 13th day of November, 2017.

15 FOLEY & OAKES, PC

16
17 
18 J. Michael Oakes, Esq.
19 Nevada Bar No. 1999
20 626 So. 8th Street
21 Las Vegas, Nevada 89101
22 Attorneys for Plaintiffs
23
24
25
26
27
28

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

2
3
4
5

6
7
8
9
10
11
12
13

14
15
16
17

18

19

20

21

22

23

24
25
26
27
28


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

ORDER SHORTENING TIME

Good cause appearing therefor,

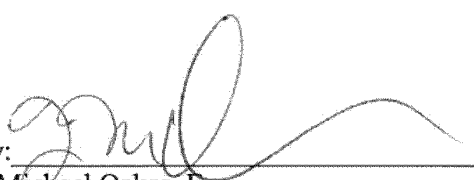
IT IS HEREBY ORDERED that the time for hearing of the following MOTION TO CONSOLIDATE CASES, AND TO STAY PROCEEDINGS IN SECOND CASE ON ORDER SHORTENING TIME shall be heard on the 27th day of November, 2017, at the hour of 9:00 a.m./p.m. in Department XIII.

DATED this 14th day of November, 2017.



DISTRICT COURT JUDGE

Respectfully Submitted:
FOLEY & OAKES, PC


By: _____
J. Michael Oakes, Esq.
Nevada Bar No. 1999
626 So. 8th Street
Las Vegas, Nevada 89101
(702) 562-8820 Telephone
(702) 562-8821 Facsimile
Attorneys for Plaintiffs

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In connection with prior hearings, as reflected in the minutes (See Exhibit "1"), this Court considered the issue of whether it had jurisdiction over this dispute. It determined that it did, but referred the Plaintiffs' motion to remove defendant Kerr as Trustee to the Probate Commissioner under EDCR 4.03. At the same hearing, this Court granted a preliminary injunction, and advised the Defendants that "if counsel wants to seek expungement of the lis pendens a motion can be filed."

Rather than file that motion to expunge, Defendants have filed the Second Case, as a Petition to Assume In Rem Jurisdiction Over the NT Legacy Trust, Dated October 15, 2009. As part of the Petition in the Second Case, they are asking to confirm Kerr as the Trustee of the NT Legacy Trust, for a summary adjudication that NT Legacy Trust is the sole member of Tran Enterprises, LLC, and for an expungement of the lis pendens. For ease of reference, a copy of the Petition (without exhibits) is attached as Exhibit "2."

These precise legal and factual questions are already pending in this, the First Case, and the filing of the Second Case can only be characterized as "forum shopping." Defendants did not like the ruling from this Court, and in their Petition, they explain that this Court "did not understand (or perhaps was not informed) that Lam's argument in support of a TRO was legally unsound." Obviously, Plaintiffs disagree, as the issuance of the temporary restraining order and the subsequent issuance of the preliminary injunction was critical to stop the losses on sales of real property, which already add up to over \$1,600,000. The larger point, however, is that the law does not favor running to a new court to have it "fix" rulings made by a prior court.

Given the identical set of facts, and the same legal questions already pending in this, the

1 First Case, it is quite surprising to see this Second Case, couched in terms of a Petition to
2 Assume Jurisdiction of the Trust and for Instructions. The only rationale for it would be to
3 forum shop.

4 Since the two cases involve the same set of facts and common questions of law, they
5 should be consolidated. This Court has already referred the Motion for Removal to the Probate
6 Commissioner, and that motion can and will be heard there. However, the report and
7 recommendation should come back to this Court, as the Court assigned to the First Case filed,
8 and as the court which referred the already pending Motion for Removal to the Probate
9 Commissioner for a report and recommendation.

11 Further, the remaining relief sought by the Defendants should be stayed. Other than
12 granting the motion for preliminary injunction, this Court did two things. First, it ordered that the
13 Motion for Removal of Kerr should be first heard by the Probate Commissioner. Second, it
14 informed the Defendants that if they wanted to seek expungement of the lis pendens, they could
15 do so by motion. The Court never suggested that a motion to expunge would, like the Motion for
16 Removal of trustee, be referred under EDCR 4.03.

18 If the Defendants wish to seek substantive relief from this Court, they are free to do so at
19 any time, and if they want this Court to send any other specific issue to the Probate
20 Commissioner, they can ask for that as well. In the meantime, the two cases should be
21 consolidated, and the request for relief in the Second Case should be stayed.

22 II. LEGAL ARGUMENT

23 THE TWO CASES HAVE COMMON QUESTIONS OF FACT AND LAW, SO 24 CONSOLIDATION IS PROPER, AND THE SECOND CASE SHOULD BE STAYED

25 NRCP 42(a) provides as follows:

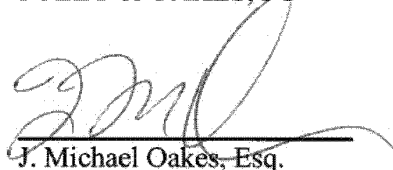
26 “42 (a) Consolidation. When actions involving a common
27 question of law or fact are pending before the court, it may order a
28 joint hearing or trial of any or all the matters in issue in the actions;
it may order all the actions consolidated; and it may make such

1 orders concerning proceedings therein as may tend to avoid
2 unnecessary costs or delay.”

3 This is a clear case where consolidation is proper. The Petition, i.e., the Second Case,
4 goes beyond the scope of this Court’s prior directions in making its earlier rulings, and is asking
5 for relief on issues that have already been the subject of briefing and consideration in the First
6 Case.

7 DATED this 13th day of November, 2017.

8 FOLEY & OAKES, PC

9
10 

11 J. Michael Oakes, Esq.
12 Nevada Bar No. 1999
13 626 So. 8th Street
14 Las Vegas, Nevada 89101
15 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Foley & Oakes, PC,
and that on the 14th day of November, 2017, I served the following document(s):

**MOTION TO CONSOLIDATE CASES, AND TO STAY PROCEEDINGS IN SECOND
CASE ON ORDER SHORTENING TIME**

I served the above-named document(s) by the following means to the person s as listed
below:

☒ **By ECF System** (or the "Notice of Electronic Filing" to all addresses):

Lars Evensen, Esq. Lance Earl, Esq. Holland & Hart 9555 Hillwood Drive, 2nd floor Las Vegas, NV 89134 <i>Attorneys for Defendants</i>	
--	--

☒ **By United States Mail**, postage fully prepaid to person(s) and addresses as
follows:

Mark A. Solomon, Esq. Alexander G. LeVeque, Esq. Craig D. Friedel, Esq. Solomon Dwiggin & Freer, Ltd. 9060 West Cheyenne Avenue Las Vegas, Nevada 89129 <i>Attorneys for P. Sterling Kerr, Trustee of the NT Legacy Trust, dated October 15, 2009</i>	
---	--

☐ **By Facsimile Transmission** to person(s) and addresses as shown above: No
error was reported by the fax machine that I used. A copy of the record of the fax transmission is
attached.

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


An employee of FOLEY & OAKES, PC

EXHIBIT “1”

EXHIBIT “1”

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal](#)
[Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE No. A-17-760853-B

Charles Lam, Plaintiff(s) vs. P. Sterling Kerr, Defendant(s)

§
§
§
§
§
§

Case Type: **NRS Chapters 78-89**
 Date Filed: **09/01/2017**
 Location: **Department 13**
 Cross-Reference Case **A760853**
 Number:

PARTY INFORMATION

Defendant	Kerr, P. Sterling	Lead Attorneys Lars K. Evensen <i>Retained</i> 7026694600(W)
Defendant	NT Legacy Trust Dated October 15 2009	Lars K. Evensen <i>Retained</i> 7026694600(W)
Plaintiff	Lam, Charles	John M. Oakes <i>Retained</i> 702-384-1070(W)
Plaintiff	NT Revocable Living Trust Dated October 15 2009	John M. Oakes <i>Retained</i> 702-384-1070(W)
Plaintiff	Tran Enterprises LLC	John M. Oakes <i>Retained</i> 702-384-1070(W)

EVENTS & ORDERS OF THE COURT

09/21/2017 **All Pending Motions** (9:00 AM) (Judicial Officer Denton, Mark R.)

Minutes

09/21/2017 9:00 AM

- APPEARANCES: John M. Oakes and Dan Foley, Attorneys Charles Lam, Pltf Lars Evensen, Attorney for Deft, Sterling Kerr Sterling Kerr, Deft/Trustee Relative to the Pltfs Motion for Preliminary Injunction, COURT stated it was not consolidating the Motion with trial on the merits and that it was not conducting an evidentiary hearing today. PLTF'S MOTION FOR REMOVAL OF KERR AND KAUFMAN AS TRUSTEE AND AS MANAGER ON ORDER SHORTENING TIME COURT referenced EDCR 4.03 as to referring the matter to the Probate Commissioner as Special Master relative to the status of Kerr and Kaufman as Trustee. Colloquy held regarding the Court having jurisdiction. Following argument by counsel regarding the Motion, COURT ORDERED matter REFERRED to the Probate Commissioner and DIRECTED Mr. Oakes to submit an order accomplishing the referral to the Probate Commissioner for a RECOMMENDATION on this issue. PLTF'S MOTION FOR PRELIMINARY INJUNCTION COURT STATED ITS FINDINGS, and ORDERED Motion GRANTED relative to any and all properties that are the subject of the upcoming sale. If counsel wants to seek expungement of the lis pendens a motion can be filed. COURT FURTHER ORDERED, bond SET at \$5,000.00. Mr. Oakes to submit the order.

[Return to Register of Actions](#)

EXHIBIT “2”

EXHIBIT “2”

Steven D. Grlerson

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON
DWIGGINS & FREER
FIRST AND ESTATE ATTORNEYS
Sdf

1 Mark A. Solomon (#418)
2 Alexander G. LeVeque (#11183)
3 Craig D. Friedel (#13873)
4 SOLOMON DWIGGINS & FREER, LTD.
5 9060 West Cheyenne Avenue
6 Las Vegas, Nevada 89129
7 Telephone: 702.853.5483
8 Facsimile: 702.853.5485
9 msolomon@sdfnlaw.com
10 aleveque@sdfnlaw.com
11 cfriedel@sdfnlaw.com

12 Attorneys for P. Sterling Kerr, Trustee of the
13 NT Legacy Trust, dated October 15, 2009

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 In the Matter of the
17 NT LEGACY TRUST, dated October 15, 2009

Case No.: P-17-093391-T

Dept. No.: XXVI

Date of Hearing: October 27, 2017

Time of Hearing: 9:30 a.m.

18 PETITION TO ASSUME *IN REM* JURISDICTION OVER THE NT LEGACY TRUST,
19 DATED OCTOBER 15, 2009

20 -AND-

21 PETITION TO CONFIRM TRUSTEE AND FOR INSTRUCTIONS

22 -AND-

23 PETITION FOR A DECLARATION THAT THE NT LEGACY TRUST IS THE SOLE
24 MEMBER OF TRAN ENTERPRISES, LLC

25 -AND-

26 PETITION TO EXPUNGE LIS PENDENS

27
28 Petitioner, P. Sterling Kerr, Esq. ("Petitioner"), hereby petitions this Honorable Court,
pursuant to NRS 153.031, 164.010, 164.015 and 164.033 to assume *in rem* jurisdiction over the
NT Legacy Trust, dated October 15, 2009 (the "Legacy Trust"), to confirm Petitioner as Trustee
of the Legacy Trust, for instructions, for a declaration at the Legacy Trust is the sole member of

1 of 17

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDRNLAW.COM



Tran Enterprises, LLC ("TE LLC"), a Nevada limited-liability company, and to expunge improvidently recorded lis pendens' on several parcels of real property owned by the Legacy Trust through TE LLC. This Petition is made and based on the Memorandum of Points and Authorities set forth herein, all of the papers and pleadings already on file with the Court, and any oral argument that the Court may entertain at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Charles Lam ("Lam"), son and beneficiary of the decedent, Nhu Thi Tran ("Tran"), has brought a civil action on behalf of TE LLC against the Petitioner, P. Sterling Kerr, Esq. ("Petitioner"), in his individual capacity and as Trustee of the Legacy Trust, which is pending in Department 13 of the Eighth Judicial District Court.

Procedurally, a threshold issue has arisen with respect to Lam's standing to bring such a lawsuit on behalf of TE LLC given that the Legacy Trust is the sole owner of TE LLC's membership interest, and that Lam was removed as TE LLC's manager in March of 2017.

The Legacy Trust is an irrevocable Nevada asset protection trust. Accordingly, this Court is the appropriate forum to determine the Legacy Trust's ownership interest in TE LLC and to exercise *in rem* jurisdiction over the Legacy Trust to oversee its administration now that Tran has passed away. This court is also the appropriate forum to instruct the Petitioner with regard to the internal affairs of the Legacy Trust, including the marshaling and liquidation of assets and payment of all testamentary bequests. For these reasons, Petitioner respectfully requests that this Court grant the instant petition in its entirety.

II. STATEMENT OF FACTS

INTERESTED PERSONS

1. Pursuant to NRS 153.031(2), Petitioners provide that the following individuals, on information and belief, are interested persons under the Trust and as to the relief requested in this Petition:

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SOLNVLAW.COM

SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS

NAME	RELATIONSHIP	ADDRESS
Charles Lam	Beneficiary / Plaintiff in Case No. A-17- 7608563-B	c/o J. Michael Oakes, Esq. FOLEY & OAKES, PC 626 South Eighth Street Las Vegas, Nevada 89101
Vince Lam	Beneficiary	629 Shenandoah Road Corona, CA 92879
Tony Lam	Beneficiary	5956 Seville Avenue Huntington Park, CA 90255
Dennis Lam	Beneficiary	629 Shenandoah Road Corona, CA 92879
Lisa Lam	Beneficiary	5959 Seville Avenue Huntington Park, CA 90255
Bryan Lam	Beneficiary	5956 Seville Avenue Huntington Park, CA 90255
Ha Thi Tran	Beneficiary	10990 High Land Meadow Village Dr. Apt 807 Houston, TX 77089
Nhu Tran Foundation, Inc.	Beneficiary	2450 St. Rose Parkway, Suite 120 Henderson, NV 89074
Mary V. Kaufman	Former Trustee	2036 Laggia Court Las Vegas, NV 89117

FORMATION HISTORY AND OVERVIEW OF NHU THI TRAN'S ESTATE PLANNING

2. On October 15, 2009, Tran settled the Legacy Trust, a Nevada irrevocable asset protection trust. *See* NT Legacy Trust, a true and correct copy being attached hereto as Exhibit 1.

3. Tran appointed the Petitioner and Mary V. Kaufman ("Kaufman") as the initial Co-Trustees of the Legacy Trust. *See* Ex. 1, at p. 43.

4. On October 15, 2009, Tran assigned all of her right, title and interest to certain membership interests in TE LLC to the Legacy Trust. *See* Assignment, a true and correct copy being attached hereto as Exhibit 2.



5. TE LLC is a Nevada limited-liability company, formed for the purpose of holding several parcels of undeveloped real party. *See* TE LLC Operating Agreement, a true and correct copy being attached here as **Exhibit 3**.

6. On or about June 3, 2016, Kaufman tendered her resignation as Co-Trustee of the Legacy Trust thereby resulting in Petitioner being the sole Trustee of the Legacy Trust, as of June 3, 2016. *See* Kaufman Resignation, a true and correct copy being attached hereto as **Exhibit 4**.

7. On January 25, 2017, Tran passed away. *See* Death Certificate, a true and correct copy being attached hereto as **Exhibit 5**.

8. Section 3.2(A) of the Legacy Trust provides that upon Tran's death, the Trustee shall pay specific bequests to certain beneficiaries as follows:

- a. \$2,000,000 to Charles Lam, Tran's son;
- b. \$20,000 to Vince Lam, Tran's son;
- c. \$20,000 to Tony Lam, Tran's son;
- d. \$20,000 to Dennis Lam, Tran's grandson;
- e. \$20,000 to Lisa Lam, Tran's granddaughter;
- f. \$20,000 to Bryan Lam, Tran's grandson; and
- g. \$20,000 to Ha Thi Tran, Tran's sister. *See, Ex. 1*, at pp.10-11 (TRAN0081-82).

9. Section 3.2(B) of the Legacy Trust provides that, after the payment of specific bequests, the remainder and residual of the assets are to be paid to Nhu Tran Foundation, Inc. (the "Tran Foundation").

THE DISPUTE BETWEEN LAM AND PETITIONER FOLLOWING TRAN'S DEATH

The Removal of Lam as Manager of TE LLC

10. At the time of Tran's death, Lam was the manager of TE LLC.

1 11. On March 22, 2017, Petitioner, in his capacity as Trustee of the Legacy Trust, the
2 sole member of TE LLC, terminated Lam as manager.¹ See Letter to Charles Lam, dated March
3 22, 2017, a true and correct copy being attached hereto as Exhibit 6.

4 12. On April 4, 2017, Lam responded to Petitioner's letter wherein he refused to
5 acknowledge his removal. See, Letter to Sterling Kerr, dated April 4, 2017, a true and correct
6 copy being attached hereto as Exhibit 7.

7 *Lam's Business Court Complaint against Petitioner*

8 13. On September 1, 2017, Lam, purportedly on behalf of TE LLC, filed a civil
9 lawsuit against Petitioner, individually and as Trustee of the Legacy Trust, which seeks damages,
10 declaratory relief and equitable relief. See Business Court Complaint, filed on September 1, 2017,
11 a true and correct copy being attached hereto as Exhibit 8. Specifically, Lam seeks the following:
12 (a) damages caused by Petitioner allegedly breaching a fiduciary duty and/or acting negligent by
13 selling real properties owned by TE LLC for less than fair market value; (b) a declaration "setting
14 forth the rights of the parties and their authority to act on behalf of the NT Legacy Trust, the
15 Revocable Trust, and Tran Enterprises"; and (c) an order removing Petitioner as Trustee of the
16 Legacy Trust, enjoining Petitioner from selling real property owned by TE LLC and/or the
17 Legacy Trust, and appointing a receiver over the Legacy Trust and TE LLC. *Id.*

18 14. In addition the filing of the Business Court Complaint, Lam also filed a motion to
19 remove the Petitioner as trustee of the Legacy Trust (the "Motion to Remove"), and a motion for
20 a temporary restraining order and a preliminary injunction (the "Motion for TRO"), which sought
21 to enjoin Petitioner from selling real property owned by the Legacy Trust TE LLC. See Motion to
22 Remove & Motion for TRO, true and correct copies being attached hereto as Exhibit 9 and
23 Exhibit 10, respectively.

24 *Lam's Motion to Remove Petitioner as Trustee of the Legacy Trust*

25
26 ¹ Section 3.2 of the TC LLC Operating Agreement expressly provides that a manager may be
27 removed "with or without cause" by a vote of the majority in interest of members. See Ex. 3, at p.
28 4.

15. As for the Motion to Remove, which was properly referred by Department 13 to this Court, the sole basis for removal of the Petitioner is that Tran signed a document on or about September 4, 2013, which purports to remove Petitioner and Kaufman as Co-Trustees of the Legacy Trust. *See* Revocation of Power of Attorney and Assignment, attached hereto as Exhibit 11. The Legacy Trust, however, is an irrevocable trust and has no provisions whatsoever that give Tran, its settlor, any power to remove a trustee. *See generally* Article VII of the Legacy Trust, Ex. 1, at pp. 22-31.

16. Moreover, even if Tran held a power to remove the Petitioner as Trustee (which she did not), the Legacy Trust requires formality and strict compliance with the removal procedure, which in this case required delivery to the Petitioner by certified or registered mail, courier, or hand delivery.² The purported "revocation" was never delivered to the Petitioner prior to Tran's death, and, in fact, expressly states in contravention of the strict requirements of Section 7.2(c) that the trustee revocation "is effective immediately upon [Tran's] signature herein subscribed."³

17. Therefore, as a matter of law, Petitioner cannot be, and has not been, removed as Trustee of the Legacy Trust on the basis the Lam has advanced.

Lam's Motion for TRO/Preliminary Injunction

18. Concurrently with the filing of the Business Court Complaint and the Motion to Remove Trustee, Lam also filed a Motion for TRO and Preliminary Injunction. *See* Motion for TRO, a true and correct copy being attached hereto as Exhibit 10. The Motion for TRO sought to

² 7.2(c) Formality Required.

Any document specified in this Section 7.2(c) **shall not be effective** unless se[n]t by certified mail or registered mail or by courier, postage and/or fees prepaid, return receipt request, by facsimile transmission (where receipt is capable of being determined), or by hand delivery (Emphasis added).

³ Petitioner is also informed and believes that Tran may have lacked contractual capacity in September of 2013.



1 enjoin the Petitioner from selling real property owned by TE LLC. In support of his motion, Lam
2 erroneously asserted that he was the manager of TE LLC and that Petitioner had no authority to
3 act as Trustee of the Legacy Trust. Lam relied on the Revocation of Power of Attorney and
4 Assignment document which, as explained *supra*, is a legally inoperative instrument because (1)
5 Tran had no authority under the Legacy Trust to remove Petitioner as Trustee; and (2) even if she
6 did, the notice of removal was never delivered.

7 19. Presumably, the Business Court did not understand (or perhaps was not informed)
8 that Lam's argument in support of a TRO was legally unsound because on September 6, 2017, it
9 entered a temporary restraining order enjoining Petitioner from selling any further parcels of
10 property because "[t]he Plaintiffs have provided evidence to show that there is a legitimate
11 dispute as to the authority of Defendants Kerr and Kaufman to act in any capacity, based on the
12 Revocation signed on September 4, 2013 by Nhu Tran, the settlor of the trusts." *See* TRO Order,
13 at ¶ 4, a true and correct copy being attached hereto as Exhibit 12. Notably, however, the
14 Business Court went on to state that "the Court is not expressing an opinion on the ultimate merits
15 of the case" and that it did not find that there is a reasonable likelihood of success on the merits;
16 only that Plaintiff may be able to demonstrate a reasonable likelihood of success on the merits. *Id.*

17 20. On September 21, 2017, the Business Court held a non-evidentiary hearing on
18 Lam's Motion for Preliminary Injunction. *See* Business Court Minutes, a true and correct copy
19 being attached hereto as Exhibit 13. During the hearing, the Business Court granted the
20 preliminary injunction, increased the bond to \$5,000, and referred the Motion to Remove,
21 pursuant to EDCR 4.03, to this Court. *Id.* No written order has yet been entered by the Business
22 Court.

23 ***Lam's Lis Pendens***

24 21. Concurrently with the filing of the Business Court Complaint on September 1,
25 2017, Lam also filed and recorded a Notice of Pendency of Action (*Lis Pendens*). *See* *Lis*
26 *Pendens*, a true and correct copy being attached hereto as Exhibit 14.

9080 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SOLVIAW.COM

SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



1 22. According to the Lis Pendens, Lam claims that the Business Court action "affects
2 title to certain parcels of real property owned by Trans [sic] Enterprises, LLC and the NT
3 Revocable Living Trust, dated the 15th day of October, 2009..." *Id.*

4 23. On September 27, 2017, Lam filed an Amended Lis Pendens, which released one
5 of the parcels and corrected an APN of one of the affected parcels. *See* Amended Lis Pendens, a
6 true and correct copy being attached hereto as Exhibit 15.

7 24. As set forth in greater detail herein, both the Lis Pendens and the Amended Lis
8 Pendens were improvidently filed as to the parcels owned by TE LLC because there is no dispute
9 as to the title of those parcels. Rather, Lam's alleged dispute is whether Petitioner has authority to
10 sell the parcels. Accordingly, the lis pendens' should be expunged as to the approximate sixteen
11 (16) parcels owned by TE LLC.

12 *Lam's Purported 10% Interest in TE LLC.*

13 25. On December 2, 2009, Tran executed and delivered to the Petitioner an
14 Assignment of Interest instrument which purportedly and conditionally assigns a 10%
15 membership interest in TE LLC to Lam. *See* Assignment of Interest, a true and correct copy being
16 attached hereto as Exhibit 16. Pursuant to its terms, the Assignment of Interest is effective "only
17 upon presentation to CHARLIE LAM from my attorney, P. STERLING KERR, ESQ." *Id.*

18 26. However, the Assignment of Interest is an inoperative instrument because Tran no
19 longer had any membership interests in TE LLC to assign to Lam as she previously assigned all
20 of her right, title and interest in TE LLC to the Legacy Trust two months prior in October of 2009.
21 *See* Ex. 2. Moreover, Tran never instructed Petitioner to deliver the Assignment of Interest to
22 Lam, presumably because she was informed by Lam in or around March of 2010 that he had no
23 interest in receiving and accepting the 10% membership interest. *See* Tran Handwritten Letter,
24 dated March 24, 2010, a true and correct copy being attached hereto as Exhibit 17.

25
26
27
28



III. ARGUMENT

A. THIS COURT SHOULD ASSUME *IN REM* JURISDICTION OVER THE LEGACY TRUST AND CONFIRM PETITIONER AS ITS TRUSTEE.

NRS 164.010 provides in relevant part:

Petition for assumption of jurisdiction; powers of court; petition for removal of trust from jurisdiction of court; determination of where trust is domiciled

1. Upon petition of any person appointed as trustee of an express trust by any written instrument other than a will, or upon petition of a settlor or beneficiary of the trust, the district court of the county in which any trustee resides or conducts business at the time of the filing of the petition or in which the trust has been domiciled as of the time of the filing of the petition shall assume jurisdiction of the trust as a proceeding in rem unless another court has properly assumed continuing jurisdiction in rem in accordance with the laws of that jurisdiction and the district court determines that it is not appropriate for the district court to assume jurisdiction under the circumstances.

5. When the court assumes jurisdiction pursuant to this section, the court:

(a) Has jurisdiction of the trust as a proceeding in rem as of the date of the filing of the petition.

NRS 164.015 further provides in relevant part:

1. The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust ... Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trust, including petitions with respect to a nontestamentary trust for any appropriate relief ...

Under its terms, the Legacy Trust is an irrevocable trust settled in Nevada. *See* Ex. 1, p. 31, Article VIII. Its initial trustees were the Petitioner and Kaufman. *See* Acceptance by Co-Trustees, Ex. 1, at p. 41. However, on June 3, 2016, Kaufman resigned as trustee thereby resulting in the Petitioner being the sole Trustee of the Legacy Trust from June 3, 2016, through the present. *See* Ex. 4.

Accordingly, this Court should assume *in rem* jurisdiction over the Legacy Trust and confirm Petitioner as its Trustee. Petitioner anticipates that Lam will object to the Court's confirmation of Petitioner as Trustee because of a document that he produced in the Business

1 Court litigation which purports to remove Petitioner as Trustee of the Legacy Trust. *See Ex. 2.*
2 However, this document is invalid as a matter of law for two reasons. First, the Legacy Trust did
3 not vest Tran with any authority to remove trustees. The Legacy Trust is an irrevocable trust. As
4 such, in the absence of an express revocation power, Tran as settlor had no authority to remove a
5 trustee. Second, even if Tran had such a power, the Legacy Trust expressly provides that a notice
6 of removal shall be delivered to the trustee to be effective. The purported removal document was
7 never delivered to Petitioner during Tran's lifetime and, therefore, is inoperative.

8 Assuming that this Court exercises *in rem* jurisdiction over the Legacy Trust, it should
9 also declare that it has *exclusive* jurisdiction over all matters concerning the Legacy Trust,
10 including, but not limited to, administration, internal affairs, and matters concerning disputes over
11 the Legacy Trust's property. NRS 164.010(1). Under well-settled and controlling law, "when one
12 court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem*
13 jurisdiction over the same *res*."⁴ This is commonly known as the "prior-exclusive-jurisdiction
14 doctrine".⁵ The prior-exclusive-jurisdiction doctrine is one that is not only recognized and
15 followed by the Supreme Court of Nevada, but is also recognized and followed by the United
16 States Supreme Court.⁶ In *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. 456 (1939), a
17 trust proceeding, the United States Supreme Court aptly stated:

18 We have said that the principle applicable to both federal and state courts is that
19 the court first assuming jurisdiction over property may maintain and exercise that
20 jurisdiction to the exclusion of the other, it's not restricted to cases where property
21 has actually been seized under judicial process before a second suit is instituted,
22 but applies as well where suits are brought to marshal assets, administer
23 trusts, or liquidate estates, and in suits of a similar nature where, to give

24 ⁴ *Chapman v. Deutsche Bank Nat'l Tr. Co.*, 129 Nev. Adv. Op. 34, 302 P.3d 1103, 1105 (2013)
25 (quoting *Marshall v. Marshall*, 547 U.S. 293, 311, 126 S.Ct. 1735, 164 L.Ed.2d 480 (2006)).

26 ⁵ *Id.*

27 ⁶ *See e.g. Penn Gen. Cas. Co. v. Commonwealth of Pennsylvania ex rel. Schnader*, 55 S. Ct. 386,
28 390 (1935) ("[T]wo courts having concurrent jurisdiction in rem, one first taking possession
acquires exclusive jurisdiction.");



effect to its jurisdiction, the court must control the property. The doctrine is necessary to the harmonious cooperation of federal and state tribunals.

An exercise of *in rem* jurisdiction over the Legacy Trust confers upon this Court the exclusive jurisdiction to hear and decide all matters relating to the Legacy Trust. In this case, Petitioner seeks not only his confirmation as Trustee, but also orders and declarations concerning the Legacy's Trust's property, including, but not limited to, TE LLC and its assets. Nevada law expressly authorizes this Court to make declarations with respect to matters relating to the Legacy Trust. Indeed, NRS 164.010(2)(d) states that at the time of the hearing on the Petition, the Court may consider making orders on "matters relating to the trust, including, without limitation, matters that might be addressed in a declaratory judgment relating to the trust under subsection 2 of NRS 30.040 or petitions filed pursuant to NRS 153.031 or 164.015."⁸

B. THIS COURT SHOULD DECLARE THAT THE LEGACY TRUST IS THE SOLE MEMBER OF TRAN ENTERPRISES, LLC AND THAT CHARLES LAM IS NEITHER A MEMBER NOR A MANAGER OF TRAN ENTERPRISES, LLC.

NRS 164.015(1) and 164.033(1) provide this Court authority to declare that the Legacy Trust is the sole member of TE LLC, and that, as the sole member, the Legacy Trust can remove and replace TE LLC's manager. Indeed, NRS 164.033 states in relevant part:

1. The trustee or an interested person may petition the court to enter an order:

(a) If the trustee is in possession of, or holds title to, property and the property or an interest in it is claimed by another.

⁷ 305 U.S. at 466 (Emphasis added). See also *In re Thomas and Agnes Carvel Foundation*, 36 F.Supp.2d 144 (S.D.N.Y. 1999) (declining to exercise jurisdiction, pursuant to *Princess Lida*, over an intervivos trust because the New York state surrogate's court had already exercised jurisdiction over the trust).

⁸ NRS 164.010(2)(d). NRS 30.040(2) provides: "A maker or legal representative of a maker of a will, trust or other writings constituting a testamentary instrument may have determined any question of construction or validity arising under the instrument and obtain a declaration of rights, status or legal relations thereunder. Any action for declaratory relief may only be made in a proceeding commenced pursuant to the provisions of title 12 or 13 of NRS, as appropriate. See also NRS 30.070.

(b) If the trustee has a claim to property and another holds title to or is in possession of the property.

Prior to the settling of the Legacy Trust, Tran, in her individual capacity, was the sole member of TE LLC. However, on October 15, 2009, Tran assigned all of her right, title and interest in her TE LLC membership interest to the Legacy Trust. *See* Ex. 2. Accordingly, this Court can and should declare that the Legacy Trust is the sole member of TE LLC and, therefore, Lam has no membership interest therein. With regard to Lam's claim that he holds a 10% membership interest in TE LLC, the purported Assignment of Interest that Tran signed on December 2, 2009 is legally inoperative because Tran had already divested herself of her membership interests in TE LLC two months prior. Moreover, even if she had a membership interest to give, the Assignment of Interest instrument was never delivered to Lam by the Petitioner, primarily because Lam refused to accept delivery of the gift, as evidenced by Tran's 2010 letter to the Petitioner. *See* Ex. 17.

Similarly, this Court should also declare that the Petitioner's removal of Lam as TE LLC's manager was proper given that (1) Petitioner is the Trustee of the Legacy Trust, the sole owner of TE LLC's membership interest; and (2) pursuant to TE LLC's Operating Agreement, a manager can be removed and replaced upon a majority vote of the membership, which in this case only required the vote of the Petitioner. *See*, Ex. 3, at p. 4.

C. THIS COURT SHOULD EXPUNGE ALL LIS PENDENS RECORDED AGAINST THE REAL PROPERTY OWNED BY TE LLC.

NRS 14.010 permits a plaintiff to file a lis pendens only "[i]n an action for the foreclosure of a mortgage upon real property, or affecting title or possession of real property." "As a general proposition, lis pendens are not appropriate instruments for use in promoting recoveries in actions for personal or money judgments; rather, their office is to prevent the transfer or loss of real property which is the subject of dispute in the action that provides the basis for the lis pendens." *Levinson v. Eighth Judicial Dist. Ct.*, 109 Nev. 747, 750 (Nev. 1993).

[Signature]

Accordingly, NRS 14.015(1) and (2) provide that a defendant may request a hearing upon 15 days' notice, whereupon Lam must:

... establish to the satisfaction of the court that:

- (a) The action is for the foreclosure of a mortgage upon the real property described in the notice or affects the title or possession of the real property described in the notice;
- (b) The action was not brought in bad faith or for an improper motive;
- (c) The party who recorded the notice will be able to perform any conditions precedent to the relief sought in the action insofar as it affects the title or possession of the real property; and
- (d) The party who recorded the notice would be injured by any transfer of an interest in the property before the action is concluded.

NRS 15.015(3) provides that: "[i]n addition to the matters enumerated in subsection 2, the party who recorded the notice must establish to the satisfaction of the court either:

- (a) That the party who recorded the notice is likely to prevail in the action; or
- (b) That the party who recorded the notice has a fair chance of success on the merits in the action and the injury described in paragraph (d) of subsection 2 would be sufficiently serious that the hardship on him or her in the event of a transfer would be greater than the hardship on the defendant resulting from the notice of pendency, - and that if the party who recorded the notice prevails he or she will be entitled to relief affecting the title or possession of the real property.

If Lam fails to meet the foregoing burden, the lis pendens' must be expunged. NRS 14.015(5).

According to his Amended Notice of Lis Pendens, Lam improvidently recorded his pendens' against the following parcels of real property owned by TE LLC:

<u>APN Number</u>	<u>Property Description</u>
161-28-301-006	Hacienda Avenue and Morris Street
126-10-501-015	Iron Mountain and Patricia Avenue
176-13-501-030	Mohawk Street and Shelbourne Avenue
161-28-401-013	Nellis Blvd and Rawhide Avenue
177-17-701-012	Ford Avenue and Ensworth Street

9040 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89127
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON
DWIGANS & FREER
TRUST AND ESTATE ATTORNEYS

<u>APN Number</u>	<u>Property Description</u>
177-17-701-011	Ford Avenue and Ensworth Street
140-08-601-013	Nellis Blvd and Gowan Road
139-16-310-017	Cartier Avenue and Martin L. King Blvd
126-03-801-002	Dolan Martin and O'Hare Avenue
126-01-501-004	Trails End Avenue and McKinister Road
176-13-501-036	Mohawk Street and Mistral Avenue
179-27-605-005	Roan Road and Derby Drive
179-27-605-004	Derby Drive
179-27-605-003	Pinto Road and Colt Drive
177-17-701-013	Ford Avenue and Ensworth Street
161-28-401-009	US-95 and Denning Street

For the reasons set forth *supra*, the lis pendens' recorded against all of the parcels owned by TE LLC are required to be expunged because there is no dispute that TE LLC owns the parcels. Moreover, the record establishes that there is no genuine dispute concerning the Legacy Trust's ownership of TE LLC and its ability to remove Lam as the manager. Lam's case is really about control; not ownership. The question of who has the right to control the Legacy Trust and TE LLC is not a statutory basis for the recordation of a lis pendens. Title and possession are not in dispute. Lis pendens', therefore, are not necessary and only cloud title to the detriment of the Legacy Trust. Accordingly, the lis pendens' should be expunged.

D. PETITIONER REQUESTS INSTRUCTIONS WITH REGARD TO PAYING SPECIFIC BEQUESTS AND DISTRIBUTING THE REMAINDER TO THE RESIDUAL BENEFICIARY.

NRS 153.031 provides in relevant part:

1. A trustee or beneficiary may petition the court regarding any aspect of the affairs of the trust, including:

(g) Instructing the trustee;

1 The Legacy Trust provides that upon Tran's death, the trustee is required liquidate trust
2 assets to pay \$2,120,000.00 in specific bequests. *See Ex. 1*, at pp. 10-11. Following payment of
3 the specific bequests, the trustee is then directed to pay the residual and remaining trust estate to
4 the Nhu Tran Foundation, Inc. ("Tran Foundation") *Id.*

5 The Legacy Trust currently has enough liquidity to satisfy all of the specific bequests,
6 including the \$2 million specific bequest to Lam. Accordingly, Petitioner respectfully requests an
7 instruction from this Court to pay the specific bequests without further delay. Upon satisfaction of
8 the specific bequests, Petitioner further requests instructions from this Court to sell the remaining
9 assets of the Legacy Trust, including those parcels of real property owned by TE LLC, to pay the
10 residual and remainder to the Tran Foundation. Not only does this Court have the equitable power
11 to do so, but the express terms of the Legacy Trust also grant the Petitioner the power to sell
12 assets without Court approval. *See Ex. 1*, at Articles 6.3, 6.23.⁹

13 WHEREFORE, Petitioner respectfully requests that this Court issue the following relief:

14
15 ⁹ "In addition to the powers vested in them by law and other provisions of this Instrument, the
16 Trustees shall have the following powers, exercisable in their sole and absolute discretion,
without court approval, and effective until actual distribution of all property...

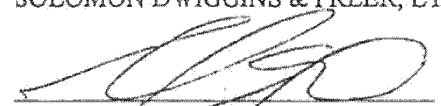
17 **6.3 Sale or Lease of Property.** For prices and upon such terms as they deem property. (i) to sell at
18 public or private sale, or to exchange, any real or personal property; (ii) to give options for any
19 such sales, exchanges, or leases; and (iii) to lease Trust property for terms within or beyond the
term of the Trust and for any purpose, including exploration for an removal of gas, oil, and other
minerals; and to enter into community oil leases, pooling and utilization agreements.

20 **6.23 Broad Powers Of Distribution.** Upon any division or partial or final distribution of the
21 Trust estate, the successor Trustee shall have the power to partition, allot and distribute the Trust
22 estate in undivided interest or in kind, or partly in money and partly in kind, at valuations
23 determined by the Trustees, and to sell such property as the Trustees, in the Trustees' discretion,
24 considers necessary to make such division or distribution. In making any division or partial or
25 final distribution of the Trust estate, the Trustees shall be under no obligation to make a pro rata
26 division or to distribute the same assets to beneficiaries similarly situated. Rather, the Trustees
27 may, in the Trustees' discretion, make non pro rata divisions between Trusts or shares and non
pro rata distributions to beneficiaries as long as the respective assets allocated to separate trusts or
shares or the distributions to beneficiaries have equivalent or proportionate fair market value. The
income tax basis of assets allocated or distributed non pro rata need not be equivalent and may
vary to a greater or lesser amount, as determined by the Trustees, in his or her discretion, and no
adjustment need be made to compensate for any difference in basis.

1. An order assuming *in rem* jurisdiction of the Legacy Trust;
2. An order confirming Petitioner, P. Sterling Kerr, Esq., as the Trustee of the Legacy Trust;
3. A declaration that the Legacy Trust is the sole member of Tran Enterprises, LLC;
4. A declaration that Charles Lam has no membership interest in Tran Enterprises, LLC;
5. A declaration that Petitioner had authority to remove Charles Lam as Manager of TE LLC in or about March of 2017;
6. An order expunging all lis pendens' recorded against the real property owned by the Legacy Trust though its membership interest in TE LLC;
7. An order instructing the Petitioner to pay all specific bequests, to liquidate all remaining Trust assets, and to pay the residue of the Legacy Trust estate to the Tran Foundation, the remainder beneficiary; and
8. An order for any and all other relief just and warranted under the circumstances.

Dated this 26 day of October, 2017.

SOLOMON DWIGGINS & FREER, LTD.



Mark A. Solomon (#418)
Alexander G. Leveque (#11183)
Craig D. Friedel (#13873)
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Petitioner, P. Sterling Kerr

7060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SOLVIAV.COM

SOLOMON
DIVISIONS & FREER
WEST AND SELLER ATTORNEYS

VERIFICATION

Petitioner, P. STERLING KERR, whose mailing address is 2450 St. Rose Parkway, Suite 120, Henderson, Nevada 89074, declares under penalties of perjury of the State of Nevada:

That he is the Petitioner who makes the foregoing PETITION TO ASSUME *IN REM* JURISDICTION OVER THE NT LEGACY TRUST, DATED OCTOBER 15, 2009 -AND- PETITION TO CONFIRM TRUSTEE AND FOR INSTRUCTIONS -AND- PETITION FOR A DECLARATION THAT THE NT LEGACY TRUST IS THE SOLE MEMBER OF TRAN ENTERPRISES, LLC -AND- PETITION TO EXPUNGE LIS PENDENS, that he has read said petition and knows the contents thereof, and that the same is true of his own knowledge except for those matters stated on information and belief, and that as to such matters he believes them to be true.

DATED this 9th day of October, 2017


P. STERLING KERR, ESQ.



1 **OPPS**

2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 J. MICHAEL OAKES, ESQ.
5 Nevada Bar No. 1999
6 FOLEY & OAKES, PC
7 626 So. 8th Street
8 Las Vegas, Nevada 89101
9 (702) 384-2070 - office
10 (702) 384-2128 - facsimile
11 mike@foleyoakes.com
12 *Attorneys for Charles Lam*

9 DISTRICT COURT
10 ***
11 CLARK COUNTY, NEVADA

11)	Case No. P-17-093391-T
12)	Dept. No. XXVI
13)	
14)	Date: December 1, 2017
15)	Time: 9:30 a.m.
16)	

17 In the Matter of the
18 NT LEGACY TRUST, dated October 15, 2009

17 **OPPOSITION OF CHARLES LAM TO**
18 **PETITION TO ASSUME IN REM JURISDICTION OVER THE NT LEGACY TRUST,**
19 **DATED OCTOBER 15, 2009 and PETITION TO CONFIRM TRUSTEE AND FOR**
20 **INSTRUCTIONS and PETITION FOR A DECLARATION THAT THE NT LEGACY**
21 **TRUST IS SOLE MEMBER OF TRAN ENTERPRISES, LLC and PETITION TO**
22 **EXPUNGE LIS PENDENS**

23 Comes now, CHARLES LAM ("Charles"), AND hereby submits his Opposition To the
24 Petition To Assume In Rem Jurisdiction Over The NT Legacy Trust, Dated October 15, 2009 And
25 Petition To Confirm Trustee And For Instructions And Petition For A Declaration That The NT
26 Legacy Trust Is Sole Member Of Tran Enterprises, LLC And Petition To Expunge Lis Pendens.

27 ///

28 ///

///

///

**FOLEY
&
OAKES**

This opposition is based upon the following Memorandum of Points and Authorities and such argument as will be heard at the time of hearing this matter or any subsequent proceeding.

DATED this 17th day of November, 2017.

Submitted by:

FOLEY & OAKES, PC

/s/ J. Michael Oakes

Daniel T. Foley, Esq.

Nevada Bar No. 1078

J. Michael Oakes, Esq.

Nevada Bar No. 1999

626 So. 8th Street

Las Vegas, NV 89101

(702) 384-2070

Attorneys for Charles Lam

**FOLEY
&
OAKES**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **INTRODUCTION**

4 The issues raised by this Petition are already pending in another case in front of Judge
5 Denton. In the earlier case, Judge Denton entered a temporary restraining order and a preliminary
6 injunction against Sterling Kerr. The injunctive relief was necessary because within 7 months of
7 the death of Nhu Tran, Kerr had taken control of Tran Enterprises over the objection of Charles,
8 and secretly sold its most valuable properties in two double escrow sales transactions on August 4
9 and August 31. In both instances, Tran Enterprises sold property to Edwards Homes, Inc., who
10 then sold to a third party on the very same day for a combined amount of \$1,625,000 more than the
11 price paid to Tran Enterprises. Those rushed sales took place without the benefit of any listing with
12 an agent through the multiple listing service, and without the benefit of any appraisal.

13 Those actions, in and of themselves, were breaches of fiduciary duties, and are grounds for
14 removal of Kerr as Trustee.

15 Based on the gross negligence or willful misconduct of Kerr, his misinterpretation of the
16 operative documents, his conflict of interest, and a revocation signed by Nhu Tran during her
17 lifetime, Charles had sought the removal of Kerr as trustee of the NT Legacy Trust, which would
18 carry with it his role as self-appointed manager of Tran Enterprises. In his order, Judge Denton
19 ruled that the motion for removal of Kerr be heard before the Probate Commissioner for a
20 recommendation. That motion, however, is to be heard as part of the already pending first case, not
21 through this second case.

22 The Minute Order from the proceedings before Judge Denton also stated "If counsel wants
23 to seek expungement of the lis pendens, a motion can be filed." Again, that motion would have
24 been in the pending case for which the lis pendens was recorded.

25 To avoid the ongoing confusion of running back and forth between cases, Charles has filed
26 a motion to consolidate the two cases, and to stay this case, which is scheduled for hearing before
27 Judge Denton on November 27, 2017. By the time the hearing on this Petition takes place on
28 December 1, 2017, the parties should have some guidance from Judge Denton as to how he has

1 ruled. A copy of the Motion to Consolidate Cases, and for Stay of Second Case, is attached as
2 Exhibit "A." (See the Appendix for all Exhibits).

3 Certainly, there is no doubt that the Probate Commissioner is to hear the Motion for
4 Removal and make a recommendation to Judge Denton in the first case. That is what he ordered.
5 Charles asserts that the other issues raised herein are issues already pending before Judge Denton
6 in the first case, and should be heard there, unless and until he says otherwise.

7 Since this brief is being filed prior to the time of that hearing before Judge Denton, it is
8 unknown whether all of these issues are to go forward in any manner on December 1, 2017.
9 Therefore, if the merits of this Petition are actually heard, Charles hereby asks for an opportunity
10 to submit specific briefing on any of the issues raised by the Petition, prior to any recommendation
11 by the Probate Commissioner.

12 In the meantime, Charles hereby asks that the Probate Commissioner review the pleadings
13 previously filed herein, including the documentary evidence and declarations, as those pleadings
14 go directly to the requests for relief made herein. Specifically, this includes the following, which
15 are being provided to the Probate Commissioner as Exhibits in the Appendix filed
16 contemporaneously:

- 17 B. The September 1, 2017 Motion for Temporary Restraining order and
18 Preliminary Injunction,
- 19 C. The September 1, 2017 Motion for Removal of Kerr and Kaufman as
20 Trustee and Manager on Order Shortening Time,
- 21 D. The September 5, 2017 Supplement to the Motion for Temporary
22 Restraining Order and the Removal of Kerr and Kaufman as Trustee and
23 Manager, which attached the recorded deeds from the August 31, 2017
24 double escrow transaction,
- 25 E. The Notice of Entry of Order Granting Motion for Temporary Restraining
26 Order and Setting Hearing on Preliminary Injunction,
- 27
- 28

- 1 F. The September 19, 2017 Reply to Defendants' Opposition to Plaintiff's
2 Motion for Preliminary Injunction and Plaintiff's Motion for Removal of
3 Kerr and Kaufman as Trustee and Manager,
4 G. The September 19, 2017 Second Declaration of Charles Lam in Support of
5 Reply to Defendants' Opposition to Plaintiff's Motion for Preliminary
6 Injunction and Plaintiff's Motion for Removal of Kerr and Kaufman as
7 Trustee and Manager,
8 H. The Minutes from the September 21, 2017 hearing before Judge Denton (the
9 Preliminary Injunction Order has not been entered), and
10 I. The October 6, 2017 Order referring the removal motion to the Probate
11 Commissioner.
12

13 With this being said, this brief will now comment on the specific relief requested in the
14 Petition.

15 **II. Any Hearing on Confirmation of Kerr as Trustee of NT Legacy Trust Should**
16 **be Considered Along With the Motion for His Removal**

17 This point seems rather obvious. The question of Kerr's ongoing status is already pending
18 in the first case, and the Court first acquiring jurisdiction has referred that issue to the Probate
19 Commissioner. Charles has requested a hearing date on that motion, but as of this writing, it has
20 not been set.
21

22 **III. The Request for a Declaration that NT Legacy Trust is the Sole Member of**
23 **Tran Enterprises is A Request for Summary Judgment, and the Facts Do Not Support the**
24 **Requested Relief**

25 Kerr is seeking this declaration by the Court because all of his self-help remedies in firing
26 Charles as manager of Tran Enterprises and inserting himself instead are dependent upon NT
27 Legacy Trust being or becoming the majority or sole member of Tran Enterprises as of the date of
28 death of Nhu Tran. Given the fact that Charles objected to Kerr's takeover of Tran Enterprises, it is
surprising that Kerr did not do the obvious thing that a careful fiduciary would do, which would

1 have been to file a petition and seek instructions at that time. Charles asserts that the reason Kerr
2 did not do that was because he did not want to be under any scrutiny when he sold off the
3 properties.

4 Note that a trustee's failure to ask for instructions and its assertion of a biased interpretation
5 of trust documents in its favor are a basis for finding a breach of fiduciary duty. See In the Matter
6 of the Connell Living Trust, 133 Nev. Adv. Op. 19 (2017), where the Court affirmed summary
7 judgment against a trustee, stating:
8

9 "Concerning the summary judgment on breach of fiduciary duties
10 and the resulting award of attorney fees, we agree with the district
11 court that Eleanor breached her fiduciary duties of impartiality and
12 to avoid conflicts of interest when she unilaterally ceased
13 distributions to respondents without seeking court instructions and
14 when she advocated as trustee for a trust interpretation favoring
15 herself as beneficiary; consequently, attorney fees were warranted.
16 NRS 153.031(3)(b) (providing that the district court may award a
17 petitioner attorney fees "to redress or avoid an injustice" and that a
18 trustee may be made personally liable for the attorney fees if the
19 trustee "breached his or her fiduciary duties")"

20 The facts relating to ownership of Tran Enterprises will show that Kerr "jumped the gun,"
21 that he did not have a basis for firing Charles and appointing himself as manager of Tran
22 Enterprises at all, and that Charles is a 10% member. The following numbered exhibits, which are
23 part of the Appendix, will show:
24

25 J. October 15, 2009 – Nhu Tran signs the NT Legacy Trust, and an assignment
26 to the NT Legacy Trust of "certain membership interests in TRAN ENTERPRISES, LLC,
27 **currently owned** by NHU THI TRAN, and any and all interests owned by NHU THI TRAN in
28 TRAN ENTERPRISES, LLC, any Series LLC's under the master LLC.

29 K. October 23, 2009 – Nhu Tran, individually, signs the operating agreement
30 for Tran Enterprises, LLC. She "currently owned" no membership interest at the time of the
31 October 9, 2009 assignment.

1 L. December 2, 2009 - Nhu Tran, individually, signs an assignment whereby
2 “the undersigned hereby assigns ten percent (10%) of **her** membership interest in Tran
3 Enterprises” to Charles. This assignment was prepared by Kerr and shows that Nhu Tran was the
4 owner, not the NT Legacy Trust.

5 M. Tran Enterprises, LLC goes through bankruptcy and has a plan of
6 reorganization confirmed on April 23, 2012. The Confirmed Plan, which is attached to the
7 Appendix, is conclusive as to all creditors and equity holders. On Page 18, it identifies the Equity
8 Interest Holders as Class 6 under the Plan, and states “Ms. Tran is the sole member of Tran
9 Enterprises, LLC.” It also states that “Each record holder of Equity Interest in the Debtor shall
10 retain its interest in the Debtor, as the Reorganized Debtor.”

11 N. September 4, 2013 – Nhu Tran signs before a notary a Revocation of Power
12 of Attorney and Assignment which revokes any power or assignment previously given to Kerr in
13 any capacity, stating: “The undersigned hereby revokes any and all General or Special Powers of
14 Attorney to act as Trustee or in any other capacities and Assignments of right, title and interest, if
15 any, previously granted to MARY V. KAUFMAN, an Individual, and P. STERLING KERR, Esq.,
16 who represented myself in drafting the formation and creation, in TRAN ENTERPRISES, LLC, a
17 Nevada Limited Liability Company and any Series LLC’s thereunder, NT REVOCABLE LIVING
18 TRUST, a Nevada trust, NT LEGACY TRUST, a Nevada trust, NHU TRAN FOUNDATION,
19 INC., a Nevada Nonprofit Corporation. This Revocable of Power of Attorney and Assignment is
20 effective immediately upon my signature herein subscribed.”

21 With ownership of Tran Enterprises being in Nhu Tran, Kerr had no basis to take over Tran
22 Enterprises, and all of his actions on behalf of Tran, including the sales resulting in \$1,625,000 in
23 losses, were unauthorized.

24 IV. THE LIS PENDENS SHOULD NOT BE EXPUNGED
25
26
27
28

1 As explained hereinabove, Judge Denton had told counsel to file their motion if they
2 wanted to expunge the lis pendens, and he would hear it. Bringing that motion in a second case is
3 simply “forum shopping.” Further, the lis pendens was filed to give notice of proceedings in Case
4 No. A-17-760853-B, so it would be absurd to have a ruling on expungement come from the Court
5 or Probate Commissioner assigned to another case.

6 DATED this 17th day of November, 2017.

7
8 FOLEY & OAKES, PC
9 /s/ J. Michael Oakes
10 Daniel T. Foley, Esq.
11 Nevada Bar No. 1078
12 J. Michael Oakes, Esq.
13 Nevada Bar No. 1999
14 626 So. 8th Street
15 Las Vegas, NV 89101
16 (702) 384-2070
17 *Attorneys for Charles Lam*
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that I am an employee
3 of Foley & Oakes, PC, and that on the 17th day of November, 2017, I served the following
4 document(s):

5 **OPPOSITION TO PETITION TO ASSUME IN REM JURISDICTION OVER THE NT**
6 **LEGACY TRUST, DATED OCTOBER 15, 2009 and PETITION TO CONFIRM TRUSTEE**
7 **AND FOR INSTRUCTIONS and PETITION FOR A DECLARATION THAT THE NT**
8 **LEGACY TRUST IS SOLE MEMBER OF TRAN ENTERPRISES, LLC and PETITION**
9 **TO EXPUNGE LIS PENDENS**

I served the above-named document(s) by the following means to the person s as listed below:

10 ☐ **By United States Mail**, postage fully prepaid to person(s) and addresses as follows:

11 ☒ **By Electronic Transmission through the ECF System:**

12 Mark A. Solomon, Esq. 13 Alexander G. LeVeque, Esq. 14 Craig D. Friedel, Esq. 15 Solomon Dwiggins & Freer, Ltd. 16 9060 West Cheyenne Avenue 17 Las Vegas, Nevada 89129 <i>Attorneys for P. Sterling Kerr, Trustee of the</i> <i>NT Legacy Trust, dated October 15, 2009</i>	
--	--

18 I declare under the penalty of perjury that the foregoing is true and correct.

19
20
21 **/s/ Elizabeth Lee Gould**
22 An employee of FOLEY & OAKES, PC
23
24
25
26
27
28



1 DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
2 J. MICHAEL OAKES, ESQ.
Nevada Bar No. 1999
3 FOLEY & OAKES, PC
626 So. 8th Street
4 Las Vegas, Nevada 89101
5 (702) 384-2070 - office
(702) 384-2128 - facsimile
6 mike@foleyoakes.com
Attorneys for Charles Lam
7

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

11)	Case No. P-17-093391-T
12)	Dept. No. XXVI
13)	
14)	
15)	
16)	
17)	
18)	
19)	
20)	
21)	
22)	
23)	
24)	
25)	
26)	
27)	
28)	

17 APPENDIX
18 TO
19 OPPOSITION OF CHARLES LAM TO
20 PETITION TO ASSUME IN REM JURISDICTION OVER THE NT LEGACY TRUST,
21 DATED OCTOBER 15, 2009 and PETITION TO CONFIRM TRUSTEE AND FOR
22 INSTRUCTIONS and PETITION FOR A DECLARATION THAT THE NT LEGACY
23 TRUST IS SOLE MEMBER OF TRAN ENTERPRISES, LLC and PETITION TO
24 EXPUNGE LIS PENDENS

25 Comes Now, Charles Lam ("Charles"), and hereby submits his Appendix to his Opposition
26 To The Petition To Assume In Rem Jurisdiction Over The NT Legacy Trust, Dated October 15,
27 2009 and Petition To Confirm Trustee And For Instructions And Petition For A Declaration That
28 The NT Legacy Trust Is Sole Member Of Tran Enterprises, LLC and Petition To Expunge Lis
Pendens, attaching the following Exhibits that are referenced in the Opposition:

**FOLEY
&
OAKES**

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

- A. Motion to Consolidate Cases, and for Stay of Second Case.
- B. The September 1, 2017 Motion for Temporary Restraining order and Preliminary Injunction.
- C. The September 1, 2017 Motion for Removal of Kerr and Kaufman as Trustee and Manager on Order Shortening Time.
- D. The September 5, 2017 Supplement to the Motion for Temporary Restraining Order and the Removal of Kerr and Kaufman as Trustee and Manager, which attached the recorded deeds from the August 31, 2017 double escrow transaction.
- E. The Notice of Entry of Order Granting Motion for Temporary Restraining Order and Setting Hearing on Preliminary Injunction.
- F. The September 19, 2017 Reply to Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction and Plaintiff's Motion for Removal of Kerr and Kaufman as Trustee and Manager.
- G. The September 19, 2017 Second Declaration of Charles Lam in Support of Reply to Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction and Plaintiff's Motion for Removal of Kerr and Kaufman as Trustee and Manager.
- H. The Minutes from the September 21, 2017 hearing before Judge Denton.
- I. The October 6, 2017 Order concerning Motion for Removal of Trustee and Appointment of Successor Trustee.
- J. October 15, 2009 – Assignment of Interest in Tran Enterprises to NT Legacy Trust
- K. October 23, 2009 – Operating Agreement for Tran Enterprises, LLC.

- 1 L. December 2, 2009 Assignment of Interest in Tran Enterprises to Charles
2 Lam
3 M. April 23, 2012 Order Confirming Plan or Reorganization for Tran
4 Enterprises.
5 N. September 4, 2013 Revocation of Power of Attorney and Assignment.
6
7 DATED this 17th day of November, 2017.

8
9 Submitted by:

10 FOLEY & OAKES, PC

11 /s/ J. Michael Oakes

12 Daniel T. Foley, Esq.

13 Nevada Bar No. 1078

14 J. Michael Oakes, Esq.

15 Nevada Bar No. 1999

16 626 So. 8th Street

17 Las Vegas, NV 89101

18 (702) 384-2070

19 *Attorneys for Charles Lam*
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that I am an employee
3 of Foley & Oakes, PC, and that on the 17th day of November, 2017, I served the following
4 document(s):

5 **APPENDIX TO OPPOSITION TO PETITION TO ASSUME IN REM JURISDICTION**
6 **OVER THE NT LEGACY TRUST, DATED OCTOBER 15, 2009 and PETITION TO**
7 **CONFIRM TRUSTEE AND FOR INSTRUCTIONS and PETITION FOR A**
8 **DECLARATION THAT THE NT LEGACY TRUST IS SOLE MEMBER OF TRAN**
ENTERPRISES, LLC and PETITION TO EXPUNGE LIS PENDENS

9 I served the above-named document(s) by the following means to the person s as listed below:

10 ☐ **By United States Mail**, postage fully prepaid to person(s) and addresses as follows:

11 ☒ **By Electronic Transmission through the ECF System:**

12 Mark A. Solomon, Esq. 13 Alexander G. LeVeque, Esq. 14 Craig D. Friedel, Esq. 15 Solomon Dwiggins & Freer, Ltd. 16 9060 West Cheyenne Avenue 17 Las Vegas, Nevada 89129 <i>Attorneys for P. Sterling Kerr, Trustee of the</i> <i>NT Legacy Trust, dated October 15, 2009</i>	
--	--

18 I declare under the penalty of perjury that the foregoing is true and correct.

19
20
21 **/s/ Elizabeth Lee Gould**
22 An employee of FOLEY & OAKES, PC
23
24
25
26
27
28

EXHIBIT “A”

EXHIBIT “A”

Steven D. Grierson

DEPARTMENT XIII
NOTICE OF HEARING
DATE 11/27/17 TIME 9:00 AM
APPROVED BY ST

1 MTN
2 J. Michael Oakes, Esq.
3 Nevada Bar No. 1999
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 Tel.: (702) 384-2070
8 Fax: (702) 384-2128
9 mike@foleyoakes.com
10 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

9 CHARLES LAM, individually and derivatively)
10 on behalf of TRAN ENTERPRISES, LLC, a)
11 Nevada limited liability company, and as)
12 Trustee of the NT REVOCABLE LIVING)
13 TRUST, dated the 15th day of October, 2009)

13 *Plaintiffs,*

14 vs.

15 P. STERLING KERR, individually and as)
16 Trustee of the NT LEGACY TRUST, dated the)
17 15th day of October, 2009, Nhu Tran)
18 Foundation, Inc., a Nevada non-profit)
19 corporation; and DOES I through V individuals;)
20 and ROE VI through X Corporations and)
21 Partnerships,)

20 *Defendants.*

Case No. A-17-760853-B
Dept. No. XIII

**MOTION TO CONSOLIDATE
CASES, AND TO STAY
PROCEEDINGS IN SECOND
CASE ON ORDER
SHORTENING TIME**

Date:
Time:

22 In the matter of the)
23 NT LEGACY TRUST, dated October 15, 2009)
24)
25)
26)
27)
28)

TO BE CONSOLIDATED WITH
Case No. P-17-093391-T
Dept. No. XXVI

RECEIVED

NOV 13 2017

DISTRICT COURT DEPT# 13

FOLEY
&
OAKES


1 **MOTION TO CONSOLIDATE CASES, AND TO STAY PROCEEDINGS IN SECOND**
2 **CASE ON ORDER SHORTENING TIME**

3 COMES NOW Plaintiff CHARLES LAM, individually and derivatively on behalf of
4 TRAN ENTERPRISES, LLC, a Nevada limited liability company, and as Trustee of the NT
5 REVOCABLE LIVING TRUST, dated the 15th day of October, 2009 by and through his
6 attorney, J. Michael Oakes, Esq., of FOLEY & OAKES, PC, and hereby moves this Court to
7 consolidate case numbers A-17-760853-B and P-17-093391-T into one action, since they have
8 common and identical questions of fact and law, and to stay the proceedings in the second case.

9 This Motion is made and based on the prior rulings from this Court, NRCP 42(a) and
10 EDCR 2.50, EDCR 4.03, the following Memorandum of Points and Authorities, the pleadings
11 and papers on file herein, and any arguments of counsel that may be entertained at the hearing of
12 this motion.
13

14 DATED this 13th day of November, 2017.

15 FOLEY & OAKES, PC

16
17 
18 J. Michael Oakes, Esq.
19 Nevada Bar No. 1999
20 626 So. 8th Street
21 Las Vegas, Nevada 89101
22 Attorneys for Plaintiffs
23
24
25
26
27
28

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

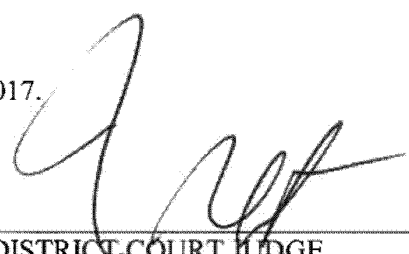
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER SHORTENING TIME

Good cause appearing therefor,

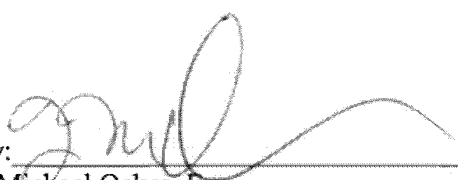
IT IS HEREBY ORDERED that the time for hearing of the following MOTION TO CONSOLIDATE CASES, AND TO STAY PROCEEDINGS IN SECOND CASE ON ORDER SHORTENING TIME shall be heard on the 27th day of November, 2017, at the hour of 9:00 a.m./p.m. in Department XIII.

DATED this 14th day of November, 2017.



DISTRICT COURT JUDGE

Respectfully Submitted:
FOLEY & OAKES, PC


By: _____
J. Michael Oakes, Esq.
Nevada Bar No. 1999
626 So. 8th Street
Las Vegas, Nevada 89101
(702) 562-8820 Telephone
(702) 562-8821 Facsimile
Attorneys for Plaintiffs

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In connection with prior hearings, as reflected in the minutes (See Exhibit "1"), this Court considered the issue of whether it had jurisdiction over this dispute. It determined that it did, but referred the Plaintiffs' motion to remove defendant Kerr as Trustee to the Probate Commissioner under EDCR 4.03. At the same hearing, this Court granted a preliminary injunction, and advised the Defendants that "if counsel wants to seek expungement of the lis pendens a motion can be filed."

Rather than file that motion to expunge, Defendants have filed the Second Case, as a Petition to Assume In Rem Jurisdiction Over the NT Legacy Trust, Dated October 15, 2009. As part of the Petition in the Second Case, they are asking to confirm Kerr as the Trustee of the NT Legacy Trust, for a summary adjudication that NT Legacy Trust is the sole member of Tran Enterprises, LLC, and for an expungement of the lis pendens. For ease of reference, a copy of the Petition (without exhibits) is attached as Exhibit "2."

These precise legal and factual questions are already pending in this, the First Case, and the filing of the Second Case can only be characterized as "forum shopping." Defendants did not like the ruling from this Court, and in their Petition, they explain that this Court "did not understand (or perhaps was not informed) that Lam's argument in support of a TRO was legally unsound." Obviously, Plaintiffs disagree, as the issuance of the temporary restraining order and the subsequent issuance of the preliminary injunction was critical to stop the losses on sales of real property, which already add up to over \$1,600,000. The larger point, however, is that the law does not favor running to a new court to have it "fix" rulings made by a prior court.

Given the identical set of facts, and the same legal questions already pending in this, the

1 First Case, it is quite surprising to see this Second Case, couched in terms of a Petition to
2 Assume Jurisdiction of the Trust and for Instructions. The only rationale for it would be to
3 forum shop.

4 Since the two cases involve the same set of facts and common questions of law, they
5 should be consolidated. This Court has already referred the Motion for Removal to the Probate
6 Commissioner, and that motion can and will be heard there. However, the report and
7 recommendation should come back to this Court, as the Court assigned to the First Case filed,
8 and as the court which referred the already pending Motion for Removal to the Probate
9 Commissioner for a report and recommendation.

11 Further, the remaining relief sought by the Defendants should be stayed. Other than
12 granting the motion for preliminary injunction, this Court did two things. First, it ordered that the
13 Motion for Removal of Kerr should be first heard by the Probate Commissioner. Second, it
14 informed the Defendants that if they wanted to seek expungement of the lis pendens, they could
15 do so by motion. The Court never suggested that a motion to expunge would, like the Motion for
16 Removal of trustee, be referred under EDCR 4.03.

18 If the Defendants wish to seek substantive relief from this Court, they are free to do so at
19 any time, and if they want this Court to send any other specific issue to the Probate
20 Commissioner, they can ask for that as well. In the meantime, the two cases should be
21 consolidated, and the request for relief in the Second Case should be stayed.

22 II. LEGAL ARGUMENT

23 THE TWO CASES HAVE COMMON QUESTIONS OF FACT AND LAW, SO 24 CONSOLIDATION IS PROPER, AND THE SECOND CASE SHOULD BE STAYED

25 NRCP 42(a) provides as follows:

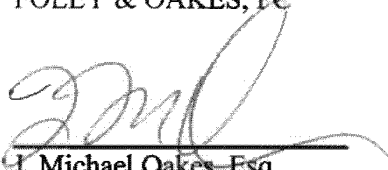
26 “42 (a) Consolidation. When actions involving a common
27 question of law or fact are pending before the court, it may order a
28 joint hearing or trial of any or all the matters in issue in the actions;
it may order all the actions consolidated; and it may make such

1 orders concerning proceedings therein as may tend to avoid
2 unnecessary costs or delay.”

3 This is a clear case where consolidation is proper. The Petition, i.e., the Second Case,
4 goes beyond the scope of this Court’s prior directions in making its earlier rulings, and is asking
5 for relief on issues that have already been the subject of briefing and consideration in the First
6 Case.

7 DATED this 13th day of November, 2017.

8 FOLEY & OAKES, PC

9
10 
11 J. Michael Oakes, Esq.
12 Nevada Bar No. 1999
13 626 So. 8th Street
14 Las Vegas, Nevada 89101
15 *Attorneys for Plaintiffs*
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Foley & Oakes, PC,
3 and that on the 14th day of November, 2017, I served the following document(s):

4 **MOTION TO CONSOLIDATE CASES, AND TO STAY PROCEEDINGS IN SECOND**
5 **CASE ON ORDER SHORTENING TIME**

6 I served the above-named document(s) by the following means to the person s as listed
7 below:

8 ☒ **By ECF System** (or the "Notice of Electronic Filing" to all addresses):

9
10 Lars Evensen, Esq.
11 Lance Earl, Esq.
12 Holland & Hart
13 9555 Hillwood Drive, 2nd floor
Las Vegas, NV 89134
Attorneys for Defendants

14 ☒ **By United States Mail**, postage fully prepaid to person(s) and addresses as
15 follows:

16 Mark A. Solomon, Esq.
17 Alexander G. LeVeque, Esq.
18 Craig D. Friedel, Esq.
19 Solomon Dwiggin & Freer, Ltd.
20 9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for P. Sterling Kerr, Trustee of the
NT Legacy Trust, dated October 15, 2009

21
22 ☐ **By Facsimile Transmission** to person(s) and addresses as shown above: No
23 error was reported by the fax machine that I used. A copy of the record of the fax transmission is
24 attached.

25 I declare under the penalty of perjury that the foregoing is true and correct.

26
27 
28 An employee of FOLEY & OAKES, PC

**FOLEY
&
OAKES**

EXHIBIT “1”

EXHIBIT “1”

REGISTER OF ACTIONS

CASE NO. A-17-760853-B

Charles Lam, Plaintiff(s) vs. P. Sterling Kerr, Defendant(s)

የጥራት ማረጋገጫ ስርዓት

Case Type: NRS Chapters 78-89

Date Filed: 09/01/2017

Location: Department 13

Cross-Reference Case A760853

Number:

PARTY INFORMATION

Defendant Kerr, P. Sterling

Lead Attorneys
Lars K. Evensen
Retained
7026694600(W)

Defendant NT Legacy Trust Dated October 15
2009

Lars K. Evensen
Retained
7026694600(W)

Plaintiff **Lam, Charles**

John M. Oakes
Retained
702-384-1070(W)

Plaintiff **NT Revocable Living Trust Dated
October 15 2009**

John M. Oakes
Retained
702-384-1070(W)

Plaintiff Tran Enterprises LLC

John M. Oakes
Retained
702-384-1070(W)

EVENTS & ORDERS OF THE COURT

09/21/2017 | All Pending Motions (9:00 AM) (Judicial Officer Denton, Mark R.)

Minutes

09/21/2017 9:00 AM

- APPEARANCES: John M. Oakes and Dan Foley, Attorneys Charles Lam, Pllt Lars Evensen, Attorney for Deft, Sterling Kerr Sterling Kerr, Deft/Trustee Relative to the Pltfs Motion for Preliminary Injunction, COURT stated it was not consolidating the Motion with trial on the merits and that it was not conducting an evidentiary hearing today. PLTF'S MOTION FOR REMOVAL OF KERR AND KAUFMAN AS TRUSTEE AND AS MANAGER ON ORDER SHORTENING TIME COURT referenced EDCR 4.03 as to referring the matter to the Probate Commissioner as Special Master relative to the status of Kerr and Kaufman as Trustee. Colloquy held regarding the Court having jurisdiction. Following argument by counsel regarding the Motion, COURT ORDERED matter REFERRED to the Probate Commissioner and DIRECTED Mr. Oakes to submit an order accomplishing the referral to the Probate Commissioner for a RECOMMENDATION on this issue. PLTF'S MOTION FOR PRELIMINARY INJUNCTION COURT STATED ITS FINDINGS, and ORDERED Motion GRANTED relative to any and all properties that are the subject of the upcoming sale. If counsel wants to seek expungement of the lis pendens a motion can be filed. COURT FURTHER ORDERED, bond SET at \$5,000.00. Mr. Oakes to submit the order.

[Return to Register of Actions](#)

EXHIBIT “2”

EXHIBIT “2”

Steven D. Grierson

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS

1 Mark A. Solomon (#418)
Alexander G. LeVeque (#11183)
2 Craig D. Friedel (#13873)
SOLOMON DWIGGINS & FREER, LTD.
3 9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
4 Telephone: 702.853.5483
Facsimile: 702.853.5485
5 msolomon@sdfnlaw.com
aleveque@sdfnlaw.com
6 cfriedel@sdfnlaw.com

7 Attorneys for P. Sterling Kerr, Trustee of the
NT Legacy Trust, dated October 15, 2009

8
9 DISTRICT COURT
CLARK COUNTY, NEVADA

10 In the Matter of the

11 NT LEGACY TRUST, dated October 15, 2009

Case No.: P-17-093391-T

Dept. No.: XXVI

Date of Hearing: October 27, 2017

Time of Hearing: 9:30 a.m.

12
13
14 PETITION TO ASSUME *IN REM* JURISDICTION OVER THE NT LEGACY TRUST,
DATED OCTOBER 15, 2009

15 -AND-

16 PETITION TO CONFIRM TRUSTEE AND FOR INSTRUCTIONS

17 -AND-

18 PETITION FOR A DECLARATION THAT THE NT LEGACY TRUST IS THE SOLE
19 MEMBER OF TRAN ENTERPRISES, LLC

20 -AND-

21 PETITION TO EXPUNGE LIS PENDENS

22
23 Petitioner, P. Sterling Kerr, Esq. ("Petitioner"), hereby petitions this Honorable Court,
24 pursuant to NRS 153.031, 164.010, 164.015 and 164.033 to assume *in rem* jurisdiction over the
25 NT Legacy Trust, dated October 15, 2009 (the "Legacy Trust"), to confirm Petitioner as Trustee
26 of the Legacy Trust, for instructions, for a declaration at the Legacy Trust is the sole member of

9040 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDRNLAW.COM



Tran Enterprises, LLC ("TE LLC"), a Nevada limited-liability company, and to expunge improvidently recorded lis pendens' on several parcels of real property owned by the Legacy Trust through TE LLC. This Petition is made and based on the Memorandum of Points and Authorities set forth herein, all of the papers and pleadings already on file with the Court, and any oral argument that the Court may entertain at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Charles Lam ("Lam"), son and beneficiary of the decedent, Nhu Thi Tran ("Tran"), has brought a civil action on behalf of TE LLC against the Petitioner, P. Sterling Kerr, Esq. ("Petitioner"), in his individual capacity and as Trustee of the Legacy Trust, which is pending in Department 13 of the Eighth Judicial District Court.

Procedurally, a threshold issue has arisen with respect to Lam's standing to bring such a lawsuit on behalf of TE LLC given that the Legacy Trust is the sole owner of TE LLC's membership interest, and that Lam was removed as TE LLC's manager in March of 2017.

The Legacy Trust is an irrevocable Nevada asset protection trust. Accordingly, this Court is the appropriate forum to determine the Legacy Trust's ownership interest in TE LLC and to exercise *in rem* jurisdiction over the Legacy Trust to oversee its administration now that Tran has passed away. This court is also the appropriate forum to instruct the Petitioner with regard to the internal affairs of the Legacy Trust, including the marshaling and liquidation of assets and payment of all testamentary bequests. For these reasons, Petitioner respectfully requests that this Court grant the instant petition in its entirety.

II. STATEMENT OF FACTS

INTERESTED PERSONS

1. Pursuant to NRS 153.031(2), Petitioners provide that the following individuals, on information and belief, are interested persons under the Trust and as to the relief requested in this Petition:

NAME	RELATIONSHIP	ADDRESS
Charles Lam	Beneficiary / Plaintiff in Case No. A-17- 7608563-B	c/o J. Michael Oakes, Esq. FOLEY & OAKES, PC 626 South Eighth Street Las Vegas, Nevada 89101
Vince Lam	Beneficiary	629 Shenandoah Road Corona, CA 92879
Tony Lam	Beneficiary	5956 Seville Avenue Huntington Park, CA 90255
Dennis Lam	Beneficiary	629 Shenandoah Road Corona, CA 92879
Lisa Lam	Beneficiary	5959 Seville Avenue Huntington Park, CA 90255
Bryan Lam	Beneficiary	5956 Seville Avenue Huntington Park, CA 90255
Ha Thi Tran	Beneficiary	10990 High Land Meadow Village Dr. Apt 807 Houston, TX 77089
Nhu Tran Foundation, Inc.	Beneficiary	2450 St. Rose Parkway, Suite 120 Henderson, NV 89074
Mary V. Kaufman	Former Trustee	2036 Laggia Court Las Vegas, NV 89117

FORMATION HISTORY AND OVERVIEW OF NHU THI TRAN'S ESTATE PLANNING

2. On October 15, 2009, Tran settled the Legacy Trust, a Nevada irrevocable asset protection trust. *See* NT Legacy Trust, a true and correct copy being attached hereto as Exhibit 1.

3. Tran appointed the Petitioner and Mary V. Kaufman ("Kaufman") as the initial Co-Trustees of the Legacy Trust. *See* Ex. 1, at p. 43.

4. On October 15, 2009, Tran assigned all of her right, title and interest to certain membership interests in TE LLC to the Legacy Trust. *See* Assignment, a true and correct copy being attached hereto as Exhibit 2.

5. TE LLC is a Nevada limited-liability company, formed for the purpose of holding several parcels of undeveloped real party. *See* TE LLC Operating Agreement, a true and correct copy being attached here as Exhibit 3.

6. On or about June 3, 2016, Kaufman tendered her resignation as Co-Trustee of the Legacy Trust thereby resulting in Petitioner being the sole Trustee of the Legacy Trust, as of June 3, 2016. *See* Kaufman Resignation, a true and correct copy being attached hereto as Exhibit 4.

7. On January 25, 2017, Tran passed away. *See* Death Certificate, a true and correct copy being attached hereto as Exhibit 5.

8. Section 3.2(A) of the Legacy Trust provides that upon Tran's death, the Trustee shall pay specific bequests to certain beneficiaries as follows:

- a. \$2,000,000 to Charles Lam, Tran's son;
- b. \$20,000 to Vince Lam, Tran's son;
- c. \$20,000 to Tony Lam, Tran's son;
- d. \$20,000 to Dennis Lam, Tran's grandson;
- e. \$20,000 to Lisa Lam, Tran's granddaughter;
- f. \$20,000 to Bryan Lam, Tran's grandson; and
- g. \$20,000 to Ha Thi Tran, Tran's sister. *See*, Ex. 1, at pp.10-11 (TRAN0081-82).

9. Section 3.2(B) of the Legacy Trust provides that, after the payment of specific bequests, the remainder and residual of the assets are to be paid to Nhu Tran Foundation, Inc. (the "Tran Foundation").

THE DISPUTE BETWEEN LAM AND PETITIONER FOLLOWING TRAN'S DEATH

The Removal of Lam as Manager of TE LLC

10. At the time of Tran's death, Lam was the manager of TE LLC.

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SOLVNLAW.COM

 **JEFFREY SOLOMON**
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS

11. On March 22, 2017, Petitioner, in his capacity as Trustee of the Legacy Trust, the sole member of TE LLC, terminated Lam as manager.¹ See Letter to Charles Lam, dated March 22, 2017, a true and correct copy being attached hereto as Exhibit 6.

12. On April 4, 2017, Lam responded to Petitioner's letter wherein he refused to acknowledge his removal. See, Letter to Sterling Kerr, dated April 4, 2017, a true and correct copy being attached hereto as Exhibit 7.

Lam's Business Court Complaint against Petitioner

13. On September 1, 2017, Lam, purportedly on behalf of TE LLC, filed a civil lawsuit against Petitioner, individually and as Trustee of the Legacy Trust, which seeks damages, declaratory relief and equitable relief. See Business Court Complaint, filed on September 1, 2017, a true and correct copy being attached hereto as Exhibit 8. Specifically, Lam seeks the following: (a) damages caused by Petitioner allegedly breaching a fiduciary duty and/or acting negligent by selling real properties owned by TE LLC for less than fair market value; (b) a declaration "setting forth the rights of the parties and their authority to act on behalf of the NT Legacy Trust, the Revocable Trust, and Tran Enterprises"; and (c) an order removing Petitioner as Trustee of the Legacy Trust, enjoining Petitioner from selling real property owned by TE LLC and/or the Legacy Trust, and appointing a receiver over the Legacy Trust and TE LLC. *Id.*

14. In addition the filing of the Business Court Complaint, Lam also filed a motion to remove the Petitioner as trustee of the Legacy Trust (the "Motion to Remove"), and a motion for a temporary restraining order and a preliminary injunction (the "Motion for TRO"), which sought to enjoin Petitioner from selling real property owned by the Legacy Trust TE LLC. See Motion to Remove & Motion for TRO, true and correct copies being attached hereto as Exhibit 9 and Exhibit 10, respectively.

Lam's Motion to Remove Petitioner as Trustee of the Legacy Trust

¹ Section 3.2 of the TC LLC Operating Agreement expressly provides that a manager may be removed "with or without cause" by a vote of the majority in interest of members. See Ex. 3, at p. 4.



15. As for the Motion to Remove, which was properly referred by Department 13 to this Court, the sole basis for removal of the Petitioner is that Tran signed a document on or about September 4, 2013, which purports to remove Petitioner and Kaufman as Co-Trustees of the Legacy Trust. *See* Revocation of Power of Attorney and Assignment, attached hereto as Exhibit 11. The Legacy Trust, however, is an irrevocable trust and has no provisions whatsoever that give Tran, its settlor, any power to remove a trustee. *See generally* Article VII of the Legacy Trust, Ex. 1, at pp. 22-31.

16. Moreover, even if Tran held a power to remove the Petitioner as Trustee (which she did not), the Legacy Trust requires formality and strict compliance with the removal procedure, which in this case required delivery to the Petition by certified or registered mail, courier, or hand delivery.² The purported "revocation" was never delivered to the Petitioner prior to Tran's death, and, in fact, expressly states in contravention of the strict requirements of Section 7.2(c) that the trustee revocation "is effective immediately upon [Tran's] signature herein subscribed."³

17. Therefore, as a matter of law, Petitioner cannot be, and has not been, removed as Trustee of the Legacy Trust on the basis the Lam has advanced.

Lam's Motion for TRO/Preliminary Injunction

18. Concurrently with the filing of the Business Court Complaint and the Motion to Remove Trustee, Lam also filed a Motion for TRO and Preliminary Injunction. *See* Motion for TRO, a true and correct copy being attached hereto as Exhibit 10. The Motion for TRO sought to

¹ 7.2(c) **Formality Required.**

Any document specified in this Section 7.2(c) **shall not be effective** unless se[n]t by certified mail or registered mail or by courier, postage and/or fees prepaid, return receipt request, by facsimile transmission (where receipt is capable of being determined), or by hand delivery (Emphasis added).

² Petitioner is also informed and believes that Tran may have lacked contractual capacity in September of 2013.



1 enjoin the Petitioner from selling real property owned by TE LLC. In support of his motion, Lam
2 erroneously asserted that he was the manager of TE LLC and that Petitioner had no authority to
3 act as Trustee of the Legacy Trust. Lam relied on the Revocation of Power of Attorney and
4 Assignment document which, as explained *supra*, is a legally inoperative instrument because (1)
5 Tran had no authority under the Legacy Trust to remove Petitioner as Trustee; and (2) even if she
6 did, the notice of removal was never delivered.

7 19. Presumably, the Business Court did not understand (or perhaps was not informed)
8 that Lam's argument in support of a TRO was legally unsound because on September 6, 2017, it
9 entered a temporary restraining order enjoining Petitioner from selling any further parcels of
10 property because "[t]he Plaintiffs have provided evidence to show that there is a legitimate
11 dispute as to the authority of Defendants Kerr and Kaufman to act in any capacity, based on the
12 Revocation signed on September 4, 2013 by Nhu Tran, the settlor of the trusts." *See* TRO Order,
13 at ¶ 4, a true and correct copy being attached hereto as Exhibit 12. Notably, however, the
14 Business Court went on to state that "the Court is not expressing an opinion on the ultimate merits
15 of the case" and that it did not find that there is a reasonable likelihood of success on the merits;
16 only that Plaintiff may be able to demonstrate a reasonable likelihood of success on the merits. *Id.*

17 20. On September 21, 2017, the Business Court held a non-evidentiary hearing on
18 Lam's Motion for Preliminary Injunction. *See* Business Court Minutes, a true and correct copy
19 being attached hereto as Exhibit 13. During the hearing, the Business Court granted the
20 preliminary injunction, increased the bond to \$5,000, and referred the Motion to Remove,
21 pursuant to EDCR 4.03, to this Court. *Id.* No written order has yet been entered by the Business
22 Court.

23 ***Lam's Lis Pendens***

24 21. Concurrently with the filing of the Business Court Complaint on September 1,
25 2017, Lam also filed and recorded a Notice of Pendency of Action (*Lis Pendens*). *See* *Lis*
26 *Pendens*, a true and correct copy being attached hereto as Exhibit 14.

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SOLVNLAW.COM

SOLOMON
DWIGONS & FREER
TRUST AND ESTATE ATTORNEYS



1 22. According to the Lis Pendens, Lam claims that the Business Court action "affects
2 title to certain parcels of real property owned by Trans [sic] Enterprises, LLC and the NT
3 Revocable Living Trust, dated the 15th day of October, 2009..." *Id.*

4 23. On September 27, 2017, Lam filed an Amended Lis Pendens, which released one
5 of the parcels and corrected an APN of one of the affected parcels. *See* Amended Lis Pendens, a
6 true and correct copy being attached hereto as Exhibit 15.

7 24. As set forth in greater detail herein, both the Lis Pendens and the Amended Lis
8 Pendens were improvidently filed as to the parcels owned by TE LLC because there is no dispute
9 as to the title of those parcels. Rather, Lam's alleged dispute is whether Petitioner has authority to
10 sell the parcels. Accordingly, the lis pendens' should be expunged as to the approximate sixteen
11 (16) parcels owned by TE LLC.

12 *Lam's Purported 10% Interest in TE LLC.*

13 25. On December 2, 2009, Tran executed and delivered to the Petitioner an
14 Assignment of Interest instrument which purportedly and conditionally assigns a 10%
15 membership interest in TE LLC to Lam. *See* Assignment of Interest, a true and correct copy being
16 attached hereto as Exhibit 16. Pursuant to its terms, the Assignment of Interest is effective "only
17 upon presentation to CHARLIE LAM from my attorney, P. STERLING KERR, ESQ." *Id.*

18 26. However, the Assignment of Interest is an inoperative instrument because Tran no
19 longer had any membership interests in TE LLC to assign to Lam as she previously assigned all
20 of her right, title and interest in TE LLC to the Legacy Trust two months prior in October of 2009.
21 *See Ex. 2.* Moreover, Tran never instructed Petitioner to deliver the Assignment of Interest to
22 Lam, presumably because she was informed by Lam in or around March of 2010 that he had no
23 interest in receiving and accepting the 10% membership interest. *See* Tran Handwritten Letter,
24 dated March 24, 2010, a true and correct copy being attached hereto as Exhibit 17.

25
26
27
28



III. ARGUMENT

A. THIS COURT SHOULD ASSUME *IN REM* JURISDICTION OVER THE LEGACY TRUST AND CONFIRM PETITIONER AS ITS TRUSTEE.

NRS 164.010 provides in relevant part:

Petition for assumption of jurisdiction; powers of court; petition for removal of trust from jurisdiction of court; determination of where trust is domiciled

1. Upon petition of any person appointed as trustee of an express trust by any written instrument other than a will, or upon petition of a settlor or beneficiary of the trust, the district court of the county in which any trustee resides or conducts business at the time of the filing of the petition or in which the trust has been domiciled as of the time of the filing of the petition shall assume jurisdiction of the trust as a proceeding in rem unless another court has properly assumed continuing jurisdiction in rem in accordance with the laws of that jurisdiction and the district court determines that it is not appropriate for the district court to assume jurisdiction under the circumstances.

5. When the court assumes jurisdiction pursuant to this section, the court:

(a) Has jurisdiction of the trust as a proceeding in rem as of the date of the filing of the petition.

NRS 164.015 further provides in relevant part:

1. The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust ... Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trust, including petitions with respect to a nontestamentary trust for any appropriate relief ...

Under its terms, the Legacy Trust is an irrevocable trust settled in Nevada. *See* Ex. 1, p. 31, Article VIII. Its initial trustees were the Petitioner and Kaufman. *See* Acceptance by Co-Trustees, Ex. 1, at p. 41. However, on June 3, 2016, Kaufman resigned as trustee thereby resulting in the Petitioner being the sole Trustee of the Legacy Trust from June 3, 2016, through the present. *See* Ex. 4.

Accordingly, this Court should assume *in rem* jurisdiction over the Legacy Trust and confirm Petitioner as its Trustee. Petitioner anticipates that Lam will object to the Court's confirmation of Petitioner as Trustee because of a document that he produced in the Business

1 Court litigation which purports to remove Petitioner as Trustee of the Legacy Trust. *See Ex. 2.*
2 However, this document is invalid as a matter of law for two reasons. First, the Legacy Trust did
3 not vest Tran with any authority to remove trustees. The Legacy Trust is an irrevocable trust. As
4 such, in the absence of an express revocation power, Tran as settlor had no authority to remove a
5 trustee. Second, even if Tran had such a power, the Legacy Trust expressly provides that a notice
6 of removal shall be delivered to the trustee to be effective. The purported removal document was
7 never delivered to Petitioner during Tran's lifetime and, therefore, is inoperative.

8 Assuming that this Court exercises *in rem* jurisdiction over the Legacy Trust, it should
9 also declare that it has *exclusive* jurisdiction over all matters concerning the Legacy Trust,
10 including, but not limited to, administration, internal affairs, and matters concerning disputes over
11 the Legacy Trust's property. NRS 164.010(1). Under well-settled and controlling law, "when one
12 court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem*
13 jurisdiction over the same *res*."⁴ This is commonly known as the "prior-exclusive-jurisdiction
14 doctrine".⁵ The prior-exclusive-jurisdiction doctrine is one that is not only recognized and
15 followed by the Supreme Court of Nevada, but is also recognized and followed by the United
16 States Supreme Court.⁶ In *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. 456 (1939), a
17 trust proceeding, the United States Supreme Court aptly stated:

18 We have said that the principle applicable to both federal and state courts is that
19 the court first assuming jurisdiction over property may maintain and exercise that
20 jurisdiction to the exclusion of the other, it's not restricted to cases where property
21 has actually been seized under judicial process before a second suit is instituted,
22 but applies as well where suits are brought to marshal assets, administer
23 trusts, or liquidate estates, and in suits of a similar nature where, to give

22 ⁴ *Chapman v. Deutsche Bank Nat'l Tr. Co.*, 129 Nev. Adv. Op. 34, 302 P.3d 1103, 1105 (2013)
23 (quoting *Marshall v. Marshall*, 547 U.S. 293, 311, 126 S.Ct. 1735, 164 L.Ed.2d 480 (2006)).

24 ⁵ *Id.*

25 ⁶ *See e.g. Penn Gen. Cas. Co. v. Commonwealth of Pennsylvania ex rel. Schnader*, 55 S. Ct. 386,
26 390 (1935) ("[T]wo courts having concurrent jurisdiction in *rem*, one first taking possession
27 acquires exclusive jurisdiction.");

effect to its jurisdiction, the court must control the property. The doctrine is necessary to the harmonious cooperation of federal and state tribunals.

An exercise of *in rem* jurisdiction over the Legacy Trust confers upon this Court the exclusive jurisdiction to hear and decide all matters relating to the Legacy Trust. In this case, Petitioner seeks not only his confirmation as Trustee, but also orders and declarations concerning the Legacy's Trust's property, including, but not limited to, TE LLC and its assets. Nevada law expressly authorizes this Court to make declarations with respect to matters relating to the Legacy Trust. Indeed, NRS 164.010(2)(d) states that at the time of the hearing on the Petition, the Court may consider making orders on "matters relating to the trust, including, without limitation, matters that might be addressed in a declaratory judgment relating to the trust under subsection 2 of NRS 30.040 or petitions filed pursuant to NRS 153.031 or 164.015."⁸

B. THIS COURT SHOULD DECLARE THAT THE LEGACY TRUST IS THE SOLE MEMBER OF TRAN ENTERPRISES, LLC AND THAT CHARLES LAM IS NEITHER A MEMBER NOR A MANAGER OF TRAN ENTERPRISES, LLC.

NRS 164.015(1) and 164.033(1) provide this Court authority to declare that the Legacy Trust is the sole member of TE LLC, and that, as the sole member, the Legacy Trust can remove and replace TE LLC's manager. Indeed, NRS 164.033 states in relevant part:

1. The trustee or an interested person may petition the court to enter an order:

(a) If the trustee is in possession of, or holds title to, property and the property or an interest in it is claimed by another.

⁷ 305 U.S. at 466 (Emphasis added). See also *In re Thomas and Agnes Carvel Foundation*, 36 F.Supp.2d 144 (S.D.N.Y. 1999) (declining to exercise jurisdiction, pursuant to *Princess Lida*, over an intervivos trust because the New York state surrogate's court had already exercised jurisdiction over the trust).

⁸ NRS 164.010(2)(d). NRS 30.040(2) provides: "A maker or legal representative of a maker of a will, trust or other writings constituting a testamentary instrument may have determined any question of construction or validity arising under the instrument and obtain a declaration of rights, status or legal relations thereunder. Any action for declaratory relief may only be made in a proceeding commenced pursuant to the provisions of title 12 or 13 of NRS, as appropriate. See also NRS 30.070.

(b) If the trustee has a claim to property and another holds title to or is in possession of the property.

Prior to the settling of the Legacy Trust, Tran, in her individual capacity, was the sole member of TE LLC. However, on October 15, 2009, Tran assigned all of her right, title and interest in her TE LLC membership interest to the Legacy Trust. *See* Ex. 2. Accordingly, this Court can and should declare that the Legacy Trust is the sole member of TE LLC and, therefore, Lam has no membership interest therein. With regard to Lam's claim that he holds a 10% membership interest in TE LLC, the purported Assignment of Interest that Tran signed on December 2, 2009 is legally inoperative because Tran had already divested herself of her membership interests in TE LLC two months prior. Moreover, even if she had a membership interest to give, the Assignment of Interest instrument was never delivered to Lam by the Petitioner, primarily because Lam refused to accept delivery of the gift, as evidenced by Tran's 2010 letter to the Petitioner. *See* Ex. 17.

Similarly, this Court should also declare that the Petitioner's removal of Lam as TE LLC's manager was proper given that (1) Petitioner is the Trustee of the Legacy Trust, the sole owner of TE LLC's membership interest; and (2) pursuant to TE LLC's Operating Agreement, a manager can be removed and replaced upon a majority vote of the membership, which in this case only required the vote of the Petitioner. *See*, Ex. 3, at p. 4.

C. THIS COURT SHOULD EXPUNGE ALL LIS PENDENS RECORDED AGAINST THE REAL PROPERTY OWNED BY TE LLC.

NRS 14.010 permits a plaintiff to file a lis pendens only "[i]n an action for the foreclosure of a mortgage upon real property, or affecting title or possession of real property." "As a general proposition, lis pendens are not appropriate instruments for use in promoting recoveries in actions for personal or money judgments; rather, their office is to prevent the transfer or loss of real property which is the subject of dispute in the action that provides the basis for the lis pendens." *Levinson v. Eighth Judicial Dist. Ct.*, 109 Nev. 747, 750 (Nev. 1993).

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS

Sdf

1 Accordingly, NRS 14.015(1) and (2) provide that a defendant may request a hearing upon
2 15 days' notice, whereupon Lam must:

3 ... establish to the satisfaction of the court that:

- 4 (a) The action is for the foreclosure of a mortgage upon the real property
5 described in the notice or affects the title or possession of the real property
6 described in the notice;
- 7 (b) The action was not brought in bad faith or for an improper motive;
- 8 (c) The party who recorded the notice will be able to perform any conditions
9 precedent to the relief sought in the action insofar as it affects the title or
10 possession of the real property; and
- 11 (d) The party who recorded the notice would be injured by any transfer of an
12 interest in the property before the action is concluded.

13 NRS 15.015(3) provides that: "[i]n addition to the matters enumerated in subsection 2, the party
14 who recorded the notice must establish to the satisfaction of the court either:

- 15 (a) That the party who recorded the notice is likely to prevail in the action; or
- 16 (b) That the party who recorded the notice has a fair chance of success on the
17 merits in the action and the injury described in paragraph (d) of subsection
18 2 would be sufficiently serious that the hardship on him or her in the event
19 of a transfer would be greater than the hardship on the defendant resulting
20 from the notice of pendency, - and that if the party who recorded the
21 notice prevails he or she will be entitled to relief affecting the title or
22 possession of the real property.

23 If Lam fails to meet the foregoing burden, the lis pendens' must be expunged. NRS 14.015(5).

24 According to his Amended Notice of Lis Pendens, Lam improvidently recorded his
25 pendens' against the following parcels of real property owned by TE LLC:

<u>APN Number</u>	<u>Property Description</u>
161-28-301-006	Hacienda Avenue and Morris Street
126-10-501-015	Iron Mountain and Patricia Avenue
176-13-501-030	Mohawk Street and Shelbourne Avenue
161-28-401-013	Nellis Blvd and Rawhide Avenue
177-17-701-012	Ford Avenue and Ensworth Street

9040 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89127
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDHNYLAW.COM

SOLOMON
DWIGINS & REER
ATTORNEYS
IN THE STATE OF NEVADA

<u>APN Number</u>	<u>Property Description</u>
177-17-701-011	Ford Avenue and Ensworth Street
140-08-601-013	Nellis Blvd and Gowan Road
139-16-310-017	Cartier Avenue and Martin L. King Blvd
126-03-801-002	Dolan Martin and O'Hare Avenue
126-01-501-004	Trails End Avenue and McKinister Road
176-13-501-036	Mohawk Street and Mistral Avenue
179-27-605-005	Roan Road and Derby Drive
179-27-605-004	Derby Drive
179-27-605-003	Pinto Road and Colt Drive
177-17-701-013	Ford Avenue and Ensworth Street
161-28-401-009	US-95 and Denning Street

For the reasons set forth *supra*, the lis pendens' recorded against all of the parcels owned by TE LLC are required to be expunged because there is no dispute that TE LLC owns the parcels. Moreover, the record establishes that there is no genuine dispute concerning the Legacy Trust's ownership of TE LLC and its ability to remove Lam as the manager. Lam's case is really about control; not ownership. The question of who has the right to control the Legacy Trust and TE LLC is not a statutory basis for the recordation of a lis pendens. Title and possession are not in dispute. Lis pendens', therefore, are not necessary and only cloud title to the detriment of the Legacy Trust. Accordingly, the lis pendens' should be expunged.

D. PETITIONER REQUESTS INSTRUCTIONS WITH REGARD TO PAYING SPECIFIC BEQUESTS AND DISTRIBUTING THE REMAINDER TO THE RESIDUAL BENEFICIARY.

NRS 153.031 provides in relevant part:

1. A trustee or beneficiary may petition the court regarding any aspect of the affairs of the trust, including:

...

(g) Instructing the trustee;

1 The Legacy Trust provides that upon Tran's death, the trustee is required liquidate trust
2 assets to pay \$2,120,000.00 in specific bequests. *See Ex. 1*, at pp. 10-11. Following payment of
3 the specific bequests, the trustee is then directed to pay the residual and remaining trust estate to
4 the Nhu Tran Foundation, Inc. ("Tran Foundation") *Id.*

5 The Legacy Trust currently has enough liquidity to satisfy all of the specific bequests,
6 including the \$2 million specific bequest to Lam. Accordingly, Petitioner respectfully requests an
7 instruction from this Court to pay the specific bequests without further delay. Upon satisfaction of
8 the specific bequests, Petitioner further requests instructions from this Court to sell the remaining
9 assets of the Legacy Trust, including those parcels of real property owned by TE LLC, to pay the
10 residual and remainder to the Tran Foundation. Not only does this Court have the equitable power
11 to do so, but the express terms of the Legacy Trust also grant the Petitioner the power to sell
12 assets without Court approval. *See Ex. 1*, at Articles 6.3, 6.23.⁹

13 WHEREFORE, Petitioner respectfully requests that this Court issue the following relief:

14
15 ⁹ "In addition to the powers vested in them by law and other provisions of this Instrument, the
16 Trustees shall have the following powers, exercisable in their sole and absolute discretion,
without court approval, and effective until actual distribution of all property...

17 **6.3 Sale or Lease of Property.** For prices and upon such terms as they deem property. (i) to sell at
18 public or private sale, or to exchange, any real or personal property; (ii) to give options for any
19 such sales, exchanges, or leases; and (iii) to lease Trust property for terms within or beyond the
term of the Trust and for any purpose, including exploration for an removal of gas, oil, and other
minerals; and to enter into community oil leases, pooling and utilization agreements.

20 **6.23 Broad Powers Of Distribution.** Upon any division or partial or final distribution of the
21 Trust estate, the successor Trustee shall have the power to partition, allot and distribute the Trust
22 estate in undivided interest or in kind, or partly in money and partly in kind, at valuations
23 determined by the Trustees, and to sell such property as the Trustees, in the Trustees' discretion,
24 considers necessary to make such division or distribution. In making any division or partial or
25 final distribution of the Trust estate, the Trustees shall be under no obligation to make a pro rata
26 division or to distribute the same assets to beneficiaries similarly situated. Rather, the Trustees
27 may, in the Trustees' discretion, make non pro rata divisions between Trusts or shares and non
pro rata distributions to beneficiaries as long as the respective assets allocated to separate trusts or
shares or the distributions to beneficiaries have equivalent or proportionate fair market value. The
income tax basis of assets allocated or distributed non pro rata need not be equivalent and may
vary to a greater or lesser amount, as determined by the Trustees, in his or her discretion, and no
adjustment need be made to compensate for any difference in basis.

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



1. An order assuming *in rem* jurisdiction of the Legacy Trust;
2. An order confirming Petitioner, P. Sterling Kerr, Esq., as the Trustee of the Legacy Trust;
3. A declaration that the Legacy Trust is the sole member of Tran Enterprises, LLC;
4. A declaration that Charles Lam has no membership interest in Tran Enterprises, LLC;
5. A declaration that Petitioner had authority to remove Charles Lam as Manager of TE LLC in or about March of 2017;
6. An order expunging all lis pendens' recorded against the real property owned by the Legacy Trust though its membership interest in TE LLC;
7. An order instructing the Petitioner to pay all specific bequests, to liquidate all remaining Trust assets, and to pay the residue of the Legacy Trust estate to the Tran Foundation, the remainder beneficiary; and
8. An order for any and all other relief just and warranted under the circumstances.

Dated this 26 day of October, 2017.

SOLOMON DWIGGINS & FREER, LTD.



Mark A. Solomon (#418)
Alexander G. Leveque (#11183)
Craig D. Friedel (#13873)
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Petitioner, P. Sterling Kerr

7060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SOLAW.COM

SOLOMON
DAVIGONS & FRIER
ATTORNEYS AT LAW

VERIFICATION

Petitioner, P. STERLING KERR, whose mailing address is 2450 St. Rose Parkway, Suite 120, Henderson, Nevada 89074, declares under penalties of perjury of the State of Nevada:

That he is the Petitioner who makes the foregoing PETITION TO ASSUME *IN REM* JURISDICTION OVER THE NT LEGACY TRUST, DATED OCTOBER 15, 2009 -AND- PETITION TO CONFIRM TRUSTEE AND FOR INSTRUCTIONS -AND- PETITION FOR A DECLARATION THAT THE NT LEGACY TRUST IS THE SOLE MEMBER OF TRAN ENTERPRISES, LLC -AND- PETITION TO EXPUNGE LIS PENDENS, that he has read said petition and knows the contents thereof, and that the same is true of his own knowledge except for those matters stated on information and belief, and that as to such matters he believes them to be true.

DATED this 9th day of October, 2017


P. STERLING KERR, ESQ.

EXHIBIT “B”

EXHIBIT “B”



1 MTN
2 J. MICHAEL OAKES, ESQ.
3 Nevada Bar No. 1999
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 (702) 384-2070 - office
8 (702) 384-2128 - facsimile
9 mike@foleyoakes.com
10 Attorneys for Plaintiffs

11 DISTRICT COURT
12 ***
13 CLARK COUNTY, NEVADA

14 CHARLES LAM, individually and derivatively)
15 on behalf of TRAN ENTERPRISES, LLC, a)
16 Nevada limited liability company, and as)
17 Trustee of the NT REVOCABLE LIVING)
18 TRUST, dated the 15th day of October, 2009)

19 *Plaintiffs,*

20 vs.

21 P. STERLING KERR, individually and as)
22 Trustee of the NT LEGACY TRUST, dated the)
23 15th day of October, 2009; Mary V. Kaufman, as)
24 Trustee of the NT Legacy Trust, dated the 15th)
25 day of October, 2009; and DOES I through V)
26 individuals; and ROE VI through X)
27 Corporations and Partnerships,)

28 *Defendants.*

Case No. A-17-760853-B
Dept. No. XIII

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

29 Plaintiffs, CHARLES LAM, individually and derivatively on behalf of TRAN
30 ENTERPRISES, LLC, a Nevada limited liability company, and as Trustee of the NT
31 REVOCABLE TRUST, dated the 15th day of October, 2009, collectively herein referred to as
32 ("the Plaintiffs"), hereby apply for a Temporary Restraining Order and Preliminary Injunction,
33 preventing Kerr and Kaufman from taking any other steps to dispose of real property as Trustees
34 of the NT Legacy Trust, or as manager of Tran Enterprises.

**FOLEY
&
OAKES**

1 This Motion is based upon the following Memorandum of Points and Authorities, the
2 Declaration of Charles Lam and such argument as will be heard at the time of hearing this matter
3 or any subsequent proceeding.

4 DATED this 1st day of September, 2017.

5
6 Submitted by:

7 FOLEY & OAKES, PC

8 
9 J. Michael Oakes, Esq.

10 Nevada Bar No. 1999

11 626 So. 8th Street

12 Las Vegas, NV 89101

13 (702) 384-2070

14 Attorneys for Plaintiffs
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The facts in this case are egregious and warrant immediate equitable relief. This is truly an
3 urgent matter, as evidenced by the fact that another double escrow closing occurred just yesterday, to
4 the detriment of Tran Enterprises, and its primary member, which is either the NT Legacy Trust or the
5 Revocable Trust.

6 Contemporaneously, Plaintiffs have filed a Motion to Remove Kerr and Kaufman as Trustees
7 or Any Other Capacity, and have asked that it be heard on Order Shortening Time.

8 That motion seeks to remove Defendants Kerr and Kaufman as Trustees of the NT Legacy
9 Trust, and from any other capacities for the entities named herein. The basis for removal is the signed
10 Revocation of Power of Attorney and Assignment signed and notarized by Nhu Tran, the Settlor of
11 the trusts, on September 4, 2013. The Revocation says "the undersigned hereby revokes any and all
12 General or Special Powers of Attorney to act as **Trustee or in any other capacities**...if any,
13 previously granted to Mary V. Kaufman, Individual, and P. Sterling Kerr, Esq." (Emphasis added).
14 (See the Declaration of Charles Lam, filed contemporaneously herewith, which attached the
15 Revocation as an Exhibit).

16 This motion seeks a temporary restraining order, preventing them from taking any further
17 actions to dispose of real properties owned by Tran Enterprises or the Revocable Trust.

18 This is necessary to put a stop to the rushed liquidation of 31 parcels of real property that were
19 accumulated by Nhu Tran during her lifetime, 23 of which were titled in the name of Tran
20 Enterprises, LLC and 8 of which are titled in the name of NT Revocable Living Trust.

21 The essence is that Defendant Kerr, following the death of his client, Nhu Tran, has seized
22 control of all of her assets, asserting that the documents he prepared gave him full power and control
23 over all of the entities he created.

24 Using that control and knowing it was disputed, Kerr has been selling the properties in double
25 escrow transactions, where Tran Enterprises sells the property and its Buyer sells it again to someone
26

1 else on the same day for a much greater price. This conduct amounts to gross negligence or willful
2 misconduct.

3 The first double escrow closed on August 4, 2017. The result of that double escrow was that
4 Tran Enterprises, LLC received consideration of \$800,000 for the four properties, and on that same
5 day, the buyer of those properties sold them to a third party for \$1,200,000. These facts are a matter
6 of public record and are set forth in the Declaration of Charles Lam, filed simultaneously herewith. As
7 a result, Tran Enterprises received \$400,000 less than the fair market value for those properties.
8

9 **Another double escrow closed on August 31, with at least a \$450,000 difference - and**
10 **probably a \$1,200,000 difference - between the price paid to Tran Enterprises and the price**
11 **paid to its buyer!**

12 The remaining properties are essentially owned free and clear, and there is absolutely no
13 reason whatsoever for a rush to sale. Even so, Kerr has informed the Plaintiff Charles Lam that they
14 have 13 other properties under contract for sale, and intend to sell them on or after September 9, 2017.
15 (It may be 7 or 8 properties now, due to yesterday's double escrow sale, which they rushed through,
16 not waiting for their own stated September 9 date).
17

18 Kerr and Kaufman should be stopped from taking any further actions as Trustees, or in the
19 capacity as disputed manager of Tran Enterprises.

20 II.

21 STATEMENT OF FACTS

22 The facts of this matter are set forth in the Declaration of Charles Lam, filed
23 simultaneously herewith. For ease of reference, we have restated them below:

24 1. I am one of the three sons of Nhu Tran. The other sons are Tony Lam ("Tony") and
25 Vince Lam ("Vince"). Tony and Vince live out of town. My mother and I resided together for the
26 last thirty years. As she grew older, she was diabetic, and I cared for her up until the time when
27 she died on January 27, 2017.
28

1 2. I am a Nevada licensed real estate agent. During my mother's lifetime, I managed
2 her affairs. She acquired numerous properties, and as of the date of her death, Tran Enterprises,
3 LLC "(Tran Enterprises)" owned 24 parcels of real property and the NT Revocable Living Trust,
4 dated the 15th day of October, 2009 ("the Revocable Trust") owned seven parcels of real property.
5 I had assisted my mother in negotiating and concluding all of the property acquisitions.

6 3. For Tran Enterprises, I was the manager since its very inception on October 22,
7 2009. As far as I am concerned, I am still the Manager but the Defendant, Sterling Kerr ("Kerr")
8 has asserted that he is the manager and has filed an amended annual list stating that he is Manager.
9 I believe I am also a 10% Member of Tran Enterprises.

10 4. For the Revocable Trust, I was originally named as the Successor Trustee and that
11 was never revised. Therefore, based upon the death of my mother, I am now the Trustee of the
12 Revocable Trust.

13 5. Shortly following my mother's death on January 27, 2017, I received a letter from
14 Kerr, dated March 22, 2017. A copy of the letter is attached as Exhibit 1. In the letter, he
15 informed me that, due to my mother's death, a new trust identified as the NT Legacy Trust now
16 owned 100% of the membership interest in Tran Enterprises, that he was the Successor Trustee,
17 that I was being fired as manager of Tran Enterprises, and that the assets of the Revocable Trust
18 "pour into the NT Legacy Trust."

19 6. At the time of receipt of that letter, I was still grieving my mother's death. It took
20 me as a complete shock, because I had always managed her affairs during her lifetime and I was
21 capable of doing so following her death. She never informed me that I would be removed from my
22 positions, and in fact, often discussed with me what I would do with the properties once she passed
23 away. If any documents ever provided that I was to be removed from all positions having
24 authority over the properties, I believe my mother did not understand that.

25 7. I wrote to Kerr on April 4, 2017 and expressed my displeasure about his letter. I
26
27
28

1 told him that I should not be removed from my positions. I never heard from him after sending
2 that letter.

3 8. The next thing I heard was in August of 2017, when I was informed by third parties
4 that properties belonging to Tran Enterprises had been sold by Kerr. I was given enough
5 information to learn which properties were involved and, based thereon, I was able to locate the
6 deeds.
7

8 9. There are three deeds relating to the transaction, and they are attached to this
9 declaration as Exhibits 2-A, 2-B, and 2-C. As shown by the deeds, Kerr had actually completed
10 the sale of four properties belonging to Tran Enterprises. Tran Enterprises sold APN's 176-16-
11 601-048 and 176-16-601-049 to Edward Homes, Inc., on August 4, 2017 for \$550,000 and sold
12 APN's 176-21-501-027 and 176-21-501-028 to Edward Homes, Inc., on August 4, 2017 for
13 \$250,000, for a combined price of \$800,000. Immediately following the sale of those four
14 properties, Edward Homes, Inc. sold those same four properties to Buffalo Wing, LLC for
15 \$1,200,000. This was a double escrow transaction, with all three deeds being recorded on August
16 4, 2017 as instrument numbers 2075, 2076, and 2077.
17

18 10. I contacted Kerr's office and was told to speak to his attorney, Lars Evensen of
19 Holland & Hart. I met with him and was provided a letter dated August 21, 2017, a copy of which
20 is attached as Exhibit 3. During the meeting, I expressed my displeasure over what had happened,
21 but he would not provide me any information concerning any of the other properties.
22

23 11. In a subsequent letter dated August 23, 2017, attached as Exhibit 4, he told me that
24 they intend to sell all of the other properties owned by Tran Enterprises and NT Legacy Trust. He
25 also told me that thirteen of the properties are currently under contract, with some of them starting
26 to close on or after September 9, 2017. He refused to provide me any information at all
27 concerning which properties were to be sold, their pricing, or any other information concerning the
28 sale. I had asked for information concerning the manner in which the properties had been

1 marketed or whether there were any appraisals to justify the sales prices. They have refused to
2 provide me any such information.

3 12. To the best of my knowledge, there are no appraisals, and the properties were never
4 listed through the multiple listing service.

5 13. The letter of August 23, 2017 gave me two pages from what they say was the Trust
6 Agreement for the NT Legacy Trust. They would not provide me the complete Trust and they
7 redacted some of the information they gave me.
8

9 14. My mother became unhappy with Kerr in 2013. She asked me to prepare a
10 Revocation whereby all of the rights of Kerr and Mary V. Kaufman would be revoked. I did so,
11 and my mother signed that document on September 4, 2013, and her signature was notarized at
12 Wells Fargo Bank. A copy of the Revocation is attached as Exhibit 5.

13 15. I am still the Trustee of the Revocable Trust. I have never made any distributions of
14 assets owned by the Trust. Specifically, I have never distributed any of the real property owned by
15 that Trust, and I never distributed the membership interest, if any, of the Revocable Trust in Tran
16 Enterprises.
17

18 16. Today I was informed by a third party that Kerr just sold other properties belonging
19 to Tran Enterprises in another double escrow transaction, whereby Tran Enterprises received
20 \$1,500,000 less than the same day sale by its buyer to a third party. This was from the same
21 source who told me about the first sale, which all turned out to be true. I have not been able to pull
22 those deeds yet to verify if this is true.

23 17. Tran Enterprises currently owns the following described real properties:
24

<u>APN Number</u>	<u>Property Description</u>
161-28-301-006	Hacienda Avenue and Morris Street
126-10-501-015	Iron Mountain and Patricia Avenue
176-35-501-035	South Jones Blvd and West Levi Street

1	176-35-501-034	South Jones Blvd and West Levi Street
2	176-35-501-033	South Jones Blvd and West Levi Street
3	176-13-501-130	Mohaw Street and Shelbourne Avenue
4	176-16-601-048	Shelbourne Avenue and Buffalo Drive
5	161-28-401-013	Nellis Blvd and Rawhide Avenue
6	176-36-201-001	Jones Blvd and Somerset Hills Avenue
7	177-17-701-012	Ford Avenue and Ensworth Street
8	177-17-701-011	Ford Avenue and Ensworth Street
9	140-08-601-013	Nellis Blvd and Gowan Road
10	139-16-310-017	Cartier Avenue and Martin L. King Blvd
11	126-03-801-002	Dolan Martin and O'Hare Avenue
12	126-01-501-004	Trails End Avenue and McKinister Road
13	176-13-501-036	Mohawk Street and Mistral Avenue
14	176-16-601-049	Camero Avenue and Buffalo Drive
15	176-21-501-028	Northeast of Agate and Cimarron Road
16	179-27-605-005	Roan Road and Derby Drive
17	179-27-605-004	Derby Drive
18	179-27-605-003	Pinto Road and Colt Drive
19	176-21-501-027	Cimarron Road and Agate Avenue
20	177-17-701-013	Ford Avenue and Ensworth Street
21	161-28-401-009	US-95 and Denning Street
22		
23		
24		
25		
26		
27		
28		

18. The Revocable Trust currently owns the following described real properties:

<u>APN Number</u>	<u>Property Description</u>

040-13-401-001	Moapa Valley
161-18-510-033	Sandhill and Sunset Village
034-00-002-020	Bunkerville
139-16-310-055	Hyde Avenue and West Street
042-09-000-003	Moapa Valley
139-23-211-020	Fifth Street and Mccovern Avenue
161-18-510-052	Sandhill and Sunset Village

19. All of the foregoing parcels of real property are unique.

III.

ARGUMENT

The Court Should Issue a Temporary Restraining Order to Prevent Kerr and Kaufman from Acting As Trustees Without A Court Order

NRCP 65 states, in pertinent part, as follows:

...(b) **Temporary Restraining Order; Notice; Hearing; Duration.** A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 15 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at

1 the earliest possible time and takes precedence of all matters
2 except older matters of the same character; and when the motion
3 comes on for hearing the party who obtained the temporary
4 restraining order shall proceed with the application for a
5 preliminary injunction and, if the party does not do so, the court
6 shall dissolve the temporary restraining order. On 2 days' notice to
7 the party who obtained the temporary restraining order without
8 notice or on such shorter notice to that party as the court may
9 prescribe, the adverse party may appear and move its dissolution or
10 modification and in that event the court shall proceed to hear and
11 determine such motion as expeditiously as the ends of justice
12 require.

13 **(c) Security.** No restraining order or preliminary injunction shall
14 issue except upon the giving of security by the applicant, in such
15 sum as the court deems proper, for the payment of such costs and
16 damages as may be incurred or suffered by any party who is found
17 to have been wrongfully enjoined or restrained. No such security
18 shall be required of the State or of an officer or agency thereof.

19 **(d) Form and Scope of Injunction or Restraining Order.**
20 Every order granting an injunction and every restraining order
21 shall set forth the reasons for its issuance; shall be specific in
22 terms; shall describe in reasonable detail, and not by reference to
23 the complaint or other document, the act or acts sought to be
24 restrained; and is binding only upon the parties to the action, their
25 officers, agents, servants, employees, and attorneys, and upon
26 those persons in active concert or participation with them who
27 receive actual notice of the order by personal service or otherwise.

18 As explained in *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987):

19 A preliminary injunction to preserve the status quo is normally
20 available upon a showing that the party seeking it enjoys a
21 reasonable probability of success on the merits and that the
22 defendant's conduct, if allowed to continue, will result in
23 irreparable harm for which compensatory damages is an
24 inadequate remedy.

25 Land is unique, and the loss of land is an irreparable injury.

26 In order to preserve the status quo while the issues raised herein are litigated, the Court
27 should issue a temporary restraining order, followed by setting a hearing on the request for a
28 preliminary injunction.

1 **Certification Regarding Notice**

2 Lars Evensen of Holland and Hart has represented Kerr relative to this matter. By signing
3 this pleading, counsel for Plaintiffs hereby certifies that he will email copies of the pleadings filed
4 herein to Lars Evensen by 1:30 today, and will call him to follow up on that. No further notice
5 should be required.

6 DATED this 1st day of September, 2017.

7
8 FOLEY & OAKES, PC

9 

10 J. Michael Oakes, Esq.

11 Nevada Bar No. 1999

12 626 So. 8th Street

13 Las Vegas, NV 89101

14 (702) 384-2070

15 Attorneys for Plaintiffs
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “C”

EXHIBIT “C”

Steven D. Grierson

1 MTN
2 J. MICHAEL OAKES, ESQ.
3 Nevada Bar No. 1999
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 (702) 384-2070 - office
8 (702) 384-2128 - facsimile
9 mike@foleyoakes.com
10 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

DEPARTMENT XIII
NOTICE OF HEARING
DATE 9/6/17 TIME 9am
APPROVED BY *MD*

11 CHARLES LAM, individually and derivatively)
12 on behalf of TRAN ENTERPRISES, LLC, a)
13 Nevada limited liability company, and as)
14 Trustee of the NT REVOCABLE LIVING)
15 TRUST, dated the 15th day of October, 2009)

16 *Plaintiffs,*

17 vs.

18 P. STERLING KERR, individually and as)
19 Trustee of the NT LEGACY TRUST, dated the)
20 15th day of October, 2009; Mary V. Kaufman, as)
21 Trustee of the NT Legacy Trust, dated the 15th)
22 day of October, 2009; and DOES I through V)
23 individuals; and ROE VI through X)
24 Corporations and Partnerships,)

25 *Defendants.*

Case No. A-17-760853-B
Dept. No. XIII

**MOTION FOR REMOVAL OF
KERR AND KAUFMAN AS
TRUSTEE AND AS MANAGER
ON ORDER SHORTENING
TIME**

Date:
Time:

26 Plaintiffs, CHARLES LAM, individually and derivatively on behalf of TRAN
27 ENTERPRISES, LLC, a Nevada limited liability company, and as Trustee of the NT
28 REVOCABLE TRUST, dated the 15th day of October, 2009, collectively herein referred to as
29 ("the Plaintiffs"), hereby move to remove Defendants Kerr and Kaufman as Trustees of the NT
30 Legacy Trust and to remove Kerr from his asserted position as manager of Tran Enterprises.
31 Plaintiffs are requesting an Order Shortening Time to hear this motion.

RECEIVED

SEP 01 2017

DISTRICT COURT DEPT#13

**FOLEY
&
OAKES**

1 This Motion is based upon the following Memorandum of Points and Authorities, the
2 Declaration of Charles Lam, the Motion for Temporary Restraining Order filed
3 contemporaneously herewith, and such argument as will be heard at the time of hearing this matter
4 or any subsequent proceeding.

5 DATED this 1st day of September, 2017.
6
7

8 Submitted by:

9 FOLEY & OAKES, PC

10 

11 J. Michael Oakes, Esq.

12 Nevada Bar No. 1999

13 626 So. 8th Street

14 Las Vegas, NV 89101

15 (702) 384-2070

16 *Attorneys for Plaintiffs*
17
18
19
20
21
22
23
24
25
26
27
28

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

3

4
5

6
7
8
9
10

11
12
13
14

15

16

17
18
19

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

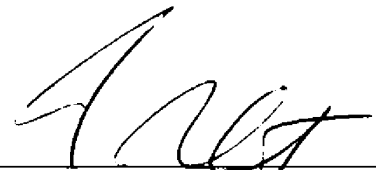
ORDER SHORTENING TIME

Good cause appearing therefor,

IT IS HEREBY ORDERED that the time for hearing of the ~~following~~ ^{2nd} Motion For
Removal of Kerr and Kaufman as Trustees and As Manager shall be heard on the ~~6th~~ ^{And Plaintiff's Motion for Temporary Restraining Order} day of


September 14, 2017, at the hour of 9:00 ~~a.m.~~ ^{p.m.} in Department XIII.

DATED this 1st day of September, 2017.


DISTRICT COURT JUDGE

Respectfully Submitted:

FOLEY & OAKES, PC

By: 
J. Michael Oakes, Esq.
Nevada Bar No. 1999
850 East Bonneville Avenue
Las Vegas, Nevada 89101
(702) 562-8820 Telephone
(702) 562-8821 Facsimile
Attorneys for Plaintiffs

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

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

The Court Should Remove Kerr and Kaufman as Trustees of any Trusts, and Remove Kerr as Manager of Tran Enterprises

The basis for this Motion is fully set forth in the Motion for Temporary Restraining Order, filed contemporaneously herewith, as well as the Declaration of Charles Lam. Plaintiffs incorporate all of the evidence and arguments from those other pleadings.

The Settlor of the Trusts at issue herein, Nhu Tran, revoked all of the authority of Kerr and Kaufman to act on behalf of her entities during her lifetime. The Revocation of Power of Attorney and Assignment, was signed and notarized on September 4, 2013. The Revocation says "the undersigned hereby revokes any and all General or Special Powers of Attorney to act as Trustee or in any other capacities...if any, previously granted to Mary V. Kaufman, Individual, and P. Sterling Kerr, Esq." (See the Declaration of Charles Lam, filed contemporaneously herewith).

That Revocation should be enforced.

Furthermore, based upon the gross negligence and willful misconduct of Kerr, additional grounds support his removal from all capacities.

Kerr and Kaufman should be removed from all positions. The Court can appoint the decedents's son and lifelong confidante, Charles Lam, or an independent third party. All sales of real property could and should be made subject to Court order.

DATED this 1st day of September, 2017.

FOLEY & OAKES, PC



J. Michael Oakes, Esq.

Nevada Bar No. 1999

626 So. 8th Street

Las Vegas, NV 89101

(702) 384-2070

Attorneys for Plaintiffs

**FOLEY
&
OAKES**

EXHIBIT “D”

EXHIBIT “D”



1 **SUPP**
2 J. MICHAEL OAKES, ESQ.
3 Nevada Bar No. 1999
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 (702) 384-2070 - office
8 (702) 384-2128 - facsimile
9 mike@foleyoakes.com
10 *Attorneys for Plaintiffs*

11 DISTRICT COURT
12 ***
13 CLARK COUNTY, NEVADA

14 CHARLES LAM, individually and derivatively)
15 on behalf of TRAN ENTERPRISES, LLC, a)
16 Nevada limited liability company, and as)
17 Trustee of the NT REVOCABLE LIVING)
18 TRUST, dated the 15th day of October, 2009)

19 *Plaintiffs,*

20 vs.

21 P. STERLING KERR, individually and as)
22 Trustee of the NT LEGACY TRUST, dated the)
23 15th day of October, 2009; Mary V. Kaufman, as)
24 Trustee of the NT Legacy Trust, dated the 15th)
25 day of October, 2009; and DOES I through V)
26 individuals; and ROE VI through X)
27 Corporations and Partnerships,)

28 *Defendants.*

Case No. A-17-760853-B
Dept. No. XIII

**SUPPLEMENT TO THE
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
THE REMOVAL OF KERR AND
KAUFMAN AS TRUSTEE AND
AS MANAGER ON ORDER
SHORTENING TIME**

**Date: September 6, 2017
Time: 9:00 a.m.**

29 Attached hereto as Exhibit "1" are the deeds relating to the August 31, 2017 transactions,
30 which were unavailable at the time of filing this original motion. Plaintiffs ask that the Court take

31 ///

32 ///

33 ///

**FOLEY
&
OAKES**

1 judicial notice of these public records.

2 DATED this 5th day of September, 2017.

3

4

Submitted by:

5

FOLEY & OAKES, PC

6

7

J. Michael Oakes, Esq.
Nevada Bar No. 1999
626 So. 8th Street
Las Vegas, NV 89101
(702) 384-2070
Attorneys for Plaintiffs

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT “1”

EXHIBIT “1”

Inst #: 20170831-0002560

Fee: \$19.00 N/C Fee: \$0.00

RPTT: \$7522.50 Ex: #

08/31/2017 10:58:10 AM

Receipt #: 3181259

Requestor:

FIDELITY NATIONAL TITLE - L

Recorded By: ECM Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 176-35-501-034 176-36-201-001 176-35-501-035

Affix R.P.T.T. \$7,522.50

RECORDING REQUESTED BY:

FIDELITY NATIONAL TITLE

WHEN RECORDED MAIL TO and MAIL TAX
STATEMENT TO:

EDWARD HOMES, INC., A NEVADA
CORPORATION

197 CALIFORNIA STREET #300
LAS VEGAS, NV 89104

ESCROW NO: 00067733-118-DS

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

Tran Enterprises, LLC, a Nevada limited liability company, Series F, as to Parcel I; Tran Enterprises, LLC, a Nevada limited liability company, Series L, as to Parcel II; Tran Enterprises, LLC, a Nevada limited liability company, Series E, as to Parcel III

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, do hereby Grant, Bargain Sell and convey to

Edward Homes, Inc., a Nevada corporation

all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Subject to: 1. Taxes for the current fiscal year, paid current.
 2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my/our hand(s) this 29th day of August, 2017.

Tran Enterprises, LLC, a Nevada limited liability company

By: [Signature]
Preston Kerr, Manager

STATE OF NEVADA
COUNTY OF CLARK

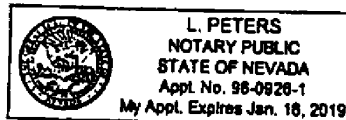
} ss:

On this 8/29/17
appeared before me, a Notary Public,
Preston Kerr, Manager of

Tran Enterprises, LLC
personally known or proven to me to
be the person(s) whose name(s) is/are
subscribed to the above instrument,
who acknowledged that he/she/they
executed the instrument for the
purposes therein contained.

[Signature]
Notary Public

My commission expires: 11/18/19



NOTARY JURAT FOR GRANT, BARGAIN, SALE DEED
FOR ESCROW NO.: 00067733-118DS

**PLEADING
CONTINUES
IN NEXT
VOLUME**