

NO. 2015-33890

THE STATE OF TEXAS,

Plaintiff,

v.

KATZ BOUTIQUE 1, INC., ET AL.

Defendants.

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§
§

IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

157th JUDICIAL DISTRICT

SETTLEMENT AGREEMENT AND RELEASE

Plaintiff, the State of Texas, acting by and through Attorney General of Texas, Ken Paxton and the County Attorney of Harris County, Texas, Vince Ryan, (“Plaintiff”) and Defendants Katz Boutique 1, Inc., Katz Boutique 2, Inc., Katz Boutique 3, Inc., Katz Boutique 4, Inc., Katz Boutique 5, Inc., Katz Boutique 6, Inc., Katz Boutique 7, Inc., Katz Boutique 8, Inc., Katz Boutique 9, Inc., Katz MGM Group, Inc. (F/K/A Katz MGM, Inc.), NGN Enterprises, Inc., 9820 North Freeway, LLC, The Real Property Known as 9820 North Freeway, The Real Property Known as 16855 North Freeway Houston Texas, The Real Property Known as 5555 Southwest Freeway, Houston, Texas, New Beginning Investments, L.L.C., The Real Property known as 14707 Eastex Freeway, Humble, Texas, Bao Quoc Nguyen, Christopher Matthew Martin, Sunil K. Gandhi, Olivia E. Toribio, Phi Hung Vo, and Paul R. Cuevas (collectively, “Defendants”) in the above-styled and numbered cause, file this Settlement Agreement and Release.

A. DEFINITIONS

1. “**Plaintiff**” or “**The State**” is the State of Texas, acting by and through Attorney General of Texas and the Harris County Attorney.
2. “**Defendants**” means Katz Boutique 1, Inc., Katz Boutique 2, Inc., Katz Boutique 3, Inc.,

Katz Boutique 4, Inc., Katz Boutique 5, Inc., Katz Boutique 6, Inc., Katz Boutique 7, Inc., Katz Boutique 8, Inc., Katz Boutique 9, Inc., Katz MGM Group, Inc. (F/K/A Katz MGM, Inc.), NGN Enterprises, Inc., 9820 North Freeway, LLC, The Real Property Known as 9820 North Freeway The Real Property Known as 16855 North Freeway Houston Texas, The Real Property Known as 5555 Southwest Freeway, Houston, Texas, New Beginning Investments, L.L.C., The Real Property known as 14707 Eastex Freeway, Humble, Texas, Bao Quoc Nguyen, Christopher Matthew Martin, Sunil K. Gandhi, Olivia E. Toribio, Phi Hung Vo, and Paul R. Cuevas.

3. “**Parties**” means the Plaintiff and Defendants, and “**Party**” means Plaintiff or any one of the Defendants as applicable.

4. “**Katz Companies**” means Defendants Katz Boutique 1, Inc., Katz Boutique 2, Inc., Katz Boutique 3, Inc., Katz Boutique 4, Inc., Katz Boutique 5, Inc., Katz Boutique 6, Inc., Katz Boutique 7, Inc., Katz Boutique 8, Inc., Katz Boutique 9, Inc., and Katz MGM, Inc.

5. “**Nguyen**” means Defendant Bao Quoc Nguyen, an individual who is president of the Katz Companies.

6. “**Individual Defendants**” means Defendants Christopher Matthew Martin, Sunil K. Gandhi, Olivia E. Toribio, Phi Hung Vo, and Paul R. Cuevas.

7. “**In Rem Defendants**” means Defendants The Real Property Known as 9820 North Freeway; The Real Property Known as 16855 North Freeway Houston, Texas; The Real Property Known as 5555 Southwest Freeway, Houston, Texas; and The Real Property known as 14707 Eastex Freeway, Humble, Texas.

8. “**Landlord Defendants**” means 9820 North Freeway LLC, NGN Enterprises Inc., and New Beginning Investments, LLC.

9. “**Lawsuit**” means the above-entitled and numbered cause, pertaining to *State of Texas v.*

Katz Boutique 1, Inc., et al., No. 2015-33890 (157th Dis. Ct., Harris County, Tex. filed June 12, 2015).

10. “**Settlement Agreement**” means this Settlement Agreement and Release by and between the Parties as reflected in this document.

11. “**Agreed Final Judgment and Permanent Injunction**” means the Agreed Final Judgment and Permanent Injunction that will be filed with the Court after payment is received pursuant to this Settlement Agreement, attached as Exhibit A to this Settlement Agreement.

B. CONTRACTUAL RECITALS AND STATEMENT OF PURPOSE

1. **WHEREAS**, the State is Plaintiff in the Lawsuit against the Katz Companies, Nguyen, the Individual Defendants, the In Rem Defendants, and the Landlord Defendants alleging violations of the Texas Deceptive Trade Practices–Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63 (“DTPA”), and to enjoin and abate a common nuisance pursuant to Chapter 125 of the Texas Civil Practice and Remedies Code, Tex. Civ. Prac. & Rem. Code §§ 125.001–125.047;

2. **WHEREAS**, all Defendants have denied, and continue to deny, all such allegations by the State;

3. **WHEREAS**, this Settlement Agreement, and the execution hereof, does not, and is not intended to be, construed to be, or is an admission of any fault or wrongdoing by or on behalf of the Katz Companies, Nguyen, the Individual Defendants, the In Rem Defendants, and the Landlord Defendants, all such claims having been expressly denied heretofore, and the Defendants continue to deny the same;

4. **WHEREAS**, it is the Parties’ desire to settle their dispute and to memorialize their settlement with this Settlement Agreement, which is intended to settle all claims and disputes

between them relating to the matter made the basis of this Settlement Agreement;

5. **WHEREAS**, all provisions of this Settlement Agreement are contractual in nature, and not mere recitals only;

6. **WHEREAS**, the purpose of this Settlement Agreement is to set forth and embody a negotiated compromise, settlement, and release, as set forth herein;

7. **WHEREAS**, by signing and executing this Settlement Agreement, each Party represents that it has carefully read and does understand the effects of this Settlement Agreement; and

8. **WHEREAS**, each Party warrants and represents by its signature and execution of the Settlement Agreement that it has the authority to enter into this Settlement Agreement; and

9. **WHEREAS**, each Party unequivocally represents and warrants that it was represented by counsel in the negotiation and formation of this Settlement Agreement or, if a Party is not represented by counsel, said Party had the opportunity to consult with counsel in the negotiation and formation of this Settlement Agreement and affirmatively waived the right to counsel of the Party's own free will;

10. **NOW, THEREFORE**, in consideration of the mutual covenants and conditions herein contained, and the incorporation of the above recitals, the parties hereto agree as follows:

C. PERSONS AND ENTITIES BOUND BY THIS SETTLEMENT AGREEMENT

1. The State represents and warrants that it has approved of all the terms, conditions and covenants of this Settlement Agreement as evidenced by the duly authorized signatures to this Settlement Agreement.

2. The Katz Companies, Nguyen, the Individual Defendants, the In Rem Defendants, and the Landlord Defendants represent and warrant that they have approved of all the terms, conditions and covenants of this Settlement Agreement as evidenced by the duly authorized signatures to this

Settlement Agreement.

D. EFFECTIVE DATE

This Settlement Agreement shall become effective on the date all Parties have signed and executed the Settlement Agreement (“**Effective Date**”).

E. RES JUDICATA

The State acknowledges that upon entry of a final judgment in this case, all claims that were asserted or could have been asserted in the Lawsuit are barred from being re-asserted by the State against Defendants in another lawsuit, except for claims arising from violations of this Settlement Agreement or the Agreed Final Judgment and Permanent Injunction entered in this Lawsuit.

F. CONSIDERATION

1. Nguyen and the Katz Companies shall pay or cause to be paid the total sum of ONE MILLION ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$1,175,000) (“**Settlement Amount**”), the sufficiency of which is hereby acknowledged by the State. The Settlement Amount is to be paid in consideration of the mutual agreements, conditions, representations, warranties, recitals, covenants and statements of intention contained in this Settlement Agreement.

2. The Parties acknowledge that in addition to and as part of the consideration for the settlement of this Lawsuit, they have entered into the Agreed Final Judgment and Permanent Injunction, which will be filed separately with the Court.

3. The Katz Companies and Nguyen shall tender payment of the Settlement Amount to the State by two separate cashier’s checks issued by a federally-chartered bank on or before

August 19, 2016, with the first check for FIVE HUNDRED NINETY-NINE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$599,250.00) made payable to Office of the Attorney General of Texas and the second check for FIVE HUNDRED SEVENTY-FIVE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$575,750) made payable to Harris County. It is hereby agreed that upon payment of the Settlement Amount, the State shall provide a Release of Lis Pendens for all of the In Rem Defendants.

4. Within two (2) business days of receipt of the Settlement Amount, the State shall file the Agreed Final Judgment and Permanent Injunction, and take any other steps reasonably necessary to effectuate dismissal of the Lawsuit as to all parties.

5. The Parties agree that of the Settlement Amount, an amount of THREE HUNDRED THOUSAND DOLLARS (\$300,000) shall be attributed to reimbursement of the Plaintiff's attorneys' fees incurred in this Lawsuit ("**Plaintiff's Attorneys' Fees**"). Of the amount attributed to Plaintiff's Attorneys' Fees, ONE HUNDRED FIFTY-THREE THOUSAND DOLLARS (\$153,000) shall be attributed to the Office of the Attorney General and ONE HUNDRED FORTY-SEVEN THOUSAND DOLLARS (\$147,000) shall be attributed to the Harris County Attorney's Office. The amount attributed to Plaintiff's Attorneys' Fees does not constitute an antecedent debt with respect to this Lawsuit. Subject to the forgoing, each Party agrees to be solely responsible for the payment of its respective attorneys' fees, court costs, expert witness fees, court reporter's fees, and all other expenses incurred on said Party's behalf as a result of or in connection with the Lawsuit and/or this Settlement Agreement.

6. All amounts payable to the Office of the Attorney General not allocated as attorneys' fees shall be allocated in accordance with Texas Govt. Code §402.007(b)(1) to the Supreme Court Judicial Fund or general revenue as appropriate.

G. TERMS AND CONDITIONS

1. **Non-Suit of Certain Defendants.** The State agrees that after payment of the Settlement Amount, the State shall non-suit with prejudice the following Defendants from any further financial liability: the Individual Defendants, the In Rem Defendants, and the Landlord Defendants.
2. **Obligated Parties.** It is specifically acknowledged by the State that any and all payments under this Settlement Agreement are the obligations of the Katz Companies and Nguyen only.
3. **Non-Admission.** Nothing in this Agreement shall be construed as an admission or admissible evidence that the Katz Companies, In Rem Defendants, Landlord Defendants, and Nguyen are obligated—whether by contract, common law, and/or equity—to pay any particular fees or expenses (or portions thereof) to the State other than the payment as set out in this Agreement.

H. RELEASE

The State, the Individual Defendants, the In Rem Defendants, the Landlord Defendants, the Katz Companies, and Nguyen hereby covenant, agree, and consent to the following:

1. The intent of the Parties hereto is that each person or entity executing this Settlement Agreement shall, by reason of such execution, be entirely free of any and all actual or potential financial claims, suits, demands, causes of action, charges or grievances of any kind or character, regardless of the nature or extent of the same, arising out of the Lawsuit, other than as set forth in this Settlement Agreement and Agreed Final Judgment and Permanent Injunction.
2. Upon Plaintiff receiving the Settlement Amount after presentment to the payor bank or banks, the State will file and request entry of the Agreed Final Judgment and Permanent Injunction. Upon the entry of the Agreed Final Judgment and Permanent Injunction, the State will fully and

finally release the Individual Defendants, the In Rem Defendants, the Landlord Defendants, the Katz Companies, and Nguyen from any and all civil claims, causes of actions, damages, restitution, fines, costs and penalties based on, arising out of or in any way related, in whole or in part, directly or indirectly, to conduct, acts or omissions occurring prior to the Effective Date which were asserted against the Individual Defendants, the In Rem Defendants, the Landlord Defendants, the Katz Companies, and Nguyen in the Plaintiff's Third Amended Petition (the "**Katz Claims**"), other than as set forth in this Settlement Agreement and Agreed Final Judgment and Permanent Injunction. The relief provided in the Settlement Agreement and the Agreed Final Judgment and Permanent Injunction shall be the sole and exclusive remedy for any action or proceeding in any form by the Attorney General of Texas, the County Attorney of Harris County, or designee(s) of the Attorney General of Texas and/or the County Attorney of Harris County, against the Katz Companies, the Individual Defendants, the In Rem Defendants, the Landlord Defendants, and Nguyen based upon any Katz Claims, including, but not limited to, any action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys' fees and costs.

I. SEVERABILITY AND GOVERNING LAW

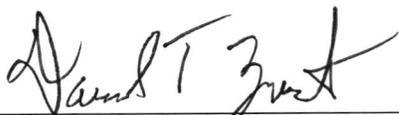
1. The Parties agree that this Settlement Agreement is valid, legally binding and enforceable. If any single section, provision, or clause of this Settlement Agreement should be found invalid, illegal, or unenforceable, the remaining sections, provisions, and clauses shall remain valid, binding, and enforceable.
2. This Settlement Agreement shall be construed in accordance with the governing laws of the State of Texas. The obligations of the parties are performable, and venue for any legal action arising out of this Settlement Agreement shall lie in Harris County, Texas.

J. ENTIRE AGREEMENT OF THE PARTIES

1. This Settlement Agreement and the Agreed Final Judgment and Permanent Injunction (to be filed separately with the Court) constitute the entire agreement and understanding of the Parties regarding the subject matter of this Settlement Agreement and the Agreed Final Judgment and Permanent Injunction and supersede all prior agreements, arrangements, and understandings regarding the specific subject matter of the Settlement Agreement and the Agreed Final Judgment and Permanent Injunction. Defendants acknowledge and agree that the Plaintiff did not make representations, warranties, recitals, covenants, or statements of intention which are not embodied in this Settlement Agreement and the Agreed Final Judgment and Permanent Injunction. This Settlement Agreement shall not be changed or terminated orally. Any modification of this Settlement Agreement shall be in writing and signed by the State, the Individual Defendants, the In Rem Defendants, the Landlord Defendants, the Katz Companies, the New Beginning Defendants, and Nguyen. Any modification of the Agreed Final Judgment and Permanent Injunction shall be governed by the terms of the Agreed Final Judgment and Permanent Injunction.

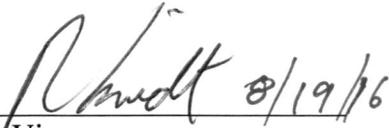
Effective Date: August 19, 2016

EXECUTED BY THE PARTIES:



DANIEL T. ZWART
SBN 24070906
RICK BERLIN
SBN 24055161
STEPHANIE EBERHARDT
SBN 24084728
Assistant Attorneys General
Consumer Protection Division
Houston Regional Office
808 Travis, Suite 1520

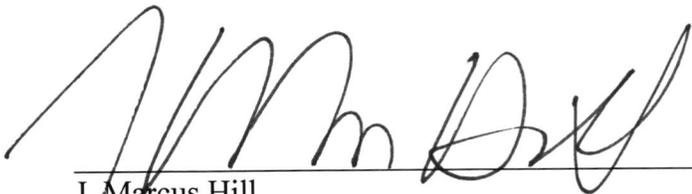
Houston, Texas 77002
Telephone (713) 223-5886
Facsimile (713) 223-5821
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Compliance Practice Group
Rosemarie Donnelly
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STATE OF TEXAS**



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(281) 597-8284- (fax)
Attorney for Defendant Bao Quoc Nguyen



J. Marcus Hill

*State of Texas v. Katz Boutique 1, Inc. et al.
Settlement Agreement and Release*

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Roni M. Most
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Bellaire, Texas 77401
(713) 283-6678
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Attorney for Defendant Sunil Gandhi



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Texas Bar No. 09638150
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Houston, Texas 77079
832-299-4765
866-542-9854 (fax)

Attorney for Defendants New Beginning Investments, the Real Property known as 14707 Eastex Freeway, Humble, Texas, and Attorney for New Beginning Investments, the Real Property known as 14707 Eastex Freeway, Humble, Texas, and Phi Hung Vo



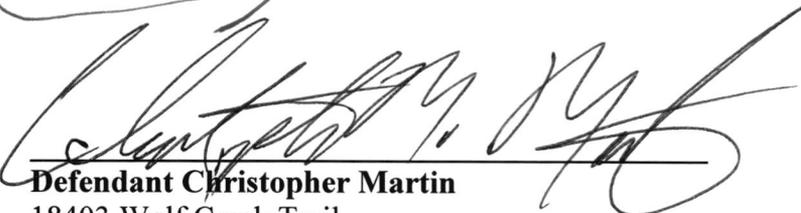
Roni M. Most
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(713) 283-6678
(713) 456-2881 (fax)
Attorney for Defendant Sunil Gandhi

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SBN: 24027550
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(713) 283-6678
(713) 456-2881 (fax)
Attorney for Defendant Sunil Gandhi

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Cersonsky, Rosen & Garcia, P.C.
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(713) 600-8500
(713) 600-8585 (fax)
Attorney for Defendants Olivia E. Toribio, and Paul R. Cuevas

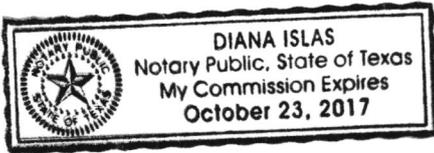
see
page
11



Defendant Christopher Martin
18403 Wolf Creek Trail
Humble, Texas, 77346.
(520) 468-1366
Pro se

Bao Quoc Nguyen
Bao Quoc Nguyen, Individually

SUBSCRIBED AND SWORN TO BEFORE ME on this 19th day of August, 2016,
to certify which witness my hand and official seal.



D. Islas
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires: 10/23/17

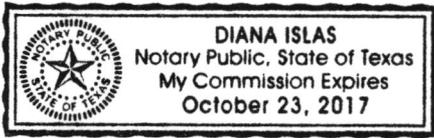
Bao Quoc Nguyen

KATZ BOUTIQUE 1, INC.; KATZ BOUTIQUE 2, INC.; KATZ BOUTIQUE 3, INC.;
KATZ BOUTIQUE 4, INC.; KATZ BOUTIQUE 5, INC., KATZ BOUTIQUE 6, INC.;
KATZ BOUTIQUE 7, INC.; KATZ BOUTIQUE 8, INC.; KATZ BOUTIQUE 9, INC.

By: Bao Quoc Nguyen (print name)

Title: President

SUBSCRIBED AND SWORN TO BEFORE ME on this 19th day of August, 2016,
to certify which witness my hand and official seal.



D. Islas
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

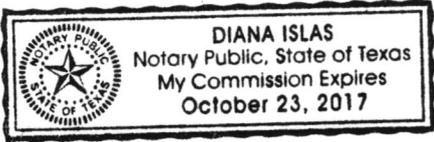
My Commission Expires: 10/23/17

Bao Quoc Nguyen
KATZ MGM GROUP, INC.

By: Bao Quoc Nguyen (print name)

Title: President

SUBSCRIBED AND SWORN TO BEFORE ME on this 19th day of August, 2016,
to certify which witness my hand and official seal.



[Signature]

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

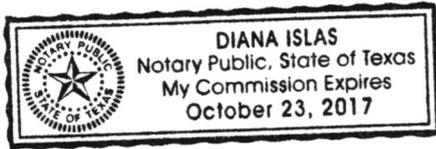
My Commission Expires: 10/23/17

Bao Quoc Nguyen
NGN ENTERPRISES, INC.

By: Bao Quoc Nguyen (print name)

Title: President

SUBSCRIBED AND SWORN TO BEFORE ME on this 19th day of August, 2016,
to certify which witness my hand and official seal.



[Signature]

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

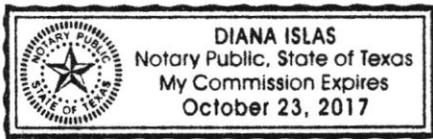
My Commission Expires: 10/23/17

Bao Quoc Nguyen
9820 NORTH FREEWAY LLC

By: Bao Quoc Nguyen (print name)

Title: President

SUBSCRIBED AND SWORN TO BEFORE ME on this 10th day of August, 2016,
to certify which witness my hand and official seal.



[Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires: 10/23/17

Bao Quoc Nguyen President of 9820 North Freeway LLC

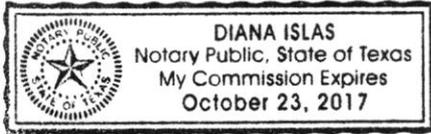
THE REAL PROPERTY KNOWN AS 9820 NORTH FREEWAY, HOUSTON, TEXAS

By: Bao Quoc Nguyen (print name)

Title: President

SUBSCRIBED AND SWORN TO BEFORE ME on this 10th day of August, 2016,
to certify which witness my hand and official seal.

T. Islas



NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires: 10/23/17

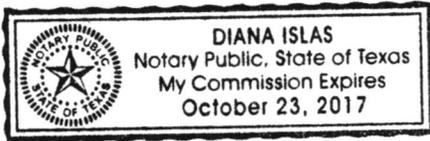
Bao Quoc Nguyen President of NGN Enterprises, Inc.
THE REAL PROPERTY KNOWN AS 16855 NORTH FREEWAY, HOUSTON, TEXAS

By: Bao Quoc Nguyen (print name)

Title: President

SUBSCRIBED AND SWORN TO BEFORE ME on this 10th day of August, 2016,
to certify which witness my hand and official seal.

[Signature]



NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

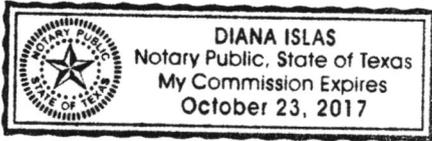
My Commission Expires: 10/23/17

Bao Quoc Ngya President of NGW Enterprises, Inc,
THE REAL PROPERTY KNOWN AS 5555 SOUTHWEST FREEWAY, HOUSTON,
TEXAS

By: Bao Quoc Ngya (print name)

Title: President

SUBSCRIBED AND SWORN TO BEFORE ME on this 19th day of August, 2016,
to certify which witness my hand and official seal.



D. Islas
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires: 10/23/17

Nien Nguyen
NEW BEGINNING INVESTMENTS, L.L.C.

By: NIEN NGUYEN (print name)

Title: PRESIDENT

SUBSCRIBED AND SWORN TO BEFORE ME on this 17 day of Aug, 2016,
to certify which witness my hand and official seal



[Handwritten Signature]

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires: _____

PRESIDENT of New Beginning
INVESTMENT LLC

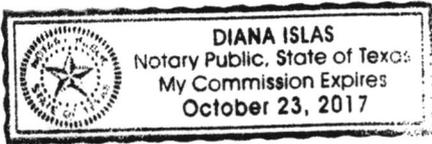
NIEN NGUYEN Nien Xuan

THE REAL PROPERTY KNOWN AS 14707 EASTEX FREEWAY, HUMBLE, TEXAS

By: NIEN NGUYEN (print name)

Title: PRESIDENT

SUBSCRIBED AND SWORN TO BEFORE ME on this 19th day of August, 2016,
to certify which witness my hand and official seal.



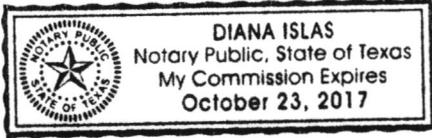
[Signature]

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires: 10/23/17


Christopher Matthew Martin, Individually

SUBSCRIBED AND SWORN TO BEFORE ME on this 19th day of August, 2016,
to certify which witness my hand and official seal.





NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires: 10/23/17



Sumil K. Gandhi, Individually

SUBSCRIBED AND SWORN TO BEFORE ME on this 17th day of August, 2016,
to certify which witness my hand and official seal.





NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

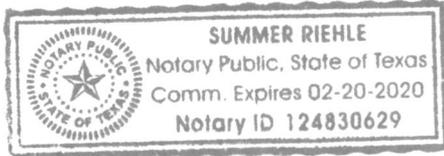
My Commission Expires: _____

Olivia E. Toribio
Olivia E. Toribio, Individually

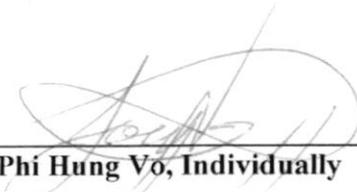
SUBSCRIBED AND SWORN TO BEFORE ME on this 18th day of August, 2016,
to certify which witness my hand and official seal.

Summer Riehle

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS



My Commission Expires: 2/20/20



Phi Hung Vo, Individually

SUBSCRIBED AND SWORN TO BEFORE ME on this 17 day of August, 2016,
to certify which witness my hand and official seal.





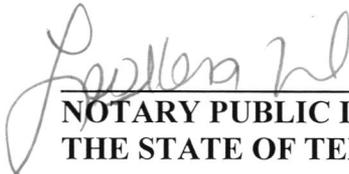
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires: February 24, 2020



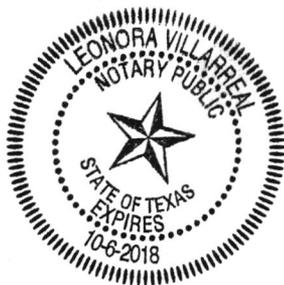
Paul R. Cuevas, Individually

SUBSCRIBED AND SWORN TO BEFORE ME on this 18th day of Aug., 2016,
to certify which witness my hand and official seal.



NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires: October 6, 2018





I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this September 7, 2016

Certified Document Number: 71626603 Total Pages: 28

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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