

## CONFIDENTIAL SETTLEMENT AGREEMENT

This Settlement Agreement and Release is made and entered into between Plaintiffs Spivak Funding, LLC and Westcliffe Opportunity Fund, LP, and Defendant Ryan Smith.

**WHEREAS**, a dispute arose between the parties that is the subject of the Civil Action captioned SPIVAK FUNDING, LLC, *ET AL.* V. ARNOLD ZALER, *ET AL.*. Case Number 06CV12423, pending before the District Court for the City & County of Denver, Colorado (the "Lawsuit").

**WHEREAS**, to avoid further expenses, the parties to this Agreement wish to compromise, resolve and settle, finally and forever, the claims and causes of action that were or could have been asserted by them against each other in the Lawsuit. The Lawsuit will be dismissed with prejudice as between Plaintiffs and Smith.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, the parties hereto do hereby agree as follows:

1. Consideration. Ryan Smith agrees to pay the principal sum of \$1,900,000.00, as follows.
  - a. Smith shall pay twelve percent (12%) of his annual take-home pay. His "take-home pay" is his wages or salary after income tax withholdings and Social Security/Medicare deductions as shown on Smith's W2. The payments for a calendar year shall be due by May 15<sup>th</sup> of the following year. For example, the payment for take-home pay received in 2010 shall be due by May 15, 2011. These payments shall continue each year through calendar year 2036, with the final payment due no later than May 15, 2037.
  - b. Smith assigns to and shall surrender to Spivak Funding and Westcliffe fifty percent (50%) of the gross value of any inheritance he is entitled to receive, directly or indirectly.
  - c. Smith assigns to and shall surrender to Spivak Funding and Westcliffe fifty percent (50%) of the gross value of any trust distributions that he receives directly or indirectly, to be paid within 15 days of receipt.
  - d. Smith assigns to and shall surrender to Spivak Funding and Westcliffe one hundred percent (100%) of any consideration from any lottery, gaming, gambling, or other games of chance that he receives or is entitled to receive.
  - e. The payment obligations in paragraphs 1.a through 1.d shall terminate on the earlier of: (1) Smith or another defendant pays the entire balance due; or (2) May 15, 2037. Smith's assignments in this Agreement are irrevocable until the occurrence of any of these conditions.
  - f. Smith shall provide Spivak Funding and Westcliffe with a copy of the following documents for each calendar year while the payment obligations remain in effect:

(1) his federal, state, and any local income tax returns, including all schedules and attachments thereto; (2) any W-2., 1099, or the like; and a synopsis regarding receipts and rights to receive consideration as identified in sub-paragraphs b, c, and d, above. These documents are due each year at the same time as the payments required under Paragraph 1.a. For example, the documents regarding calendar year 2010 shall be due by May 15, 2011, and the documents regarding calendar year 2011 shall be due by May 15, 2012. Smith shall provide and deliver these documents at his sole expense.

- g. Smith shall make his payments or surrender proceeds to Seth Weiss, 3990 S. Hudson Way, Cherry Hills Village, CO 80113, or as otherwise directed in writing by Spivak Funding and Westcliffe.
- h. Smith shall receive credit for any amount recovered or received from Arnold Zaler or other parties found liable in the Civil Action. Smith also shall receive credit for any payments Plaintiffs receive as a result of his restitution obligation to Spivak Funding as set forth in the sentencing orders and judgment in U.S. v. SMITH, Case Number 08-cr-0024-EWN, before the U.S. District Court for the District of Colorado. These credits apply to the principal amount due, not to any particular payment due from Smith.

2. Default by Smith. Any neglect or failure by Smith to comply with his obligations under Paragraph 1 and its subparts is a default by Smith. Upon default by Smith, Spivak Funding or Westcliffe may then file an action in the appropriate court to enforce this Agreement. The appropriate court is either the state District Court for the City & County of Denver, Colorado, or the court having personal jurisdiction over Ryan Smith. Spivak Funding or Westcliffe has the sole discretion as to selection of forum. Spivak Funding or Westcliffe may enforce this paragraph upon Smith's default but must give written notice to Smith of any alleged default by sending Smith a letter via certified mail at the address that Smith has provided in this agreement, or if Smith has moved, and updated his address pursuant to the terms of this Confidential Settlement Agreement, to that address within ten (10) days of any alleged default. Smith shall be given the opportunity to cure any claimed default within ten (10) days of receipt of the written notice. A default by Smith means that Spivak Funding or Westcliffe shall be entitled to all of the following, notwithstanding anything to the contrary in Paragraph 1:

- a. Judgment on the principal amount of \$1,900,000.00, less payments made by Smith or monies recovered or received from others.
- b. Interest as of the date of default. The interest rate shall be the lesser of eight percent (8%) per annum, compounded monthly, or the maximum rate allowed by law.
- c. Attorney fees and costs incurred in connection with the Default, obtaining and enforcing a judgment against Smith, and enforcement of this Agreement.

3. Admissions by Smith. Ryan Smith confesses liability as set forth in this Confidential Settlement Agreement. He reaffirms his statements made when he pled guilty in the criminal action filed against him regarding the facts at issue in the Litigation. These statements by Smith are in his "Plea Agreement and Statements Facts Relevant to Sentencing" signed by Smith and filed in U.S. v. SMITH, Case Number 08-cr-0024-EWN, before the U.S. District Court for the District of Colorado. The parties attach a copy of this document as "Exhibit 1." Smith incorporates the statements he made in Exhibit 1 into this Agreement.

4. Waiver of Discharge in Bankruptcy. Ryan Smith hereby acknowledges that the forgoing admissions cause his obligations hereunder to constitute an exception to discharge in bankruptcy under 11 U.S.C. § 523 (a) (2), (4), (6) and/or (13), or under any other applicable exception to discharge under title 11 of the United States Code.

5. Those Not Released. Notwithstanding anything in this Agreement to the contrary, none of the terms of this Agreement include or are for the benefit of Arnold Zaler, Zaler's Kosher Meats, or any entity regarding which Arnold Zaler or Zaler's Kosher Meats has any interest or control.

6. Dismissal of Claims. The parties shall file a stipulated motion to dismiss with prejudice the claims in the Lawsuit between Spivak Funding, Westcliffe, and Ryan Smith. Each party shall bear their respective attorney fees and costs incurred in the Lawsuit and to accomplish this dismissal.

7. Unknown Facts or Law. The parties understand and agree that this Agreement intends to and does cover all released claims. Each party undertook an independent investigation to that party's satisfaction into the facts and law before executing this Agreement. The parties acknowledge that they may hereafter discover facts or law different from or in addition to those that they now know to be or believe to be true with respect to the released claims. This Agreement shall remain in effect in all respects, notwithstanding such different or additional facts or law or the discovery thereof.

8. Tax Implications. Each party assumes the risk of any tax implications to that party resulting from entering into and performing on this Agreement. The parties acknowledge the right and opportunity to consult with their respective tax advisors before executing this Agreement. The parties did not rely on any representation by another party, or by that other party's representative, regarding any tax implications arising from this settlement or Agreement.

9. Acknowledgements. The parties declare that they each read the entire Agreement and understood its terms before executing the Agreement. Each party executed this Agreement after consulting with that party's attorney, or that party voluntarily waived that right. The parties also acknowledge that each of them executed the Agreement voluntarily, and did so without being pressured or influenced by any statement or representation by any other person or entity acting on behalf of the other parties.

10. Warranties. Except as expressly set forth in this Agreement, the parties have not made and make no representation, warranties, statements, promises or agreements to or with each other.

11. Attorney Fees and Costs. The parties each shall bear their respective attorney fees and costs incurred in the Lawsuit and in negotiating and executing this Agreement. In the event of any dispute or litigation arising from or in connection with this Agreement, the prevailing party shall be entitled to recovery of that party's reasonable attorney fees and costs from the other party.

12. Entire Agreement and Successors-in-Interest. This Agreement contains the entire agreement and understanding between the parties as to the subject matter hereof. Any oral or written agreements between the parties regarding this Agreement's subject matter not expressly contained herein are unenforceable. This Agreement shall inure to the benefit of and bind each party's beneficiaries, heirs, agents, representatives, attorneys, employees, officers, directors, shareholders or members, partners, subsidiaries, affiliates, independent contractors, predecessors, successors, and assigns. This Agreement cannot be rescinded, canceled, terminated, supplemented, amended or modified in any manner whatsoever without the prior written consent of all parties.

13. Confidentiality. Absent a Default as defined by this Agreement, the terms of this Agreement not already part of the public record are confidential from this point forward. Notwithstanding this provision, a party may disclose the terms of this Agreement to his or its attorneys, staff for its attorneys, tax advisors or accountants, auditors, investors, members, partners, or as required by law. A party also may disclose the terms of this Agreement as necessary to make a proper disclosure to an insurance company, creditor, law enforcement agencies, to the applicable governmental agency regarding the restitution Smith is to pay per the criminal judgment in the U.S. v. SMITH matter described above, to a court of law in which Mr. Smith seeks to discharge his obligations under this agreement (whether in bankruptcy or otherwise), or to any tax authority.

14. Warranty of Capacity to Execute Agreement. The parties warrant that no other persons or entities have any interest in the released claims and that the parties have the sole and exclusive authority to execute this Agreement. The Parties represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity any claims, debts, demands, obligations, damages, losses, causes of action, costs, expenses, or attorney fees asserted or which could have been asserted in the Lawsuit. The undersigned warrant that they have the authority and capacity to execute this Agreement on behalf of the parties for which they sign. The undersigned also warrant that they each are of sound mind when they agreed to and signed this Agreement, and that they do not have any disability or incapacity that could affect their ability to understand and enter into this Agreement.

15. Waiver. Any waiver by any party of another party's obligation under this Agreement has no effect unless that waiver is in writing and signed by the party making the waiver. Any waiver by Spivak Funding or Westcliffe of an obligation by Smith under this Agreement shall not waive any other obligation by Smith unless the waiver expressly provides otherwise. Any waiver shall be construed narrowly.

16. Notice. Any notice between the parties regarding this Agreement shall be in writing and sent to the parties at the following addresses:

- a. To Ryan Smith: Ryan Smith, 3 Brandermill Drive, Henderson, NV 89052.
- b. To Spivak Funding: Jay Spivak, Spivak Funding, LLC, 7549 S. Ivanhoe Way, Englewood, CO 80112.
- a. To Westcliffe: Seth Weiss, 3990 S. Hudson Way, Cherry Hills Village, CO 80113.
- b. Each party acknowledges that it is that party's sole responsibility to inform the other parties promptly and in writing of any change in the address at which it is to receive notice. Smith further agrees that he will provide prompt written notice to Spivak Funding and Westcliffe of any changes to his residence, regardless of whether he changes his mailing address.

17. Governing Law and Severability. The laws of the State of Colorado shall control the enforcement and interpretation of this Agreement, without reference to or consideration of Colorado's law on choice of law. If a court of competent jurisdiction finds any part of this Agreement unenforceable for any reason, the remaining parts of this Agreement remain in full effect.

18. Venue. Except as provided in Paragraph 3, the parties agree that the forum for resolution of any dispute arising out of this Agreement or the enforcement thereof only shall be the state District Court for the City & County of Denver, Colorado. The parties waive any objection to personal jurisdiction and forum non conveniens regarding any such disputes.

19. Headings. The paragraph headings in this Agreement are for convenience only. The parties do not intend for the headings to control the interpretation of this Agreement.

20. Fax and Counterpart Signatures. The parties agree that they may sign this Agreement separately and in counterparts. The parties further agree that they may transmit their signatures by facsimile and such signatures shall be considered as originals.

**EXECUTED** by each party on the date set forth below.

[SIGNATURES ON THE FOLLOWING PAGES]

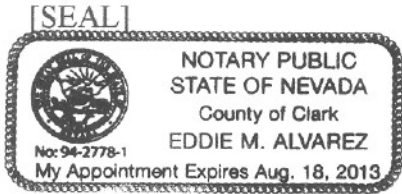
**NOTICE: This Settlement Agreement may affect your legal rights. Signing acknowledges you read and understand the entire Settlement Agreement, and that you agree to be bound by its terms. Signing also acknowledges you consulted with an attorney of your choosing before signing, or that you voluntarily waived that right.**

Date: 1.28.10

*[Signature]*  
Ryan Smith

State of Nevada )  
                                  )  
County of Clark )     ss.

Affirmed, or sworn to or subscribed, before me by Ryan Smith this 28 day of Jan, 2010. Witness my hand and official seal.



*[Signature]*  
Notary Public  
My commission expires: Aug 18, 2013

SPIVAK FUNDING, LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jay Spivak, Manager

State of Colorado )  
                                  )  
County of Arapahoe )     ss.

Affirmed, or sworn to or subscribed, before me by Jay Spivak as Manager of Spivak Funding, LLC, this \_\_\_\_ day of \_\_\_\_\_, 2010. Witness my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**NOTICE: This Settlement Agreement may affect your legal rights. Signing acknowledges you read and understand the entire Settlement Agreement, and that you agree to be bound by its terms. Signing also acknowledges you consulted with an attorney of your choosing before signing, or that you voluntarily waived that right.**

Date: \_\_\_\_\_  
Ryan Smith

State of Nevada )  
County of Clark ) ss.

Affirmed, or sworn to or subscribed, before me by Ryan Smith this \_\_\_\_ day of \_\_\_\_\_, 2010. Witness my hand and official seal.

[SEAL]

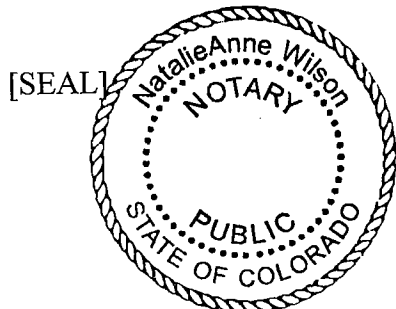
\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

SPIVAK FUNDING, LLC

Date: 1-27-2010  
By: Jay Spivak  
Jay Spivak, Manager

State of Colorado )  
County of Arapahoe ) ss.


Affirmed, or sworn to or subscribed, before me by Jay Spivak as Manager of Spivak Funding, LLC, this 27 day of January, 2010. Witness my hand and official seal.



Natalie Anne Wilson  
Notary Public  
My commission expires: 6/8/13

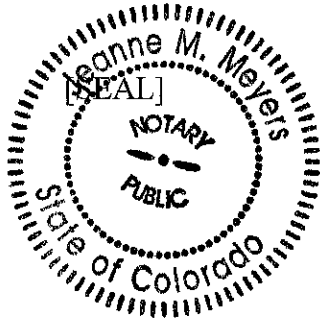
WESTCLIFFE OPPORTUNITY FUND. LP

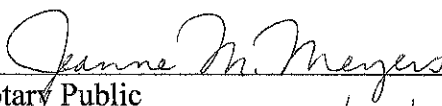
Date: January 29, 2010

By:   
GREEN PAIRS ADVISORS, LLC (Managing Member)  
By Seth Weiss, Managing Member Green Pairs

State of Colorado )  
   )      ss.  
County of Denver                               )

Affirmed, or sworn to or subscribed, before me by Seth Weiss, as the managing member of Green Pairs Advisors, LLC, this 29th day of January, 2010. Witness my hand and official seal.



  
Notary Public  
My commission expires: 7/12/12