

Julie Price - Motion to Dismiss

From: "Gary Hatch" <ghatch@mckenziefinch.com>
To: "Julie Price" <julieprice@utah.gov>, "Jeff Buckner" <jbuckner@utah.gov>, ...
Date: 4/19/2011 12:06 PM
Subject: Motion to Dismiss
CC: "1_Gary Hatch" <gary@mckenziefinch.com>
Attachments: Exhibit 1.pdf; Exhibit 1b.pdf; Exhibit 1c.pdf; Exhibit 1d.pdf; Exhibit 1e.pdf; Exhibit 1g.pdf; Motion to Dismiss.pdf

Jeff, Judge Eklund;

Please find attached my "Motion to Dismiss" based on my belief that the Utah Uniform Securities Act does not contain the rules that would give the Utah Division of Securities proper Jurisdiction over the activities of McKenzie Finch nor Gary Hatch, its Manager.

Please feel free to contact me if you have any questions.

Gary Hatch
McKenzie Finch

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"McKenzie Finch is a mutli-disciplinary, multi-national consulting firm specializing in wealth preservation techniques to affluent individuals. For over 37 years, the global professional network of over 350 JDs, CPAs, CFPs, and MBAs has been helping clients reduce capital gain, ordinary income, business and estate taxes while protecting the client's corporate and personal assets from frivolous litigation using high-impact, legally backed strategies. McKenzie Finch also offers the exclusive Personal Management Services package providing advisor management, bookkeeping and transactional assistance, and access to the most up-to-date tax, litigation, and legislative research available. "

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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

**WING HAVEN FARM, LLC
GARY G. HATCH**

Respondent

MOTION TO DISMISS

**Docket No: 10-10-0072
Docket No: 10-10-0073**

Pursuant to _____ Rules, Respondent hereby moves the Utah Division of Securities (Division) to dismiss Plaintiff's Complaint with prejudice. The bases for this Motion are set forth in the accompanying Memorandum and Affidavit.

Dated this 18th day of April, 2011



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FACTS

On the 12th of October, 2010 an agency action in the form of an adjudicative proceeding was commenced against Gary G. Hatch and Wing Haven Farms, LLC by the Utah Division of Securities (Division). *The adjudicative proceedings maintained that such action was filed with the legal authority of the Division under "Utah Code Ann. 61-1-20.*

Further the Division state *"Jurisdiction over Respondents and the subject matter is appropriate because the Division alleges that they violated § 61-1-1 (securities fraud) of the Act while engaged in the offer and sale of securities in or from Utah"*.

The Division also states that *"Gary G. Hatch (Hatch) was, at all relevant times, a resident of the State of Utah. Hatch was not, at all relevant times, licensed as a broker-dealer, agent, investment advisor, or investment advisor representative in Utah"*.

The Division states Allegations *"In the fall of 2002 DC and MC met Hatch through a referral. Since that time, Hatch Through his company McKenzie Finch, LLC, has acted as DC and MC's investment and tax advisor"*.

ARGUMENT

The Respondent's understanding is that the Division is stating the following:

The Division has Jurisdiction over Respondent because:

- a. Hatch was not, at all relevant times, licensed as a broker-dealer, agent, investment advisor, or investment advisor representative in Utah.
- b. Hatch Through his company McKenzie Finch, LLC, has acted as DC and MC's investment and tax advisor.
- c. Respondents offered and sold a security to investors, in or from Utah.

Based on the Respondent's understanding of **"a and b above"**, Hatch does not believe that neither he nor the company he manages, McKenzie Finch, did act as an "investment advisor" nor needs to be "licensed as a broker-dealer, agent, investment advisor, or investment advisor representative in Utah". Hatch bases this belief on the on;

- 1) Utah Uniform Securities Act Section 61-1-13 (q)
 - i. defines and "Investment Advisor" to mean a person who:
 - (A) **"for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of**

securities or as to the advisability of investing in, purchasing, or selling securities; or"

(B) **"for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities".**

ii. "Investment adviser" includes a financial planner or other person who:

(A) **as an integral component of other financially related services, provides the investment advisory services described in Subsection (1)(q)(i) to others for compensation and as part of a business; or**

(B) **holds the person out as providing the investment advisory services described in Subsection (1)(q)(i) to others for compensation.**

iii. "Investment adviser" does not include:

(A)

(B)

(C) **a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the profession**

2) Utah Uniform Securities Act Section 61-1-2 Investment Advisor – Unlawful acts.

(1) as "a person who **receives an consideration** from another person **Primarily** for advising the other person as to the value of securities or their purchase or sale..... to:

3) Utah Uniform Securities Act Section 61-1-3;

a.

b.:

c **the person has no place of business in this state and during the preceding 12-month period has had not more than five clients, other than those specified in Subsection (3)(b), who are residents of this state.**

Memorandum and Affidavit of Gary Hatch:

I, Gary G Hatch *, declare and state, under penalty of perjury and pursuant to 28 U.S.C. Section 1746 as follows:

As to Utah Uniform Securities Act Section 61-1-13 (q) (i) (A) Hatch attests that neither he nor McKenzie Finch received any compensation from DC, MC nor any entities they manage or control for any activity related to the Wing Haven Mare Lease program.

As to Utah Uniform Securities Act Section 61-1-2 (1) Investment Advisor – Unlawful acts. as “a person who **receives an consideration** from another person **Primarily** for advising the other person as to the value of securities or their purchase. Hatch attests that neither he nor McKenzie Finch received any compensation from DC, MC nor any entities they manage or control **Primarily** for advising as to the value of securities or their purchase.

As to Utah Uniform Securities Act Section 61-1-13 q.(i) :(A) **for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities;** Hatch attests that he nor McKenzie Finch received any compensation from DC, MC nor any entities they manage or control nor did Hatch or McKenzie Finch engage in the business of advising others, either directly or through *publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities;*

As to Utah Uniform Securities Act Section 61-1-13 q.(i) or (B) **for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities,** Hatch attests that he nor McKenzie Finch received any compensation from DC, MC nor any entities they manage or control. In addition Hatch attests that he nor McKenzie Finch engage (s) (ed) **as a part of a regular business (that..) issues or promulgates analyses or reports concerning securities,** advising others, either directly or through *publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities;*

As to Utah Uniform Securities Act Section 61-1-13 q.(i) or (B) .(ii) “Investment adviser” includes a financial planner or other person who:(A) **as an integral component of other financially related services,** provides the investment advisory services described in Subsection

*(1)(q)(i) to others for compensation and as part of a business; Hatch attests that he nor McKenzie Finch business has a **integral component** of its business that is a **financially related services**. In addition Hatch nor McKenzie Finch provides the investment advisory services described in Subsection (1)(q)(i) to others for compensation as part of its business;*

As to Utah Uniform Securities Act Section 61-1-13 q.(i) or (B) .(ii) (B) **holds the person out as providing the investment advisory services** described in Subsection (1)(q)(i) to others for compensation. Hatch attests that he nor McKenzie Finch holds itself out to any party for the purpose of **providing the investment advisory services** described in Subsection (1)(q)(i) to others for compensation.

As to Utah Uniform Securities Act Section 61-1-13 q. (iii) "Investment adviser" **does not include: (C) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the profession**. Hatch attests that any **investment advisory services** that he or McKenzie Finch should provide is **solely incidental to the practice of the business** and in all cases no compensation is paid to Hatch nor McKenzie Finch for any incidental investment advisory services.

As to Utah Uniform Securities Act Section 61-1-3 section (3) (c) Hatch attests that during the preceding 12 month period has had **not** more than five clients, who are residents of state Utah. In addition, Hatch attests that during the preceding 12 month period has had **not** more than five clients, who are residents of any one state in the United States of America.

Hatch further attests that Hatch's business, at all relevant times, was the business of a "Personal Manager" and the business of McKenzie Finch was a business that provided "Personal Management Services" (Exhibit 1) attached will show that the first email sent to the Crandall's on November 25, 2003 outlines what business that Hatch was in and one of the services that Hatch's Company, McKenzie Finch provided is "Personal Management Services". Hatch further states that he is willing to provide evidence that all emails that originated from Hatch described the same services as did the 11-23-2003 email throughout the relevant times of this issue.

Hatch is prepared to produce facts that Hatch operated his business in a manner that parallel's the **Zinn vs. Parrish** case insomuch as it pertains to the nature of the overall relationship of Hatch and DC & MC. Please find attached "Exhibit 1a". This email was sent to the Crandall's on January 8, 2008. This is one of many examples of the subject matter of the Personal

Management Services provided for the benefit of the DC & MC. You will see that, at that date in time Hatch was tasked with eight (8) different projects, Mare Leasing being only one.

In addition, Hatch has also attached an email labeled (Exhibit 1b), dated 4-21-2005 that show the same services and also illustrated the Crandall's asking Hatch to supply research and information about a 1031 exchange.

Attachment labeled (Exhibit 1c), an email dated 4-10-2006 provides further evidence that Hatch acted as a Personal Manager. Not only does this email carry the same signature line stating "Personal Management Services", but also show that the Crandall's had task Hatch to perform due diligence on the company that provided an "Investment Platform". In this case David Crandall had researched this investment platform himself and then asks Hatch to interview the managers of the company that offered this investment platform and forward his findings to the Crandall's.

Attachment labeled (Exhibit 1d), an email dated 10-03-2007 provides further evidence that Hatch acted as a Personal Manager. Not only does this email carry the same signature line stating "Personal Management Services", but also show that the Crandall's had task Hatch with five (5) separate projects.

Attachment labeled (Exhibit 1e), an email dated 7-19-2008 provides further evidence that Hatch acted as a Personal Manager. Not only does this email carry the same signature line stating "Personal Management Services", but also show that the Hatch was working on "outstanding projects" for the Crandall's.

As to Utah Uniform Securities Act Section 61-1-3 section (3) (c) as it relates to "*during the preceding 12 month period has had **not** more than five clients, who are residents of state*".

Hatch attests that in 2004 McKenzie Finch provided services to and received compensation from seven (7) clients.

Client # one (1):

- Residency: St. Thomas, USVI a territory of the United States.
- McKenzie Finch received 64.86% of its 2004 compensation from this client.

- Service provided this client: The majority of the Personal Management service provided this client was Estate Planning. In September 2002 McKenzie Finch and Hatch was tasked by client # 1's St. Thomas Law Firm to design a comprehensive "clean up" Estate Plan. This project continued through 2003 and in May of 2004 McKenzie Finch and Gary Hatch were hired by client 1's Chicago Law firm to assist them in gathering data and assist in further planning and the implementation of the comprehensive Estate Plan that would clean up the current estate plan that had been in effect as far back a 1993.

Client # two (2):

- Residency: Colorado
- McKenzie Finch received 12.4% of its 2004 compensation from this client.
- Service provided this client: The majority of the Personal Management service provided this client was Asset Protection and Philanthropic Planning. McKenzie Finch and Gary Hatch was tasked by client #2 to:
 - Design a "Master Plan".
 - Oversee and pay the cost of setting up a Foreign Asset Protection Trust in Nevis, West Indies.
 - Oversee and pay the cost of setting up a Charitable Supporting Organization that complied to IRS code 509 (a) (3) type (c).

Client # three (3):

- Residency: St. Thomas USVI a territory of the United States:
- McKenzie Finch received 2.6% of its 2004 compensation from this client.
- Service provided this client: The majority of the Personal Management service provided this client was Management Services of client #3's companies under the USVI EDC Program.

Client # four (4):

- Residency: Pennsylvania:
- McKenzie Finch received 8.89% of its 2004 compensation from this client.
- Service provided this client: The majority of the Personal Management service provided this client in 2004 was overseeing the setting up of a Captive

Insurance Company and the planning and overseeing of an Asset Protection plan.

Client # five (5):

- Residency: St. Thomas USVI a territory of the United States:
- McKenzie Finch received 2.14% of its 2004 compensation from this client.
- Service provided this client: The majority of the Personal Management service provided this client in 2004 was assisting client #5 with the USVI EDC Program.

Client # six (6):

- Residency: Utah:
- McKenzie Finch received 7.09% of its 2004 compensation from this client.
- Service provided this client: The majority of the Personal Management service provided this client was assisting client #6 in structuring their company in a way that would attract capital from debt and equity.

Client # seven (7):

- Residency: Texas:
- McKenzie Finch received 2.83% of its 2004 compensation from this client.
- Service provided this client: The majority of the Personal Management service provided this client was designing a "Master Plan" to address this client Asset Protection, Estate Planning and structure of a Company this client owned so it could expand its market.

Hatch attests that in 2005 McKenzie Finch provided services to and received compensation from six (6) clients.

Client # one (1):

- Residency: St. Thomas, USVI a territory of the United States.
- McKenzie Finch received 81.45% of its 2005 compensation from this client.
- Service provided this client: The majority of the Personal Management service provided this client was Estate Planning and restructuring the assets held

to provide payments to client #1 from a "Private Annuity" set up in 2000
McKenzie Finch and Gary Hatch still worked with client 1's Chicago Law firm to assist them in gathering data and assist in planning a comprehensive Estate Plan that would clean up the current estate plan that had been in effect as far back as 1993 and in setting up the Custom Designed Annuity that would house the assets needed to fund the payments of the "Private Annuity" set up in 2000.

Client # two (2):

- Residency: Colorado
- McKenzie Finch received 2.19% of its 2005 compensation from this client.
- Service provided this client: The majority of the Personal Management service provided this client was Asset Protection and Philanthropic Planning. McKenzie Finch and Gary Hatch was tasked by client #2 to:
 - Oversee the structuring of a "Custom Designed Life Insurance Policy".
 - Oversee up a Captive Insurance Company.
 - Advise client #2 on how to run a Charitable Supporting Organization that complied to IRS code 509 (a) (3) type (c).

Client # three (3):

- Residency: Guernsey, Channel Islands:
- McKenzie Finch received 10.83% of its 2005 compensation from this client.
 - Oversee the structuring of a "Custom Designed Life Insurance Policy".
 - Oversee setting up a Welfare Benefit Trust to provide for medical benefits and living expenses for the next 25 years period to a young New York resident who was medically challenged.

Client # four (4):

- Residency: Pennsylvania:
- McKenzie Finch received 3.26% of its 2005 compensation from this client.
- Service provided this client:
 - The majority of the Personal Management service provided this client was designing a "Master Plan" to address this client Asset Protection, Estate

Planning and helping this client refinance the mortgage on two real estate projects this client owned.

Client # five (5):

- Residency: Ghana West Africa:
- McKenzie Finch received 1.07% of its 2005 compensation from this client.
- Service provided this client:
 - This client was an attorney in Acura Ghana that had a probate case in Oregon that needed McKenzie Finch to oversee the Attorney that was handling the probate case.

Client # six (6):

- Residency: Florida:
- McKenzie Finch received 1.21% of its 2005 compensation from this client.
- Service provided this client:
 - The majority of the Personal Management service provided this client was assisting client #6 in structuring their company in a way that would attract capital from debt and equity.

Hatch attests that in 2006 McKenzie Finch provided services to and received compensation from five (5) clients.

Client # one (1):

- Residency: St. Thomas, USVI a territory of the United States.
- McKenzie Finch received 64.17% of its 2006 compensation from this client.
- Service provided this client:
 - The majority of the Personal Management service provided this client was Business Planning. McKenzie Finch and Gary Hatch still worked with client #1's Chicago Law firm to assist them in re-structuring the domicile of two of this clients company from the USVI to Delaware in order to comply with the US Governments "Buy America" program.

- Additionally McKenzie Finch and Gary Hatch over saw the activities of the Custom Designed Annuity to make sure assets were structured in a way to achieve the need to fund the Private Annuity payments.

Client # two (2):

- Residency: Colorado
- McKenzie Finch received 20.54% of its 2006 compensation from this client.
- Service provided this client: The majority of the Personal Management service provided this client was Asset Protection and Philanthropic Planning. McKenzie Finch and Gary Hatch was tasked by client #2 to:
 - Oversee the structuring of a second "Custom Designed Life Insurance Policy".
 - Oversee the continued business activities of the Captive Insurance Company set up in 2005.
 - Advise client #2 on how to run a Charitable Supporting Organization that complied to IRS code 509 (a) (3) type (c). Helped client set up the board of Trustee's and operate the Charity.
 - Helped this client understand a 1031 exchange of real property.

Client # three (3):

- Residency: Guernsey, Channel Islands:
- McKenzie Finch received 4.8% of its 2006 compensation from this client.
 - Oversee the operation of the "Custom Designed Life Insurance Policy"
 - Oversee the funding of the Welfare Benefit Trust to provide for medical benefits and living expenses for the next 25 years to a young New York resident who was medically challenged.

Client # four (4):

- Residency: Florida:
- McKenzie Finch received 6.41% of its 2006 compensation from this client.
- Service provided this client:
 - Oversee the structuring of a "Custom Designed Life Insurance Policy".

- Advise client on how to make his current Cook Island Trust work more efficiently.

Client # five (5):

- Residency: Florida:
- McKenzie Finch received 4.08% of its 2006 compensation from this client.
- Service provided this client:
 - Oversee the structuring of a "Custom Designed Life Insurance Policy".
 - Oversee the structure of an Asset Protection and Estate plan implementation.
 - Advised Client #5 on how to structure a part of his business to take advantage of the EDC benefits of the USVI.
 - Advised client against going with a tax shelter involving Brazilian debt.

Hatch attests that in 2007 McKenzie Finch provided services to and received compensation from six (6) clients.

Client # one (1):

- Residency: St. Thomas, USVI a territory of the United States.
- McKenzie Finch received 77.63% of its 2007 compensation from this client.
- Service provided this client: The majority of the Personal Management services provided this client in 2007 was Asset Protection.
- Hatch working as the Personal Manager for this client started to see irregularities in the dealing of the Insurance Company that provided this client with a Custom Design Annuity and with the 1st payment coming from the 2000 Private Annuity Hatch due in November, 2007, Hatch brought this concern to client #1. A large number of hours were spent working with the asset managers that managed the assets inside the Private Annuity. Towards the end of 2007 it became apparent that the Insurance Company was mismanaging the assets held in the Custom Designed Annuity. In addition, it also became apparent that the Chicago Law firm that this client had been working with since 2004 was also involved with the Insurance Company in a

conspiracy to mismanage this clients assets. Hatch as Personal Manager was tasked by this client to start working with a Law Firm's in Texas and the USVI to take actions to protect the assets held in by the Insurance Company.

Client # two (2):

- Residency: Colorado
- McKenzie Finch received 10.31% of its 2007 compensation from this client.
- Service provided this client: The majority of the Personal Management service provided this client was Asset Protection.

- Gary Hatch working as the Personal Manager for this client. Hatch had found out that the premium paid to the Captive Insurance Company in 2006 was never applied to an insurance policy. Hatch was then task by this client to recover the \$300,000 premium and work with another Captive Insurance providers to re-write the coverage for 2006. In addition to the re-application of the \$300K, Hatch was task to oversee the design of a different kind of Captive Insurance Company to benefit this client.
- Hatch was also tasked by this client to find a new Accounting Firm to service the increasingly sophisticated tax returns and accounting needs of this client.
- Further, Hatch as Personal Manager, was tasked to help this client refinance two of the real estate properties owned by this client.
- Helped this client by referring a new customer to their Landscape business.

Client # three (3):

- Residency: Guernsey, Channel Islands:
- McKenzie Finch received 2.06% of its 2007 compensation from this client.
 - Oversee the operation of the "Custom Designed Life Insurance Policy" for the 3rd year.
 - Oversee the funding of the Welfare Benefit Trust to provide for medical benefits and living expenses for 2007 to the beneficiary of this Trust

Client # four (4):

- Residency: Florida:

- McKenzie Finch received 1.64% of its 2007 compensation from this client.
- Service provided this client:
 - Oversee the operation of the "Custom Designed Life Insurance Policy" for the 2nd year.

Client # five (5):

- Residency: Florida:
- McKenzie Finch received 4.94% of its 2006 compensation from this client.
- Service provided this client:
 - Oversee the operation of the "Custom Designed Life Insurance Policy" for the 2nd year.

Client # Six (6):

- Residency: St. Thomas, USVI:
- McKenzie Finch received 4.15% of its 2007 compensation from this client.
- Service provided this client: The main project that McKenzie Finch was hired for was to advise this client on their plan to take raw land and build a "Planned Unit Development" on the property.
 - Hatch was tasked to work with the architect to design the units.
 - Advice was given as to what type of legal entity was needed.
 - A plan was developed to address family estate planning and how to provide an equitable division among the children of this client
 - Hatch worked with the client's law firm to set up the legal entity that would own the property and designed how it would be owned to fit the estate plan for this client's family.

Hatch attests that in 2008 & 2009 McKenzie Finch provided services very similar to the above examples. Hatch further attests that the purpose of the above examples is to illustrate that:

- 1) At all relevant times Hatch nor McKenzie Finch received **NO** compensation for activities covered in Utah Uniform Securities Act Section 61-1-13 (q) (i).
- 2) At all relevant times Hatch nor McKenzie Finch **receives an consideration** from another person **Primarily** for advising the other person as to the value of securities or

their purchase for activities covered in Utah Uniform Securities Act Section 61-1-2 (1).

- 3) At all relevant times Hatch nor McKenzie Finch did not *engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities for compensation* for activities covered in Utah Uniform Securities Act Section 61-1-13 q.(i) :(A)
- 4) At all relevant times Hatch nor McKenzie Finch did not *issues or promulgates analyses or reports concerning securities, for compensation and as a part of a regular business* as covered in Utah Uniform Securities Act Section 61-1-13 q.(i) or (B).
- 5) At all relevant times Hatch nor McKenzie Finch did not act as an *Investment adviser* includes a financial planner or other person who:(A) *as an integral component of other financially related services, provides the investment advisory services described in Subsection (1) (q) (i) to others for compensation and as part of a business; as covered in Utah Uniform Securities Act Section 61-1-13 q.(i) or (B) .(ii)*
- 6) At all relevant times Hatch nor McKenzie Finch did not *hold its self out as providing the investment advisory services described in Subsection (1)(q)(i) to others for compensation* as covered in Utah Uniform Securities Act Section 61-1-13 q.(i) or (B) .(ii) (B)
- 7) At all relevant times Hatch attest that any activity he nor McKenzie Finch was involved in related to an investment adviser was at best *incidental to the practice of the (his) profession as* covered in the Utah Uniform Securities Act Section 61-1-13 q. (iii) (C).
- 8) At all relevant times Hatch attest that any activity he nor McKenzie Finch was involved in during the preceding 12 month period has had **not** more than five clients, who are residents of state Utah as covered in the Utah Uniform Securities Act Section 61-1-3 section (3) (c).
- 9) Hatch further attest that at all relevant times Hatch and McKenzie Finch involvement in the Mare Lease program offered to Crandall Family Thoroughbred Breeding, LLC was an "Isolated transaction" as covered in the Utah Uniform Securities Act Section 61-1-13 section (1) (t).

As to Utah Uniform Securities Act Section 61-1-3 section (3) (c) Hatch attests that neither he nor McKenzie Finch **has a formal place of business in this state of Utah** and Hatch further attests that in February 2002 McKenzie Finch opened an office at 300 Royal Dane Mall, St. Thomas USVI and in up until May, 2002 McKenzie Finch did have a formal office at 7090 Union Park Avenue, Suite 400, Midvale, Utah 84047. In May 2002 McKenzie Finch closed its office at 7090 Union Park Avenue Suite 400, Midvale, Utah and moved its operation to the St. Thomas, USVI office. At that time (May, 2002) a mail service was set up at 6905 South 1300 South "Box" 240, Midvale, Utah by the then CEO of McKenzie Finch, Gene Weeks. This address was to fill the need to receive mail that had been sent to 7090 Union Park Avenue Suite 400, Midvale, Utah and was designed to be a temporary mail address. In addition, McKenzie Finch SA main address was 1st Floor, Yamraj Bldg. Market Square, PO Box 3321, Road Town, Tortola, British Virgin Islands.

Based on the Respondent's understanding of "**c above**" Hatch does not believe that neither he nor the company he manages, McKenzie Finch, offered and sold a security to investors, in or from Utah. The Utah Uniform Securities Act Section 61-1-13 section (s) defines an "Investment Contract" to include an investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor.

Further in Utah Uniform Securities Act Section 61-1-13 section (s) (D) the code states that an "Investment Contract" is one that the offeree does not receive the right to exercise practical or actual control over the managerial decisions of the enterprise.

Further in Utah Uniform Securities Act Section 61-1-13 section (ee) (ii) the code states that a "Security" **does not include**: "an interest in a limited liability company in which the limited liability company is formed as part of an estate plan where all of the members are related by blood or marriage, or the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company".

Hatch attests that DC & MC were instructed to set up a family limited liability company to operate as the Lessor in the Wing Haven Mare Lease program. Hatch suggested they use the name "*Crandall Family Thoroughbred Breeding, LLC*". This is the name used on the Mare Lease and Breeding Agreement signed by David Crandall as President and Melanie Crandall as Secretary. Further, the Foal Agreement and the Boarding Agreement was between Wing Haven Farm and Crandall Family Thoroughbred Breeding, LLC.

In addition, Hatch attests that it was never the intent of Wing Haven Farms to provide the "essential managerial efforts of someone other than the investor", in fact, not only was the "Crandall Family Thoroughbred Breeding, LLC" offered the right to exercise practical of actual control over the managerial decisions of the enterprise, they were actually required by the IRS Code to "Materially Participate" in the management, control and oversight of the activities of the Mare Lease program. They were informed and provided information that they were required to spend at least 100 hours per year, with the safe harbor being 500 hours per year.

The first thing they were instructed (as directed under *Utah Uniform Securities Act Section 61-1-13 section (ee) (ii)*) was to acquire ": "an interest in a limited liability company in which the limited liability company is formed as part of an estate plan where all of the members are related by blood or marriage" by forming a Colorado LLC by the name of "Crandall Family Thoroughbred Breeding, LLC" and then invest in this LLC that was owned and managed entirely by the Crandall family. Hatch can only conclude that if the owners of the "Crandall Family Thoroughbred Breeding, LLC" would have spent anywhere near the IRS required 100 to 500 hours per year we would not be spending our time with this action.

CONCLUSION

Hatch attests that:

- 1) At all relevant times Hatch nor McKenzie Finch received **NO** compensation for activities covered in Utah Uniform Securities Act Section 61-1-13 (q) (i).
- 2) At all relevant times Hatch nor McKenzie Finch **receives an consideration** from another person **Primarily** for advising the other person as to the value of securities or their purchase for activities covered in Utah Uniform Securities Act Section 61-1-2 (1).
- 3) At all relevant times Hatch nor McKenzie Finch did not engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities for **compensation** for activities covered in Utah Uniform Securities Act Section 61-1-13 q.(i) :(A)

- 4) At all relevant times Hatch nor McKenzie Finch did not *issues or promulgates analyses or reports concerning securities, for compensation and as a part of a regular business* as covered in Utah Uniform Securities Act Section 61-1-13 q.(i) or (B).
- 5) At all relevant times Hatch nor McKenzie Finch did not act as an *Investment adviser* includes a financial planner or other person who:(A) **as an integral component of other financially related services, provides the investment advisory services described in Subsection (1) (q) (i) to others for compensation** and as part of a business; as covered in Utah Uniform Securities Act Section 61-1-13 q.(i) or (B) .(ii)
- 6) At all relevant times Hatch nor McKenzie Finch did not **hold its self out as providing the investment advisory services** described in Subsection (1)(q)(i) to others **for compensation** as covered in Utah Uniform Securities Act Section 61-1-13 q.(i) or (B) .(ii) (B)
- 7) At all relevant times Hatch attest that any activity he nor McKenzie Finch was involved in related to an investment adviser was at best **incidental to the practice of the (his) profession** as covered in the Utah Uniform Securities Act Section 61-1-13 q. (iii) (C).
- 8) At all relevant times Hatch attest that any activity he nor McKenzie Finch was involved in during the preceding 12 month period has had **not** more than five clients, who are residents of state Utah as covered in the Utah Uniform Securities Act Section 61-1-3 section (3) (c).
- 9) Hatch further attest that at all relevant times Hatch and McKenzie Finch involvement in the Mare Lease program offered to Crandall Family Thoroughbred Breeding, LLC was an "isolated transaction" as covered in the Utah Uniform Securities Act Section 61-1-13 section (1) (t).
- 10) As to Utah Uniform Securities Act Section 61-1-3 section (3) (c) Hatch attests that neither he nor McKenzie Finch **has a formal place of business in this state of Utah.**

- 11) Hatch does not believe that neither he nor the company he manages, McKenzie Finch, offered and sold a security to investors, in or from Utah. The Utah Uniform Securities Act Section 61-1-13 section (s) defines an "Investment Contract" to include an investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor.
- 12) Further in Utah Uniform Securities Act Section 61-1-13 section (s) (D) the code states that an "Investment Contract" is one that the offeree does not receive the right to exercise practical or actual control over the managerial decisions of the enterprise.
- 13) Further in Utah Uniform Securities Act Section 61-1-13 section (ee) (ii) the code states that a "Security" **does not include**: "an interest in a limited liability company in which the limited liability company is formed as part of an estate plan where all of the members are related by blood or marriage, or the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company".
- 14) Hatch attests that DC & MC were instructed to set up a family limited liability company to operate as the Lessor in the Wing Haven Mare Lease program. Hatch suggested they use the name "Crandall Family Thoroughbred Breeding, LLC". This is the name used on the Mare Lease and Breeding Agreement signed by David Crandall as President and Melanie Crandall as Secretary. Further, the Foal Agreement and the Boarding Agreement was between Wing Haven Farm and Crandall Family Thoroughbred Breeding, LLC. (Exhibit 1g)
- 15) In addition, Hatch attests that it was never the intent of Wing Haven Farms to provide the "essential managerial efforts of someone other than the investor", in fact, not only was the "Crandall Family Thoroughbred Breeding, LLC" offered the right to exercise practical of actual control over the managerial decisions of the enterprise, they were actually required by the IRS Code to "Materially Participate" in the management, control and oversight of the activities of the Mare Lease program. They were informed and provided information that they were required to spend at least 100 hours per year, with the safe harbor being 500 hours per year.
- 16) The first thing they were instructed (as directed under Utah Uniform Securities Act Section 61-1-13 section (ee) (ii)) was to acquire ": "an interest in a limited liability

company in which the limited liability company is formed as part of an estate plan where all of the members are related by blood or marriage" by forming a Colorado LLC by the name of "*Crandall Family Thoroughbred Breeding, LLC*" and then invest at least \$200,000 in this LLC that was owned and managed entirely by the Crandall family. Hatch can only conclude that if the owners of the "*Crandall Family Thoroughbred Breeding, LLC*" would have spent anywhere near the IRS required 100 to 500 hours per year we would not be spending our time with this action.

For the reason stated above, Defendant's Motion to Dismiss should be granted.

Dated this 18th day of April, 2011



Gary Hatch

6905 South 1300 East # 240

Midvale, Utah 84047

Telephone:(435) 848-5858

Cell: (801)944-9797

Fax: (435)-603-6318

Email: Gary@hatchfamily.vi

Evidence of Mailing

I certify that on the 19th day of April, 2011, I Emailed a true and correct copy of the Motion to Dismiss, I further certify that a physical copy will be mailed by use of the US Postal Service as soon as I can print out this document and get it to a Post Office:

Administrative Court Clerk
c/o Julie Price
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, Utah 84114-6760
(801)530-6600

Jeff Buckner
Assistant Attorney General
160 East 300 South, 2nd Floor
Salt Lake City, UT 84114-0872

(801)366-0310

Steven Eklund
Utah Department of Commerce
160 East 300 South, P.O. Box 146701
Salt Lake City, UT 84114-6701
Telephone (801) 530-6648

Certificate # _____

Gary Hatch



Gary Hatch

From: "Gary Hatch" <ghatch@mckenziefinch.com>
To: "David & Melanie Crandall" <rivada@sopris.net>
Sent: Tuesday, November 25, 2003 3:45 PM
Attach: Microsoft Word - Crandell Engagement Agreement.pdf
Subject: Engagement Agreement

David & Melanie,

Please find the attached "Engagement" agreement. Please read it over, sign and return it to me.

Should you have question please feel free to call.

Gary Hatch
McKenzie Finch

USVI Office
Corporate Place
Royal Dane Mall
PO Box 306989
St. Thomas, USVI 00803

SLC Office:
6905 South 1300 East Suite 240
Salt Lake City, Utah 84047

Phone 801-558-3737
Toll Free 800-774-9797
Global Direct Dial 212-909-2788
Global Toll Free 888-200-9630
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E-mail Primary:
gary@mckenziefinch.com

E-mail backup:
ghatch@unitedstates.vi
ghatch@ubtanet.com
ghatch@batelnet.bs

McKenzie Finch is a mutli-disciplinary, multi-national consulting firm specializing in wealth preservation techniques to affluent individuals. For over 30 years, the global professional network of over 350 JDs, CPAs, CFPs, and MBAs has been helping clients reduce capital gain, ordinary income, business and estate taxes while protecting the client's corporate and personal assets from frivolous litigation using high-impact, legally backed strategies. McKenzie Finch also offers the exclusive Personal Management Services package providing advisor management, bookkeeping and transactional assistance, and access to the most up-to-date tax, litigation, and legislative research available. Locations in the United States, St. Thomas, USVI, New York City, Salt Lake City. Also Office's In the UK, Bahamas & the British Virgin Islands

Gary Hatch

From: "Gary Hatch" <ghatch@mckenziefinch.com>
To: "Melanie Crandall" <rivada@sopris.net>
Sent: Thursday, April 21, 2005 11:07 AM
Attach: http://63.123.136.2_28122_1031%20literature.pdf
Subject: 1031 Exchange

David & Melanie,

Please find attached some information I found concerning your question about a 1031 Exchange. Please let me know when you get closer to closing on your properties and we can look into this issue deeper.

Be Well,

Gary Hatch
McKenzie Finch Management

USVI Office
Corporate Place
Royal Dane Mall
PO Box 306989
St. Thomas, USVI 00803

SLC Office:
6905 South 1300 East Suite 240
Salt Lake City, Utah 84047

Phone 801-558-3737
Toll Free 800-774-9797
E-Fax 212-214-0813

E-mail Primary:
gary@mckenziefinch.com

E-mail backup:
Gary@Foster-Dunhill.com
ghatch@unitedstates.vi
ghatch@ubtanet.com
ghatch@batelnet.bs
Gary@Hatchfamily.vi
g.hatch@admiralasset.com

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Gary Hatch

From: "Gary Hatch" <ghatch@mckenziefinch.com>
To: "David & Melanie Crandall" <rivada@sopris.net>
Sent: Monday, April 10, 2006 3:04 PM
Subject: Ted

David,

Melanie,

I had a good talk with Ted today and feel we now understand each other as to what needs to be done to move this issue forward.

I will be doing what is necessary on my end tomorrow or Wednesday and get back to Ted.

I will keep you updated.

Thanks

Gary Hatch
McKenzie Finch

SLC Office:
6905 South 1300 East Suite 240
Salt Lake City, Utah 84047

Phone 801-558-3737
Toll Free 800-774-9797
E-Fax 435-608-6318

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E-mail backup:
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ghatch@ubtanet.com
Gary@Hatchfamily.vi

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Gary Hatch

From: "Gary Hatch" <ghatch@mckenziefinch.com>
To: "David & Melanie Crandall" <rivada@sopris.net>
Sent: Wednesday, October 03, 2007 5:23 PM
Subject: Call

David, Melanie;

When would you have a time when we could catch up on items?? Below is a list of things on my Agenda:

Life Insurance.

New Accountant

Glen Henderson

Robert Kipp

Set Conference call for week of the 22nd of October (after October 15th filing date)

Year End Planning

I need latest (9-30) financial statement.

Business Protection plan has been changed to a more effective Captive Insurance Company.

Mortgage loan to Client in Florida and take a first mortgage position on condo just being finished valued at \$3.8M, need \$1M Mortgage.

Your interest level on the mortgage I explained to you where we could use your cash flow to pay off your mortgage years early and save hundreds of thousands in interest. I can give you an presentation if you can supply me with your Mortgage current balance, your current interest rate, your current payment & your projected saving rate (saving rate = gross income for work and business (-) this years Business Liability prem (old BPP/new Captive) (-) life style spending rate.

Example: David's Salary Good Earth	=	\$100,000
Melanie's Wage Hospital	=	\$50,000
Net Profit Good Earth	=	\$600,000
Business Liability Premium	=	(-) \$300,000
Net Income	=	\$450,000
Taxes	=	(-) \$150,000
Life Style	=	\$200,000
Net Saving	=	\$100,000

I would suggest we have a call about the about and then set additional time to for over each items you have interest in on additional calls.

Thanks

Gary
McKenzie Finch

SLC Office:
6905 South 1300 East Suite 240
Salt Lake City, Utah 84047

Phone 801-558-3737
Toll Free 800-774-9797
E-Fax 435-608-6318

gary@mckenziefinch.com

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Gary Hatch

From: "Gary Hatch" <ghatch@mckenziefinch.com>
To: "Melanie Crandall" <rivada@sopris.net>; "David Crandall" <david@goodearthaspen.com>
Sent: Saturday, July 19, 2008 2:20 PM
Subject: Update Call

David, Melanie;

When could you have time to do a call so we can catch up on the outstanding projects??

Thanks

Gary Hatch
McKenzie Finch

SLC Office:
6905 South 1300 East Suite 240
Salt Lake City, Utah 84047

Phone 801-944-9797
Toll Free 800-774-9797
E-Fax 435-608-6318

gary@mckenziefinch.com

McKenzie Finch is a multi-disciplinary, multi-national consulting firm specializing in wealth preservation techniques to affluent individuals. For over 34 years, the global professional network of over 350 JDs, CPAs, CFPs, and MBAs has been helping clients reduce capital gain, ordinary income, business and estate taxes while protecting the client's corporate and personal assets from frivolous litigation using high-impact, legally backed strategies. McKenzie Finch also offers the exclusive Personal Management Services package providing advisor management, bookkeeping and transactional assistance, and access to the most up-to-date tax, litigation, and legislative research available.

Exhibit 1 g

**BOARDING AGREEMENT
BETWEEN**

Crandall Family Thoroughbred Breeding

AND

WING HAVEN FARMS, LLC

BOARDING AGREEMENT

This **BOARDING AGREEMENT** (the "AGREEMENT") entered into this 24th day of October 2007, by and between **David & Melanie Crandall dba Crandall Family Thoroughbred Breeding** ("Crandall") with an address of 421 Lewis Lane, Basalt, Colorado 81621 ("LESSEE"), and **WING HAVEN FARMS, LLC**, a Utah Limited Liability Company (hereinafter referred to as ("Wing Haven"), with an address of 6905 South 1300 East #240, Midvale, Utah 84047 ("LESSOR").

RECITALS

WHEREAS, LESSEE has entered into a Mare Lease and Breeding Agreement with WING HAVEN, (the "Mare Lease"), to lease mares and for stallion services, and desires to hire WING HAVEN to board and care for the mare or mares described on the attached Schedule A (individually a "Mare" and collectively the "Mares") during the term of the Mare Lease, including, but not limited to, advice and assistance in completing the breeding of the Mares and the birthing of any foals born of the Mares.

WHEREAS, WING HAVEN is engaged in the business of leasing, breeding and caring for Thoroughbred horses, and

WHEREAS, LESSEE and WING HAVEN desire to enter into a boarding and service agreement on the terms and conditions hereinafter stated.

THEREFORE, in order to complete the objectives expressed above, and in consideration of the mutual covenant and agreements, the undersigned agree as follows:

SECTION 1
OBLIGATIONS OF WING HAVEN

WING HAVEN, under LESSEE'S sole and complete direction agrees to provide board and care for the LESSEE'S Mares. The board and care services include:

1.1 Providing all services in a timely manner that will allow the LESSEE to accomplish its breeding program objectives. The LESSEE will be advised of the dates scheduled for breeding the Mares and the LESSEE will have the opportunity to review with WING HAVEN the status and condition of both the Mares and any assigned stallion and, at LESSEE'S option, to request an examination of either or both horses by a veterinarian.

1.2 Providing adequate feed and facilities for the normal and reasonable care required to maintain the health and well being of the Mares. WING HAVEN will, on request, provide to LESSEE a schedule of the daily diet of the Mares including vitamins and feed supplements.

1.3 Assisting LESSEE to carry on a breeding program that has the objective of producing live Thoroughbred foals from the Mares and in the preparation of the Mares for foaling.

1.4 Regularly inspecting the Mares for disease or injury and obtain and cause veterinary care to be provided for the Mares if such care is required under the circumstances. WING HAVEN will keep a file of all veterinary reports and will make them available to the LESSEE as requested. Further, WING HAVEN will immediately advise the LESSEE of any injury or disease to the Mares.

1.5 Providing reasonable grooming, worming and shoeing as required from time to time.

1.6 Providing all of the above in accordance with accepted industry practices and standards.

SECTION 2
COMPENSATION TO WING HAVEN

As compensation for the services to be provided under this Agreement by WING HAVEN, LESSEE shall pay to WING HAVEN the sum of Fifty Six Thousand Six Hundred dollars (\$56,600.00). The compensation shall be included as part of the total cost of the "2007 Mare Lease Program" and paid in the amounts and at the times shown in the Letter of Intent dated October 24th, 2007, and attached hereto. WING HAVEN agrees that as part Consideration for the advance payment of the boarding fee to waive all feed and care costs of the foals born of the Mares until they are weaned from their mothers or nurse mare (approximately 150 days @ \$3.00 per day per foal).

SECTION 3
TERM

3.1 The term of this agreement shall be for a period of approximately twelve (12) months, commencing December 15, 2007, and ending one (1) year thereafter.

3.2 The LESSEE may without penalty upon thirty (30) days prior written notice to WING HAVEN terminate this agreement.

3.3 Upon termination, WING HAVEN shall have no further duties or obligations to LESSEE under this Agreement.

SECTION 4
ALLOCATION OF EXPENSES

WING HAVEN acknowledges that the LESSEE, pursuant to Paragraph 2, has paid in advance for the services to be provided by WING HAVEN to allow the LESSEE to lock in the cost of the care and breeding services and to eliminate these expenses as a variable in projecting a possible profit on the Mare Lease. Further, the parties also acknowledge that the advance payment allows WING HAVEN the opportunity to purchase the feed and other services required under the Agreement which are reflected in the price of the boarding services to be provided. Therefore:

4.1 LESSEE agrees that the advance payment is not a deposit for future service and will not be returned or refunded. Board is earned by WING HAVEN as

received.

4.2 WING HAVEN, as its sole cost, shall pay all the expenses necessary to carry out its duties and obligations under this Agreement.

SECTION 5 RISK OF LOSS

The parties acknowledge that the Mares are owned by WING HAVEN and that LESSEE has only the rights in the Mares set out in the Mare Lease. Therefore, WING HAVEN shall be solely responsible for the injury or death of the Mares under its care and for insurance against accident, disease and death.

SECTION 6 COMPLIANCE WITH LAW

WING HAVEN agrees to comply with all applicable laws and regulations, federal, state or municipal, relating to the performance of its duties under this Agreement.

SECTION 7 INSPECTION

LESSEE shall have the right to inspect the Mares at anytime provided that WING HAVEN is given prior notice.

SECTION 8 COMMINGLING

WING HAVEN shall be entitled to pasture and commingle the Mares with other horses boarded by WING HAVEN.

SECTION 9 NO BUSINESS RESTRICTION

WING HAVEN shall be entitled to provide similar services to other parties provided

that such activities by WING HAVEN do not conflict with the obligation of WING HAVEN to LESSEE as provided for herein.

SECTION 10 MISCELLANEOUS

10.1 COUNTERPARTS, FACSIMILE. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument. This Agreement may also be executed by signatures to facsimile transmittal documents in lieu of original or machine generated or copied documents.

10.2 BINDING EFFECT. This agreement shall extend to and be binding upon the parties hereto, their successors and assigns. This Agreement may not be altered except by an agreement in writing signed by the parties hereto.

10.3 ASSIGNMENT. This Agreement shall not be assigned, mortgaged, pledged, encumbered or otherwise transferred by or its successors or assigns, without obtaining the approval of the both parties.

10.4 RELATIONSHIP OF PARTIES. This Agreement does not establish a partnership or joint venture between LESSEE and WING HAVEN. WING HAVEN is acting solely on the behalf of itself individually and not as agent, employee or general partner of LESSEE in connection with this Agreement.

10.5 GOVERNING LAW. The laws of the State of Utah shall govern this Agreement. Each party agrees that any action brought in connection with this Agreement shall be filed and heard in a court of competent jurisdiction in Utah.

10.6 HEADINGS. The headings in the Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

10.7 ENTIRE AGREEMENT. All understandings and agreements heretofore had between the parties hereby are merged in this Agreement, which alone fully and

completely expresses their understanding and agreement.

10.8 ATTORNEYS FEES. Should any litigation be commenced between the parties hereto concerning any provisions of this Agreement or the rights and obligations of either in relation thereto, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorneys fees.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date and year first above written.

WING HAVEN FARMS, LLC

By:  _____

Title: Manager

OWNER:

By: _____

Title: _____

By: _____

Title: _____

MARE LEASE AND BREEDING AGREEMENT

BETWEEN

Crandall Family Thoroughbred Breeding, LESSEE

AND

WING HAVEN FARMS, LLC, LESSOR

MARE LEASE AND BREEDING AGREEMENT

This is a **MARE LEASE AND BREEDING AGREEMENT** (the "AGREEMENT") entered into this 24th day of October 2007, by and between **David & Melanie Crandall dba Crandall Family Thoroughbred Breeding** ("Crandall") with an address of 421 Lewis Lane', Basalt, Colorado 81621 ("LESSEE"), and **WING HAVEN FARMS, LLC**, a Utah Limited Liability Company (hereinafter referred to as ("Wing Haven"), with an address of 6905 South 1300 East #240, Midvale, Utah 84047("LESSOR").

RECITALS

WHEREAS, LESSOR is engaged in the business of leasing Thoroughbred mares for breeding purposes; and

WHEREAS, LESSEE desires to lease from LESSOR, the mare or mares selected by LESSEE described on the attached Schedule A (individually a "Mare" and collectively the "Mares") which will be bred to the stallion or stallions selected by LESSEE described on the attached Schedule A (individually a "Stallion" and collectively the "Stallions") in accordance with the terms of this Agreement.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties to this Agreement, the parties hereby agree as follows:

SECTION 1

TERM

The term of this Agreement shall be for all Mares shown on Schedule A approximately 7 months, beginning December 1, 2007, and terminating July 1, 2008. The Mares are expected to produce foals in the year 2009.

SECTION 2

LEASE PAYMENTS

2.1 LESSEE agrees to pay to LESSOR, as rent for the Mares the total sum of \$105,900.00 dollars (the "Rent"). The Rent shall be included as part of the total cost of

the 2007 Mare Lease Program" and paid in the amounts and at the times shown in the letter of intent to purchase dated, and attached hereto as Exhibit A.

2.2 LESSEE agrees to pay to LESSOR, as stallion service fees (the "Service Fee") the total sum of dollars (\$28,000.00). Service Fee shall be included as part of the total cost of the 2007 Mare Lease Program and paid in the amounts and at the times shown in the Letter of Intent attached hereto as Exhibit A. Service Fee collected by LESSOR shall be distributed by LESSOR to the appropriate Stallion Owners.

2.3 LESSEE agrees to pay to LESSOR, as prospective foal insurance fee (the "Prospective Foal Insurance Fee") the total sum of \$13,500.00 dollars. Prospective Foal Insurance Fee shall be included as part of the total cost of the 2007 Mare Lease Program" and paid in the amounts and at the times shown in the Letter of Intent attached hereto as Exhibit A. Prospective Foal Insurance Fee collected by LESSOR shall be distributed by LESSOR to the appropriate Insurance Companies.

SECTION 3

FOAL OWNERSHIP

3.1 LESSEE and LESSOR agree that the objective of this Agreement is to allow LESSEE to lease the Mares which have been selected by LESSEE for the sole purpose to produce a foal that has stood and nursed from a Mare or has been fed by hand, in each case, for at least a period of 24 hours ("Live Foal").

3.2 If a Live Foal is produced and LESSEE has paid the Rent and Service Fee in full the Live Foal shall become the property of LESSEE whether registered in the name of the LESSEE or, for convenience, in the name of the owner of the Mare or other nominee.

3.3 LESSOR DOES NOT GUARANTEE THE BIRTH OF A LIVE FOAL OR FOAL THAT WILL STAND AND NURSE OR BE FED BY HAND FOR AT LEAST A 24 HOUR PERIOD. THE RISK OF LOSS IS TO BE BORN BY THE LESSEE.

SECTION 4

OWNERSHIP AND HEALTH OF MARES

4.1 The parties agree that if any of the Mares becomes unsuitable for LESSEE'S breeding program that LESSEE shall have the option to exchange the Mare for another mare selected by LESSEE of equal quality as determined by reference to the bloodline and breeding history of such Mare at the time it was selected by LESSEE for the program.

4.2 LESSOR represents and warrants that the Mares are owned or controlled by Wing Haven and that LESSOR has full authority to enter into this Agreement.

4.3 LESSOR represents and warrants that to its actual knowledge the Mares are free of disease and other defects that would adversely affect the ability of the Mares to produce a Live Foal. A copy of the veterinarian certificate will be made available to LESSEE on request.

SECTION 5

LOCATION, CARE AND MAINTENANCE OF THE MARES

LESSEE has entered into a boarding agreement with Wing Haven Location, care and maintenance of the mares will be done at Wing Haven Farms, LLC Farm, 10267 Warm Springs Loop, Hanna Utah 84031 Or at a location LESSOR deems safe and suitable for the health and well being of the Mare owned by LESSOR and the Foal to be owned by LESSEE.

SECTION 6

LIMITED USE OF MARES

For the term of the lease, LESSEE is authorized to use the Mares for breeding purposes only. Except for the breeding qualities of the Mares, LESSOR retains all rights and interests in the Mares, including the right to any income therefrom. If the use of the Mares by LESSOR prevents LESSEE from accomplishing the objectives of this Agreement or causes a Mare to abort a fetus, then LESSOR agrees to substitute another Mare of equal quality which shall be selected by LESSEE that will allow LESSEE to receive the benefits of this Agreement in the same year that a foal would have been born to the Mare.

SECTION 7

STALLION CONTRACTS

LESSOR warrants and represents that the Stallions selected by LESSEE have been bound. LESSOR further warrants and represents that LESSOR has full authority to purchase the seasons of the Stallions and provide such seasons to LESSEE. LESSEE acknowledges that it has had the opportunity to review any applicable service agreements of the Stallions.

SECTION 8 RISK OF LOSS

LESSEE shall bear all risk of loss if leased mare does not produce a live foal. LESSEE shall bear all risk of loss from the death or harm to any of the Live Foals produced from the Mares, unless such loss is caused by the gross negligence of LESSOR or its agents or employees, in which case LESSOR shall bear such loss. LESSEE shall bear the responsibility of insurance for the Foal upon birth as set out in the Foal Agreement of even date herewith, entered into by LESSOR and LESSEE.

SECTION 9

MISCELLANEOUS

9.1 HIGH RISK. LESSEE ACKNOWLEDGES THAT THE SUBJECT MATTER OF THIS AGREEMENT INVOLVES A HIGH DEGREE OF RISK AND THAT LESSEE HAS SUCH KNOWLEDGE IN BUSINESS AND FINANCIAL MATTERS THAT LESSEE IS CAPABLE OF EVALUATING THE MERITS AND RISKS INVOLVED IN THIS AGREEMENT AND THAT IN MAKING ITS DECISION TO ENGAGE IN THE BUSINESS OF BREEDING, RAISING, RACING, AND SELLING THOROUGHBRED HORSES RELIED ON ITS OWN EXAMINATION AND EXPERIENCE. LESSEE HAS FULLY EVALUATED THE ECONOMIC AND FINANCIAL RISKS OF THE BUSINESS AND IN LIGHT OF THE FOREGOING, LESSEE IS SATISFIED THAT ITS EXECUTION OF THIS AGREEMENT IS APPROPRIATE.

9.2 RELATIONSHIP OF PARTIES. This Agreement does not establish a partnership or Joint venture between the parties hereto. Each party is acting solely on the behalf of itself individually and not as agent, employee, or general partner of any other

parties in connection with this Agreement. It is the explicit intent and understanding of the parties hereto that none of the parties nor any of their respective affiliates, representatives, advisors or agents is making any representation or warranty whatsoever, oral or written, express or implied, other than those set forth in this Agreement and that none of the parties is relying on any statement, representation or warranty, oral or written, express or implied, made by any other party or such party's affiliates, representatives, advisors or agents. LESSEE acknowledges that LESSOR has made no representations or warranties to LESSEE regarding any forecasts, projections, estimates in respect to future revenues or results of this Agreement except that the opportunities to make a profit and the possibilities of loss on the "Mare Lease Program" have been fully explained to the LESSEE. LESSEE acknowledges that it is a sophisticated party, that it has undertaken, and that LESSOR has given LESSEE such opportunities as it has requested to undertake, a full investigation of the Mares and Stallions that are the subject matter of this Agreement including but not limited to an inspection by a veterinarian of its choice, and that LESSEE only has a contractual relationship with LESSOR, based solely on the terms of this Agreement, and that there is no special relationship with LESSOR, based solely on the terms of this Agreement and that there is no special relationship of trust or reliance between LESSEE and LESSOR. LESSEE further acknowledges that it has had the opportunity to consult with counsel or any other advisor of its choice.

9.3 SUBLEASE ASSIGNMENT. LESSEE shall not assign this lease, or any interest herein, nor sublet any Mares, or in any manner permit the use of the Mares for any purpose other than herein set forth, without the written consent of LESSOR.

9.4 TAXES. It is not the purpose or intention of this Agreement to create, and this Agreement shall not be considered as creating, a joint venture, partnership or other relationship whereby any party shall be held liable for the omissions or commissions of any other party, but, if for federal tax purposes this Agreement or the relationship established hereby, the operations hereunder are regarded as a partnership, as that term is defined in the Internal Revenue Code of 1986, then the parties hereto hereby elect not to be treated as a partnership and to be excluded from the application of all provisions of Subchapter K, Chapter 1, subtitle A of such Code. In making this election, each and every party acknowledges that the income derived from him can be adequately determined without the necessity for any computation of partnership taxable income, and all such parties agree not to give notices or take any other action inconsistent with the

election hereby made.

9.5 INDEMNITY. LESSEE shall indemnify LESSOR against, and hold LESSOR and the Mares and Stallions free and harmless from all liens, encumbrances, charges and claims whether contractual or imposed by operation of law that may arise from any claim or legal action that may be brought against LESSEE.

9.6 REMEDIES IN EVENT OF DEFAULT. If either party hereto shall default with respect to any material condition or covenant hereof, by him to be performed, the other party may, but need not declare this Agreement to be terminated. The breaching party shall be responsible to the other for reasonable attorney's fees and court costs related to any breach.

9.7 WAIVER. No waiver or failure to insist upon strict compliance with any obligation, agreement or condition of this Agreement shall operate as a waiver of, or an estoppel with respect to, any subsequent or other failure.

9.8 SEVERABILITY. The invalidity of any portion of this Agreement shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

9.9 BINDING EFFECT. The provisions of this Agreement shall be binding on the heirs, executors, administrators and assigns of LESSOR and LESSEE in like manner as on the original parties, unless modified by mutual agreement.

9.10 COUNTERPARTS, FACSIMILE. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument. This Agreement may also be executed by signatures to facsimile transmittal documents in lieu of original or machine generated or copied documents.

9.11 GOVERNING LAW. This Agreement shall be governed by, and construed with the Laws of the State of Utah. Each party agrees that any action brought in connection with Agreement shall be filed and heard in a court of competent jurisdiction in Utah.

9.12 MODIFICATION. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party.

9.13 ATTORNEY'S FEES. Should any litigation be commenced between the parties hereto concerning any provision of this Agreement or the rights and obligations of either in relation thereto, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney's fees.

9.14 SCHEDULES. The Schedules and Exhibits to this Agreement are incorporated herein by reference and expressly made a part hereof.

9.15 ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation, both written and oral, of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

IN WITNESS WHEREOF, the parties have executed this lease on the date first above written.

LESSOR: WING HAVEN FARMS, LLC, LLC

X  _____

By: Jillian C. Hatch

Title: Manager

LESSEE:

X _____

By: _____

Title: _____

X _____

By: _____

Title: _____

MARE LEASE AND BREEDING AGREEMENT

BETWEEN

Crandall Family Thoroughbred Breeding, LESSEE

AND

WING HAVEN FARMS, LLC, LESSOR

MARE LEASE AND BREEDING AGREEMENT

This is a MARE LEASE AND BREEDING AGREEMENT (the "AGREEMENT") entered into this 24th day of October 2007, by and between David & Melanie Crandall dba Crandall Family Thoroughbred Breeding ("Crandall") with an address of 421 Lewis Lane, Basalt, Colorado 81621 ("LESSEE"), and WING HAVEN FARMS, LLC, a Utah Limited Liability Company (hereinafter referred to as ("Wing Haven"), with an address of 6905 South 1300 East #240, Midvale, Utah 84047 ("LESSOR").

RECITALS

WHEREAS, LESSOR is engaged in the business of leasing Thoroughbred mares for breeding purposes; and

WHEREAS, LESSEE desires to lease from LESSOR, the mare or mares selected by LESSEE described on the attached Schedule A (individually a "Mare" and collectively the "Mares") which will be bred to the stallion or stallions selected by LESSEE described on the attached Schedule A (individually a "Stallion" and collectively the "Stallions") in accordance with the terms of this Agreement.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties to this Agreement, the parties hereby agree as follows:

SECTION 1

TERM

The term of this Agreement shall be for all Mares shown on Schedule A approximately 7 months, beginning December 1, 2007, and terminating July 1, 2008. The Mares are expected to produce foals in the year 2009.

SECTION 2

LEASE PAYMENTS

2.1 LESSEE agrees to pay to LESSOR, as rent for the Mares the total sum of \$105,900.00 dollars (the "Rent"). The Rent shall be included as part of the total cost of

the 2007 Mare Lease Program" and paid in the amounts and at the times shown in the letter of intent to purchase dated, and attached hereto as Exhibit A.

2.2 LESSEE agrees to pay to LESSOR, as stallion service fees (the "Service Fee") the total sum of dollars (\$28,000.00). Service Fee shall be included as part of the total cost of the 2007 Mare Lease Program and paid in the amounts and at the times shown in the Letter of Intent attached hereto as Exhibit A. Service Fee collected by LESSOR shall be distributed by LESSOR to the appropriate Stallion Owners.

2.3 LESSEE agrees to pay to LESSOR, as prospective foal insurance fee (the "Prospective Foal Insurance Fee") the total sum of \$13,500.00 dollars. Prospective Foal Insurance Fee shall be included as part of the total cost of the 2007 Mare Lease Program" and paid in the amounts and at the times shown in the Letter of intent attached hereto as Exhibit A. Prospective Foal Insurance Fee collected by LESSOR shall be distributed by LESSOR to the appropriate Insurance Companies.

SECTION 3

FOAL OWNERSHIP

3.1 LESSEE and LESSOR agree that the objective of this Agreement is to allow LESSEE to lease the Mares which have been selected by LESSEE for the sole purpose to produce a foal that has stood and nursed from a Mare or has been fed by hand, in each case, for at least a period of 24 hours ("Live Foal").

3.2 If a Live Foal is produced and LESSEE has paid the Rent and Service Fee in full the Live Foal shall become the property of LESSEE whether registered in the name of the LESSEE or, for convenience, in the name of the owner of the Mare or other nominee.

3.3 LESSOR DOES NOT GUARANTEE THE BIRTH OF A LIVE FOAL OR FOAL THAT WILL STAND AND NURSE OR BE FED BY HAND FOR AT LEAST A 24 HOUR PERIOD. THE RISK OF LOSS IS TO BE BORN BY THE LESSEE.

SECTION 4

OWNERSHIP AND HEALTH OF MARES

4.1 The parties agree that if any of the Mares becomes unsuitable for LESSEE'S breeding program that LESSEE shall have the option to exchange the Mare for another mare selected by LESSEE of equal quality as determined by reference to the bloodline and breeding history of such Mare at the time it was selected by LESSEE for the program.

4.2 LESSOR represents and warrants that the Mares are owned or controlled by Wing Haven and that LESSOR has full authority to enter into this Agreement.

4.3 LESSOR represents and warrants that to its actual knowledge the Mares are free of disease and other defects that would adversely affect the ability of the Mares to produce a Live Foal. A copy of the veterinarian certificate will be made available to LESSEE on request.

SECTION 5

LOCATION, CARE AND MAINTENANCE OF THE MARES

LESSEE has entered into a boarding agreement with Wing Haven Location, care and maintenance of the mares will be done at Wing Haven Farms, LLC Farm, 10267 Warm Springs Loop, Hanna Utah 84031 Or at a location LESSOR deems safe and suitable for the health and well being of the Mare owned by LESSOR and the Foal to be owned by LESSEE.

SECTION 6

LIMITED USE OF MARES

For the term of the lease, LESSEE is authorized to use the Mares for breeding purposes only. Except for the breeding qualities of the Mares, LESSOR retains all rights and interests in the Mares, including the right to any income therefrom. If the use of the Mares by LESSOR prevents LESSEE from accomplishing the objectives of this Agreement or causes a Mare to abort a fetus, then LESSOR agrees to substitute another Mare of equal quality which shall be selected by LESSEE that will allow LESSEE to receive the benefits of this Agreement in the same year that a foal would have been born to the Mare.

SECTION 7

STALLION CONTRACTS

LESSOR warrants and represents that the Stallions selected by LESSEE have been bound. LESSOR further warrants and represents that LESSOR has full authority to purchase the seasons of the Stallions and provide such seasons to LESSEE. LESSEE acknowledges that it has had the opportunity to review any applicable service agreements of the Stallions.

SECTION 8 RISK OF LOSS

LESSEE shall bear all risk of loss if leased mare does not produce a live foal. LESSEE shall bear all risk of loss from the death or harm to any of the Live Foals produced from the Mares, unless such loss is caused by the gross negligence of LESSOR or its agents or employees, in which case LESSOR shall bear such loss. LESSEE shall bear the responsibility of insurance for the Foal upon birth as set out in the Foal Agreement of even date herewith, entered into by LESSOR and LESSEE.

SECTION 9

MISCELLANEOUS

9.1 HIGH RISK. LESSEE ACKNOWLEDGES THAT THE SUBJECT MATTER OF THIS AGREEMENT INVOLVES A HIGH DEGREE OF RISK AND THAT LESSEE HAS SUCH KNOWLEDGE IN BUSINESS AND FINANCIAL MATTERS THAT LESSEE IS CAPABLE OF EVALUATING THE MERITS AND RISKS INVOLVED IN THIS AGREEMENT AND THAT IN MAKING ITS DECISION TO ENGAGE IN THE BUSINESS OF BREEDING, RAISING, RACING, AND SELLING THOROUGHBRED HORSES RELIED ON ITS OWN EXAMINATION AND EXPERIENCE. LESSEE HAS FULLY EVALUATED THE ECONOMIC AND FINANCIAL RISKS OF THE BUSINESS AND IN LIGHT OF THE FOREGOING, LESSEE IS SATISFIED THAT ITS EXECUTION OF THIS AGREEMENT IS APPROPRIATE.

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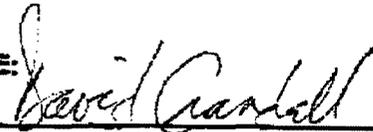
IN WITNESS WHEREOF, the parties have executed this lease on the date first above written.

LESSOR: WING HAVEN FARMS, LLC, LLC

X 

By: Jillian C. Hatch

Title: Manager

LESSEE: X 

By: David Crandall

Title: President

X 

By: Marvie Crandall

Title: Secretary

