

**EXHIBIT 1**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

CHARLES R. SEROTA, GEOFFREY S. SEROTA,  
SONS EASTPORT LLC, SONS RIVERHEAD LLC,  
SONS RIVERHEAD II LLC, 409-423 WFP SHIRLEY  
LLC, 349-351 WFP SHIRLEY LLC, SEROTA  
WADING RIVER LLC, SONS EAST MEADOW LLC,  
3644 LONG BEACH ROAD LLC, 3600 LONG  
BEACH ROAD LLC, AND SEROTA VALLEY  
STREAM LLC,

Plaintiffs,

-against-

JOSEPH SCIMONE individually, JOSEPH SCIMONE  
in his capacity as Executor of the ESTATE OF  
NATHAN L. SEROTA, MICHAEL CASSIDY, AND  
LIGHTHOUSE REALTY PARTNERS, LLC,

Defendants.

Index No.: 651117/2012

**SECOND AMENDED COMPLAINT**

Plaintiffs Charles R. Serota, Geoffrey S. Serota, Sons Eastport LLC, Sons Riverhead LLC, Sons Riverhead II LLC, 409-423 WFP Shirley LLC, 349-351 WFP Shirley LLC, Serota Wading River LLC, Sons East Meadow LLC, 3644 Long Beach Road LLC, 3600 Long Beach Road LLC, and Serota Valley Stream LLC (collectively, the "Plaintiffs"), by and through their attorneys, Greenfield Stein & Senior, LLP and Kantor, Davidoff, Wolfe, Mandelker, Twomey & Gallanty, P.C., for their Complaint allege as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs bring this action to declare null and void an alleged twenty-nine (29) page property management agreement purportedly entered into by Nathan L. Serota ("Serota"), the deceased father of Plaintiffs Charles Serota and Geoffrey Serota, with Defendant Joseph Scimone ("Scimone") on April 8, 2010, when Serota was blind, in failing health, taking

medication for Alzheimer's disease and unable to understand a one-page telephone bill when it was read to him. Even if Serota were aware and had the desire to execute the commercially unreasonable agreement knowing and understanding what it said, it is still invalid and not binding as to Plaintiffs because Serota lacked the power to impose such an agreement on Plaintiffs; because Serota could not delegate his powers and duties as Managing Member of the LLC Plaintiffs after his lifetime as he did in the document; and also because entering into the agreement constituted breaches of the fiduciary duties Serota owed to Plaintiffs and Defendant Scimone was aware of those breaches of fiduciary duty. To the extent Serota was attempting to make a post-death "gift" to Defendant Scimone, the document also fails as an attempted will substitute that does not comply with New York law.

2. The document, which purports to authorize Defendant Scimone to manage Serota's real estate empire for as long as he wants at millions of dollars per year, was obtained by the unlawful collusion of Defendant Scimone, Defendant Michael Cassidy ("Cassidy"), an attorney for the LLC Plaintiffs who aided Scimone against the LLC Plaintiffs and who shares in the proceeds (together, the "Individual Defendants"), and Vivian Serota ("Mrs. Serota"). Defendant Scimone has since assigned the purported agreement to Lighthouse Realty Partners, LLC ("Lighthouse"), an entity in which both Defendants Scimone and Cassidy have a financial interest and from which Mrs. Serota, who is not related to Plaintiffs Charles Serota and Geoffrey Serota, derives an indirect benefit as her son, Daniel, is an employee and project manager for Lighthouse.

3. On April 8, 2010, Serota was blind, wheelchair-bound, taking medication for Alzheimer's disease and suffering from heart failure, macular degeneration, hepatitis, shingles and cancer. Serota's mental state had degenerated to the point that he no longer recognized

people, could not engage in simple greetings without getting confused and had difficulty staying awake. Serota could not comprehend and handle interactions with others and could not comprehend events taking place around him. Indeed, his demise was merely days away.

4. The Individual Defendants assert that on April 8, 2010, just three weeks before Serota's death at the age of 90, Serota agreed to the terms of a twenty-nine (29) page Management Agreement ("Agreement"). Not only is the Agreement improperly one-sided, commercially unreasonable and unjust, but at the time of Serota's purported consent to the Agreement, he was mentally and physically incapacitated and unable to read, comprehend or agree to the terms of this twenty-nine (29) page Agreement. Moreover, Serota had – seven years earlier – refused to sign the Agreement.

5. The Agreement has caused damages to and is continuing to directly injure Plaintiffs in that they are the owners of various commercial properties that are purportedly subject to the Agreement and its commercially unreasonable terms.

6. While the Last Will and Testament of Nathan L. Serota (the "Will") provides for the creation of a management agreement, Serota's Will does not provide for the onerous and unreasonable Agreement that the Individual Defendants have conspired to foist upon Plaintiffs and their properties. The Agreement goes far beyond what is provided for in Serota's Will, and purports to allow Defendants Scimone, Cassidy and Lighthouse to gorge themselves on the fruits of Serota's real estate empire to an extent never agreed to by Serota prior to his incapacity, and in any event to an extent not permitted under New York and Delaware law.

7. The Individual Defendants—Serota's Chief Financial Officer and counsel — colluded with Mrs. Serota to obtain Serota's signature on a document the terms of which would

appear to guarantee, among other things, 6% of an annual rent roll of approximately \$50 million, no liability, few business expenses, and renewal of the Agreement for the lifetime of Defendant Scimone. The Agreement also permits conflicts of interest and the allocation of costs in a manner that is wholly inconsistent with the rights of the properties' owners. The Individual Defendants exerted undue influence in order to trick an elderly, physically and mentally incapacitated 90-year-old man into signing his name to the document without obtaining his knowing and intelligent consent or agreement to the Agreement's terms.

8. The Agreement should be declared null and void and Defendants Scimone and Lighthouse should be liable to Plaintiffs for restitution, disgorgement and damages for unjust enrichment and Defendants Scimone and Cassidy should be liable to Plaintiffs for restitution, disgorgement and damages for knowing participation in a breach of trust as set forth below.

#### **PARTIES AND JURISDICTION**

9. Plaintiff Charles Serota resides at 4 Clover Court, East Norwich, New York.

10. Plaintiff Geoffrey Serota resides at 7 Emerson Road, Glen Head, New York.

11. Plaintiffs Charles Serota and Geoffrey Serota are the sons of Nathan Serota and Fay Serota, who were divorced in 1989.

12. Plaintiff Sons Eastport LLC is a limited liability company organized under the laws of the State of Delaware, authorized to do business in the State of New York and doing business in the State of New York.

13. Plaintiff Sons Riverhead LLC is a limited liability company organized under the laws of the State of Delaware, authorized to do business in the State of New York and doing

business in the State of New York.

14. Plaintiff Sons Riverhead II LLC is a limited liability company organized under the laws of the State of Delaware, authorized to do business in the State of New York and doing business in the State of New York.

15. Plaintiff 409-423 WFP Shirley LLC is a limited liability company organized under the laws of the State of Delaware, authorized to do business in the State of New York and doing business in the State of New York.

16. Plaintiff 349-351 WFP Shirley LLC is a limited liability company organized under the laws of the State of Delaware, authorized to do business in the State of New York and doing business in the State of New York.

17. Plaintiff Serota Wading River LLC is a limited liability company organized under the laws of the State of New York, authorized to do business in the State of New York and doing business in the State of New York.

18. Plaintiff Sons East Meadow LLC is a limited liability company organized under the laws of the State of Delaware, authorized to do business in the State of New York and doing business in the State of New York.

19. Plaintiff 3644 Long Beach Road LLC is a limited liability company organized under the laws of the State of New York, authorized to do business in the State of New York and doing business in the State of New York.

20. Plaintiff 3600 Long Beach Road LLC is a limited liability company organized

under the laws of the State of New York, authorized to do business in the State of New York and doing business in the State of New York.

21. Plaintiff Serota Valley Stream LLC is a limited liability company organized under the laws of the State of Delaware, authorized to do business in the State of New York and doing business in the State of New York.

22. Plaintiffs Charles and Geoffrey Serota are Managing Members of Sons Eastport LLC, Sons Riverhead LLC, Sons Riverhead II LLC, 409-423 WFP Shirley LLC, 349-351 WFP Shirley LLC, Serota Wading River LLC, Sons East Meadow LLC, 3644 Long Beach Road LLC, 3600 Long Beach Road LLC, and Serota Valley Stream LLC, and are the only beneficial owners of each.

23. Each of Sons Eastport LLC, Sons Riverhead LLC, Sons Riverhead II LLC, 409-423 WFP Shirley LLC, 349-351 WFP Shirley LLC, Serota Wading River LLC, Sons East Meadow LLC, 3644 Long Beach Road LLC, 3600 Long Beach Road LLC, and Serota Valley Stream LLC (collectively, the “LLC Plaintiffs”) are owners of properties that are purportedly subject to the Agreement that Nathan Serota executed when he lacked the mental capacity to understand the Agreement, and as a result of the undue influence and collusion of the Defendants.

24. Upon information and belief, Defendant Lighthouse is a domestic corporation, organized and doing business under the laws of the State of New York, with its principal place of business at 70 East Sunrise Highway, Suite 610, Valley Stream, New York. Defendant Scimone has assigned the purported Agreement to Defendant Lighthouse.

25. Upon information and belief, Defendant Joseph Scimone resides at 2 Willow Road, Old Bethpage, New York. Upon information and belief, Defendant Scimone spent the majority of his career as a lending officer at a bank before working for Serota as Chief Financial Officer of Serota's companies, where he managed Serota's office as opposed to any properties. Upon Serota's death, Defendant Scimone became simultaneously the manager of Serota's companies, the executor of Serota's Will, and the designated Trustee of trusts set up by the Will. Plaintiffs allege that there is a conflict between Defendant Scimone's obligations as Executor and as Trustee and his obligations as manager under the Agreement. Upon information and belief, Defendant Scimone has a 70% interest in Defendant Lighthouse.

26. Joseph Scimone is also named as a defendant in his capacity as Executor of the Estate of Nathan L. Serota because this action seeks a declaration that the Management Agreement signed by Serota is void. Nathan L. Serota resided at 895 Park Avenue, New York, New York, and his estate has been probated in New York County.

27. Upon information and belief, Defendant Michael Cassidy resides at 504 Fairview Avenue, Baldwin, New York. Upon information and belief, Defendant Cassidy is an attorney who was hired by Serota and the LLC Plaintiffs to represent them in their real estate businesses. Upon information and belief, Defendant Cassidy owns 5% of Defendant Lighthouse.

### **FACTS**

28. Nathan Serota, the father of Plaintiffs Charles and Geoffrey Serota, was born in 1920 in Brooklyn, New York, and is recognized as one of the mid-twentieth-century developers who helped shape the face of post-war Long Island, building more than fifty shopping and commercial/retail centers. Those in which he had an interest at his death are now



generating rentals of approximately \$50 million per year. Serota founded Nathan L. Serota Companies ("NLS" or the "Company") and for over fifty years the Company has developed retail, office and residential property in the greater New York metropolitan area.

29. Many of the properties developed by the Company are owned by the LLC Plaintiffs, and in turn, as set forth above, by Plaintiffs Charles Serota and Geoffrey Serota as managing members. Other properties, including properties listed in the purported Agreement, were sold well before the document was signed.

30. Nathan Serota died on May 1, 2010 at the age of 90. The decade proceeding Serota's death was plagued by a major decline in both his physical and mental health.

31. As early as 2001 Serota suffered severely from macular degeneration and was losing his eyesight. He was forced to use a large magnifying glass in a futile attempt to read documents and mail. Serota travelled the world looking to save his eyesight, but no cure could be found. His eyesight continued to deteriorate to the point that when Serota executed his Will on April 9, 2002, eight (8) years before the Agreement, procedures for blind testators were followed and the Will was read out loud, in its entirety, with three witnesses so averring at the time.

32. Two to four years prior to his death, Serota suffered physically from heart problems, macular degeneration, hepatitis, shingles and cancer. His mental capacity deteriorated so severely that before April 2010, he had difficulty identifying people he saw every day, understanding things said and read to him, and he often fell asleep during daytime hours. At this time, Serota was taking a number of medications and was always accompanied by one or more nurses or health aides. Serota ceased going into work full-time around 2007 and was reduced to

going into the office two days per week merely to get out of his home. When Serota did go into the office on those days, he did not conduct the operation or management of the business, and from before April 2010, did not participate. He simply went into his office and fell asleep. During that time, Serota was receiving medication for Alzheimer's disease.

33. In the years before Serota's death, Plaintiffs Charles Serota and Geoffrey Serota were approached by Serota's business colleagues and employees about Serota's mental decline. Business associates would contact Plaintiffs Charles Serota and Geoffrey Serota to explain that they would not enter into any business deals with Serota because he was mentally incapacitated.

34. Serota's incapacity was evident to the Individual Defendants well before the execution of the Agreement. Indeed, when Plaintiffs Charles Serota and Geoffrey Serota confronted Defendant Cassidy about the existence of an operating agreement for Plaintiff Sons Riverhead II, LLC, Defendant Cassidy suggested to Plaintiffs Charles Serota and Geoffrey Serota that their father lacked the capacity to execute the operating agreement.

35. In 2009, Defendant Cassidy, the attorney for Serota's real estate business, approached Plaintiffs Charles Serota and Geoffrey Serota and suggested that an operating committee be formed at the Company in light of Serota's inability to run and manage the business. Defendant Cassidy told Plaintiffs Charles Serota and Geoffrey Serota that he himself was uncomfortable with Serota signing documents because Serota was no longer capable of understanding what he was signing. Defendant Scimone repeatedly voiced the same concerns to Plaintiffs Charles Serota and Geoffrey Serota and others. An operating committee, which included Plaintiffs Charles Serota and Geoffrey Serota, was thereafter established in order to run

and manage the Company.

36. By 2010, Serota no longer had the mental capacity to understand things; a simple greeting of “hello” was confusing and difficult for him to understand. Serota was also weak, unable to walk and unable to see. Serota became wheelchair bound. During his last year of his life, Serota was taken to Lenox Hill Hospital on a daily basis by either a nurse or home health aide.

**Serota’s Purported Consent To The Agreement:**

37. It was during this time, in 2010, that the Individual Defendants Scimone and Cassidy colluded and conspired along with Mrs. Serota to take advantage of the elderly and infirm man, despite the fact that the two Individual Defendants were fiduciaries. Mrs. Serota called the office of the Company on April 8, 2010, and told Defendant Scimone and Defendant Cassidy to rush to Serota’s New York apartment to obtain his signature on the Agreement. Upon information and belief, the Individual Defendants believed that Serota would perish that day or shortly thereafter. The Individual Defendants took an out-of-date and inaccurate draft of a proposed Agreement – ignoring counsel’s instructions with respect to lawfully obtaining the signature of this blind man – to Serota’s bedside and obtained his signature, they contend. They also contend they obtained his consent to the Agreement. The story is told by the Individual Defendants that the only individuals present during Serota’s purported signing of the Agreement were Defendant Scimone, Defendant Cassidy and Mrs. Serota’s son, Daniel, now employed by Defendant Lighthouse, whom they brought as a witness, foregoing the use of any disinterested witnesses, as were used for Serota’s will. Indeed, at that time, everyone from Serota’s business colleagues, employees and friends to his family knew that Serota was unable to understand, read, consent to and execute a document such as the Agreement. Serota passed away three weeks

later. The Individual Defendants colluded to deceive an elderly and incapacitated man.

38. In 2003, Serota was presented with a draft of the Agreement and rejected it outright and refused to sign it, then and thereafter.

39. Subsequently, in 2003, Defendant Scimone sent a draft of the Agreement to Errol Burkhardt at Burkhardt & Wexler, the law firm which prepared Serota's will. Defendant Scimone's draft of the Agreement, with handwritten changes on it, called for the Agreement to take effect six months after Serota's death. Mr. Burkhardt rejected that change, and had the document typed up, with the percentage fee to be charged added, and explained that the Agreement should commence upon Serota's death, not six months after Serota died. Mr. Burkhardt also advised Scimone that the Agreement should be signed in his office, and witnessed as though it were a testamentary disposition.

40. Thereafter Serota did not sign the Agreement in Mr. Burkhardt's office, nor did Defendants Scimone and Cassidy have the legally necessary witnesses to the act of signing the Agreement, much less have three independent witnesses as in 2002, when the Serota Will was signed. Defendants Scimone and Cassidy also did not submit to Serota the document which Burkhardt had drafted, without changes. Instead, a handwritten phrase, "within 180 days of" replaced the word "upon" in the Agreement.

41. Defendant Scimone, as Executor of Serota's Estate, thereafter used the delay to claim special commissions, amounting to almost \$4 million, from the Estate of Nathan L. Serota. Defendant Cassidy, in defending the Agreement, swore in an affidavit filed in Surrogate's Court that he had had a copy of the Agreement in his desk since 2003 -- three years before it was drafted and revised by Defendant Scimone.

42. Upon information and belief, Mrs. Serota colluded and conspired with Defendants Scimone and Cassidy to obtain Serota's signature on the Agreement in order to limit the powers that Serota's sons would have over their own properties, and to benefit her son, Daniel. Upon information and belief, Daniel is currently an employee of Defendant Lighthouse and has been appointed by Defendant Scimone as Property Manager.

43. On the death of Nathan Serota, Defendants Scimone and Cassidy took control of the Serota real estate empire, and removed Charles Serota and Geoffrey Serota from the company's offices. Defendants Scimone and Cassidy took control of the LLC Plaintiffs, and maintain custody of the bank accounts and records, while paying themselves with LLC Plaintiffs' funds. Defendants Scimone and Cassidy, using funds derived from the Estate of Nathan L. Serota, then caused a lawsuit to be brought in Federal Court alleging that Charles and Geoffrey Serota should be barred from using their own names in the real estate business.

44. Defendant Scimone assigned the Agreement to Defendant Lighthouse. Defendant Scimone and Defendant Cassidy each have an ownership interest in Defendant Lighthouse and created the entity for the purpose of financially benefitting themselves and others.

45. Upon information and belief, Defendant Scimone has a 70% interest in Defendant Lighthouse and Defendant Cassidy has a 5% interest in Defendant Lighthouse.

46. Upon information and belief, there is no evidence that Defendant Cassidy disclosed his financial interest in the Agreement to Serota when seeking his signature on the out-of-date and previously rejected Agreement, nor is there any evidence that Serota provided a waiver with respect to Defendant Cassidy's conflict of interest.

47. Upon information and belief, Mrs. Serota has sought to obstruct investigation by Plaintiffs Charles Serota and Geoffrey Serota into the facts and circumstances of this matter by persuading healthcare providers and aides and other witnesses not to speak to Plaintiffs Charles Serota and Geoffrey Serota or any of their representatives. Upon information and belief, the Individual Defendants and Defendant Lighthouse are improperly using Lighthouse and Serota's Estate assets in order to pay potential witnesses for their silence.

48. Defendants Scimone and Cassidy have been using funds, predominantly from the Serota Estate, to buy the silence of at least one witness, a long-time friend and confidant of Nathan Serota, to whom they have paid approximately \$387,500, on the condition that the witness not provide information to or testimony for any beneficiary of the Serota Estate.

49. In addition to the \$307,500 payable to the witness to keep him from testifying under oath in any lawsuit brought by any beneficiary of the Serota Estate, Defendants Scimone and Cassidy, through their control of Defendant Lighthouse, caused Lighthouse to pay the same witness \$40,000 a year for working two days a week. The \$307,500 came from the Serota Estate; the \$40,000 comes from Lighthouse, whose income are funds taken by Defendants ostensibly pursuant to the Agreement.

**The Agreement:**

50. The "Agreement," as defined, does not record Serota's actual agreement. It is a document from years earlier, which, while in possession of his faculties, Serota rejected. Specifically, the Agreement:

- a. is dated April 2003, with the "2003" crossed out in pen and "2010" handwritten in;

- b. the Notary Acknowledgement represents that Serota “personally appeared” before Defendant Cassidy and executed the Agreement in Nassau County, New York. That is simply false. Defendant Cassidy notarized the Agreement as a Notary Public qualified in Nassau County. Yet, Defendant Cassidy signed and submitted an Affidavit in New York County Surrogate’s Court in which he admitted under oath that the Agreement was executed in Manhattan at Serota’s New York City apartment;
- c. which was prepared but not signed in 2003, is incorrect with respect to the identities of the properties Serota owned as of 2010, and incorrect as to the identities in 2010 of the tenants; and
- d. in handwriting crosses out the typed term specifying that the Agreement would commence “upon” the death of Serota and instead handwrites in “within 180 days of” the death of Serota—the change requested by Defendant Scimone and explicitly rejected by counsel years earlier.

51. The Agreement’s terms are also improperly one-sided, commercially unreasonable and unconscionable and are not what a shrewd real estate magnate would sign in his right mind. The Agreement was rejected by Serota years earlier, in 2003, when he was mentally competent. Further, while Serota’s Will provides for the execution of a management agreement establishing a management fee of 6% per year for not less than five years, the Agreement goes far beyond what is provided for in the Will.

52. The Agreement is commercially unreasonable because, essentially, it purports

to bestow all the perks of the properties' ownership on Defendant Scimone while saddling him with none of the risks. For example, the Agreement shifts away from the property owners and to Defendant Scimone essentially all of the power and discretion with regard to, among other things, the budgets, the hiring of professionals, the leases, the selection of tenants, the amount of rent to be charged, the maintenance of tenant reserves, the determination of non-budgeted expenditures, the accounting for the properties, and the personnel hired to operate the properties. The Agreement also purports to make Defendant Scimone's decisions with regard to the properties final and binding on their owners. The Agreement thus stands in sharp contrast to those that are executed by commercial property owners operating in the ordinary course of business and who are in possession of all of their faculties.

53. The Agreement unreasonably restricts Plaintiffs' abilities to operate and manage their own properties, and instead gives Defendant Scimone unheard of amounts of discretion and control over the Plaintiffs' properties.

54. After Serota passed away on May 1, 2010, Plaintiffs Charles Serota and Geoffrey Serota learned of the terms of their father's alleged Agreement with Defendant Scimone.

55. The differences between the Agreement, as contrived by the Individual Defendants, and the management agreement provided for in Serota's will are significant as set forth above.

56. Throughout the course of Defendant Scimone's employment at NLS he positioned himself as Serota's most trusted advisor and sought, with Mrs. Serota's help, to drive a wedge between Serota and his sons. Not only would Defendant Scimone speak poorly about



Plaintiffs Charles Serota and Geoffrey Serota to their father, but he would speak poorly about them throughout the Company. As Serota's mental condition deteriorated and his periods of lucidity diminished, Defendant Scimone colluded with Defendant Cassidy and Mrs. Serota to create a document and to obtain Serota's signature on such document or colluded with Defendant Cassidy and Mrs. Serota to defraud Serota.

57. In the alternative, even if Serota had the mental capacity to understand and execute the Agreement as the Individual Defendants assert, it is still invalid and not binding as to Plaintiffs because Serota lacked the power to impose the Agreement on Plaintiffs; because Serota could not delegate his managing member powers and duties after his lifetime as he did in the Agreement; and also because entering into the Agreement constituted breaches of the fiduciary duties Serota owed to Plaintiffs and Defendant Scimone was aware of those breaches of fiduciary duty.

58. At the time he executed the Agreement, Serota was the Managing Member of each of the LLC Plaintiffs, and Plaintiffs Charles Serota and Geoffrey Serota were members of each of the LLC Plaintiffs.

59. As Managing Member, Serota owed fiduciary duties to each of the LLC Plaintiffs, as well as to their members.

60. Each LLC Plaintiff is governed by an Operating Agreement established and entered into under the laws of Delaware or New York (the "Operating Agreements"). Although the Operating Agreements provided that each LLC was formed for any lawful purposes, each LLC Plaintiff generally existed for purposes of owning and profiting from a specific piece of commercial real estate.

61. The Operating Agreements vest broad and exclusive power in the Managing Members of each LLC Plaintiff to, among other things, purchase, lease, acquire or dispose of property; open bank accounts and otherwise invest the funds of the company; retain accountants, attorneys or other agents; make distributions to members in the sole discretion of the Managing Members; and to cause to be prepared and filed the federal and state tax returns for the company.

62. The Operating Agreements also provide that the Managing Member is to be reimbursed for expenses incurred in the on-going conduct of the company's business and that the Managing Member may engage in business ventures that compete with the company.

63. The Agreement, by comparison, purports to bestow upon Scimone, and subsequently Lighthouse as a result of the assignment of the Agreement from Scimone to Lighthouse, the power to:

- a. set the budget for each of the LLC Plaintiffs' properties, without any need for approval by the LLC Plaintiffs or their members;
- b. maintain bank accounts on behalf of the LLC Plaintiffs and their properties;
- c. determine when or whether distributions are made, in his sole discretion;
- d. hire management level employees, without any need for approval by the LLC Plaintiffs or their members;
- e. enter into leases of any size and term, without any need for approval by the LLC Plaintiffs or their members;

- f. select attorneys to represent the LLC Plaintiffs, without any need for approval by the LLC Plaintiffs or their members;
- g. select accountants to prepare the tax returns and select accountants to conduct audits for the LLC Plaintiffs, without any need for approval by the LLC Plaintiffs or their members; and
- h. compete with the LLC Plaintiffs in the same or similar businesses.

64. In addition to purporting to bestow upon Scimone (and subsequently Lighthouse) the rights, powers, and duties of the LLC Plaintiffs' Managing Members set forth above, the Agreement is also extraordinary, is not for the usual carrying on of the LLC Plaintiffs' businesses and is commercially unreasonable in that it:

- a. does not have a definitive term and allows for continuous renewals during Scimone's lifetime;
- b. does not provide the LLC Plaintiffs and their members with unhindered access to company records;
- c. does not provide for the LLC Plaintiffs to get the credit for any self-dealing supplier discounts;
- d. does not permit the termination of the Agreement upon the sale of any single property, thus providing a major obstacle to the sale, valuation or refinancing of any one property;
- e. allows Scimone (or Lighthouse) to take a construction management fee

without specifying the rate for such fee;

- f. provides Scimone (or Lighthouse) with a 60-day cure period for monetary defaults that is at least four times as long as normal under such agreements; and
- g. provides a management fee of 6% that is unreasonably high given that the Agreement covers mainly “triple net” leases, in which the tenant is responsible for work the managing agent might otherwise have to perform.

65. After Serota’s death, Plaintiffs Charles Serota and Geoffrey Serota became aware that Defendant Scimone and Defendant Cassidy had formed Defendant Lighthouse and assigned the Agreement to Defendant Lighthouse, an entity in which both Defendant Scimone and Defendant Cassidy have a financial interest.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

66. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 65 above as though fully set forth herein.

**Lack of Capacity:**

67. On April 8, 2010, Serota lacked the mental capacity to enter into the Agreement with Defendant Scimone.

68. At the time Serota purportedly consented to the Agreement, Serota was unable to see, stay awake, engage in conversations with others, understand simple greetings, engage in complex and rational thought, or comprehend both the nature of his interactions with others and

surrounding events and circumstances.

69. At the time Serota purportedly consented to the Agreement, he was suffering from a mental defect which rendered him incapable of understanding the nature of the transaction and/or incapable of making a rational judgment with respect to the transaction.

70. The execution of Serota's Will in 2002 followed the necessary procedures for blind testators. Upon information and belief, Defendant Scimone was aware of these procedures yet he did not follow them seven (7) years later when he purportedly obtained Serota's signature on the Agreement.

71. Upon information and belief, Defendant Scimone knew that Serota lacked the mental capacity to comprehend and consent to the terms of the twenty-nine (29) page Agreement, and did not want independent witnesses to the obtaining of the signature.

72. Upon information and belief, Defendant Cassidy knew that Serota lacked the mental capacity to comprehend and consent to the terms of the twenty-nine (29) page Agreement, and did not want independent witnesses to the obtaining of the signature.

Undue Influence:

73. The Individual Defendants wrongfully exerted undue influence over Serota in order to get his signature on the Agreement.

74. Defendant Scimone had a motive to exert undue influence over Serota. Defendant Scimone's motives included guaranteeing his job security after Serota's demise, obtaining favorable terms relating to his management of the properties (terms that Serota refused to agree to years earlier, in 2003, when he was mentally competent) and receiving millions of

dollars in financial benefits. The Agreement provides that Defendant Scimone receive annually 6% of what is now approximately \$50 million in rents and allows him to renew the deal at his sole option.

75. Defendant Scimone had the opportunity to exert undue influence over Serota because of his constant physical proximity to Serota, his unique managerial position at Serota's Company, his familiarity with Serota's physical and mental condition and his knowledge and management over Serota's personal and professional state of affairs over the years. Indeed, Defendant Scimone had positioned himself as a "trusted advisor" to Serota and attempted, over the years, to alienate Serota from his sons.

76. Upon information and belief, Defendant Scimone knew that Serota lacked the mental capacity to comprehend and consent to the terms of the twenty-nine (29) page Agreement.

77. Defendant Cassidy, Serota's lawyer, had a financial motive to unduly influence Serota to sign the Agreement as, unbeknownst to Serota, he was to obtain a financial interest in the Lighthouse entity. Upon information and belief, Defendant Cassidy has a 5% interest in Defendant Lighthouse, which, at the current rent roll, is approximately \$150,000 per year.

78. Similarly, Defendant Cassidy had the opportunity to unduly influence Serota as he positioned himself as a "trusted advisor" to Serota in his capacity as counsel to Serota and the NLS companies, including the LLC Plaintiffs, from 2003 through the time he helped obtain Serota's signature to a document adverse to the companies' interests prior to Serota's death (and up through the present). Upon information and belief, Cassidy's position as counsel obligated

him to protect Serota's business interests and the business interests of NLS and the LLC Plaintiffs, rather than feather his nest through the Agreement.

79. Upon information and belief, Defendant Cassidy knew that Serota lacked the mental capacity to comprehend and consent to the terms of the twenty-nine (29) page Agreement.

80. The Agreement has caused and is continuing to cause damages to Plaintiffs in that they are the owners of various commercial properties that are purportedly subject to the Agreement and its commercially unreasonable terms.

81. The differences between the Agreement, as contrived by the Individual Defendants, and the management agreement provided for in Serota's Will are significant as set forth above.

82. The Individual Defendants unduly influenced Serota to sign the Agreement.

83. Serota lacked the mental capacity and/or was unduly influenced to consent to and execute the Agreement and Plaintiffs, therefore, seek a judicial declaration that the Agreement is null and void.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Declaratory Judgment)**

84. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 83 above as though fully set forth herein.

85. Serota held a position of trust and a position as a fiduciary with regard to the LLC Plaintiffs and their members.

86. Entering into the Agreement constituted a breach of Serota's duties of trust and fiduciary duties to the LLC Plaintiffs and their members because it was commercially unreasonable and, in the alternative, constituted an improper gift to Scimone.

87. The Agreement is not an arm's length business transaction that was negotiated in the best interest of the LLC Plaintiffs or their members.

88. Defendants Scimone and Cassidy knew that Serota was the Managing Member of each of the LLC Plaintiffs. Defendants Scimone and Cassidy also knew that there were other members in each of the LLC Plaintiffs. Thus, Defendants Scimone and Cassidy knew or, at a minimum, should have known that Serota held a position of trust and a position as a fiduciary with regard to the LLC Plaintiffs and their members.

89. Defendant Scimone was a party to the Agreement and was, thus, aware of the terms of the Agreement. Therefore, Defendant Scimone knew or should have known that the terms of the Agreement were so commercially unreasonable that, by entering into the Agreement, Serota was breaching his duty of trust to the LLC Plaintiffs and their members.

90. Defendant Cassidy signed and notarized the Agreement and acted as counsel to the LLC Plaintiffs when the Agreement was executed. He was, thus, aware of the terms of the Agreement. Therefore, Defendant Cassidy knew or should have known that the terms of the Agreement were so commercially unreasonable that, by entering into the Agreement, Serota was breaching his duty of trust to the LLC Plaintiffs and their members.

91. Defendant Scimone participated in and substantially assisted Serota in breaching his duties of trust to the LLC Plaintiffs and their members by, among other things,



colluding with Serota and Defendant Cassidy by entering into the Agreement. At a minimum, Defendant Scimone did not take any action to prevent Serota from breaching his duty of trust by entering into the Agreement.

92. Defendant Cassidy participated in and substantially assisted Serota in breaching his duties of trust to the LLC Plaintiffs and their members by, among other things, colluding with Serota and Defendant Scimone by entering into the Agreement. At a minimum, Defendant Cassidy did not take any action to prevent Serota from breaching his duty of trust by entering into the Agreement.

93. Because entering the Agreement was a breach of trust and fiduciary duties by Serota, and Defendants Scimone and Cassidy knowingly participated and assisted in that breach, the Agreement is voidable by the parties to whom those duties were owed—here, Plaintiffs.

94. Voiding the agreement is the only remedy that will fully compensate Plaintiffs.

95. Plaintiffs seek a judicial declaration that the Agreement is null and void.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Declaratory Judgment)**

96. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 95 above as though fully set forth herein.

97. Serota's powers as Managing Member of the LLC Plaintiffs were set forth in the Operating Agreements as limited by the laws of their states of incorporation.

98. Serota lacked the authority to execute the Agreement and to bind the LLC

Plaintiffs to the Agreement because the Agreement is not apparently for the carrying on of the business of the LLC Plaintiffs in the usual way and is a breach of the duties owed by Serota to the LLC Plaintiffs and their members under the implied covenant of good faith and fair dealing.

99. Neither the LLC Plaintiffs nor their members authorized Serota to execute the Agreement on their behalf.

100. Because Serota lacked the authority to execute the Agreement, the Agreement is voidable by Plaintiffs.

101. Voiding the agreement is the only remedy that will fully compensate Plaintiffs.

102. Plaintiffs seek a judicial declaration that the Agreement is null and void.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Declaratory Judgment)**

103. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 102 above as though fully set forth herein.

104. Serota's execution of the Agreement was a de facto delegation of the LLC Plaintiffs' Managing Members' powers and duties to Scimone.

105. The Agreement purports to take effect 180 days after the death of Serota and to continue in perpetuity for the life of Scimone, unless terminated earlier under the limited circumstances set forth therein.

106. Serota did not have the power or authority to delegate the powers and duties of the LLC Plaintiffs' Managing Members after his lifetime, and did not have the power and

authority to deny successive Managing Members of the LLC Plaintiffs the powers and duties provided for in the Operating Agreements.

107. Because Serota lacked the power or authority to delegate the powers and duties of the LLC Plaintiffs' Managing Members after his death, the Agreement is voidable by Plaintiffs.

108. Voiding the agreement is the only remedy that will fully compensate Plaintiffs.

109. Plaintiffs seek a judicial declaration that the Agreement is null and void.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
**(Declaratory Judgment)**

110. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 109 above as though fully set forth herein.

111. The powers granted to Scimone in the Agreement constitute an attempted testamentary disposition or will substitute by Serota.

112. Scimone was specifically advised by counsel that because the Agreement could be considered a testamentary disposition, it should be signed in counsel's office and properly witnessed. Specifically, a July 24, 2003 letter from Errol A. Burkhart of Wexler & Burkhart, P.C. to Scimone instructed, "Please do not have Nathan sign the Contract outside my office. My reason is that the Contract is to take effect on Nathan's death and some concern was raised as to whether the powers granted in the Contract are considered a testamentary disposition. Therefore, we should make sure the document is properly witnessed so it will

qualify as a testamentary conveyance.” The Contract referred to in the July 24, 2003 letter from Mr. Burkhart is in substance the Agreement Serota did not sign until April 2010.

113. Scimone disregarded the advice and instruction of counsel and did not have Serota’s execution of the Agreement properly witnessed because, among other reasons, Scimone knew Serota lacked the capacity to understand and execute the Agreement and did not want disinterested witnesses present.

114. Because the Agreement is a testamentary disposition or will substitute that fails to comply with the requirements of New York law, it is voidable by Plaintiffs.

115. Voiding the agreement is the only remedy that will fully compensate Plaintiffs.

116. Plaintiffs seek a judicial declaration that the Agreement is null and void.

**AS AND FOR A SIXTH CAUSE OF ACTION**  
**(Unjust Enrichment by Defendants Scimone and Lighthouse)**

117. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 116 above as though fully set forth herein.

118. Defendants Scimone and Lighthouse have been unjustly enriched. Defendants Scimone and Lighthouse have wrongfully and unconscionably benefited from fees taken from Plaintiffs in connection with Agreement.

119. Defendants Scimone and Lighthouse were without the right or power to impose the Agreement on Plaintiffs’ properties or to collect fees from Plaintiffs.

120. Defendants Scimone and Lighthouse have been enriched at the expense of Plaintiffs, including, at a minimum, any fees purportedly collected pursuant to the Agreement for

the properties owned by Sons Eastport LLC, Sons Riverhead LLC, Sons Riverhead II LLC, 409-423 WFP Shirley LLC, 349-351 WFP Shirley LLC, Serota Wading River LLC, Sons East Meadow LLC, 3644 Long Beach Road LLC, 3600 Long Beach Road LLC, and Serota Valley Stream LLC.

121. Equity and good conscience require full restitution of the monies received by Defendants Scimone and Lighthouse pursuant to the Agreement from the properties owned by Sons Eastport LLC, Sons Riverhead LLC, Sons Riverhead II LLC, 409-423 WFP Shirley LLC, 349-351 WFP Shirley LLC, Serota Wading River LLC, Sons East Meadow LLC, 3644 Long Beach Road LLC, 3600 Long Beach Road LLC, and Serota Valley Stream LLC. This includes not only the money itself that Defendants Scimone and Lighthouse received, but also the proceeds of that money.

**AS AND FOR A SEVENTH CAUSE OF ACTION**  
**(Knowing Participation In A Breach Of Trust by Defendant Scimone)**

122. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 121 above as though fully set forth herein.

123. Serota held a position of trust with regard to the LLC Plaintiffs.

124. Entering into the Agreement constituted a breach of Serota's duties of trust to the LLC Plaintiffs.

125. Defendant Scimone knew that Serota was the Managing Member of each of the LLC Plaintiffs, and also served as Managing Agent of the real estate owned by the LLC Plaintiffs. Thus, Defendant Scimone knew or, at a minimum, should have known that Serota held a position of trust with regard to the LLC Plaintiffs.

126. Defendant Scimone was a party to the Agreement and was, thus, aware of the terms of the Agreement. Therefore, Defendant Scimone knew or should have known that the

terms of the Agreement were so commercially unreasonable that, by entering into the Agreement, Serota was breaching his duties of trust to the LLC Plaintiffs.

127. Defendant Scimone participated in and substantially assisted Serota in breaching his trust duties to the LLC Plaintiffs by, among other things, colluding with Serota and Defendant Cassidy by entering into the Agreement. At a minimum, Defendant Scimone did not take any action to prevent Serota from breaching his duties of trust by entering into the Agreement.

128. Plaintiffs have been proximately damaged by Defendant Scimone's knowing participation in Serota's breach of trust in an amount to be proven at trial.

**AS AND FOR AN EIGHTH CAUSE OF ACTION**  
**(Knowing Participation In A Breach Of Trust by Defendant Cassidy)**

129. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 128 above as though fully set forth herein.

130. Serota held a position of trust with regard to the LLC Plaintiffs.

131. Entering into the Agreement constituted a breach of Serota's duties of trust to the LLC Plaintiffs.

132. Defendant Cassidy, as counsel to the LLC Plaintiffs, knew that Serota was the Managing Member of each of the LLC Plaintiffs, and also served as Managing Agent of the real estate owned by the LLC Plaintiffs. Thus, Defendant Cassidy knew or, at a minimum, should have known that Serota held a position of trust with regard to the LLC Plaintiffs.

133. Defendant Cassidy signed and notarized the Agreement and acted as counsel to the LLC Plaintiffs when the Agreement was executed. He was, thus, aware of the terms of the Agreement. Therefore, Defendant Cassidy knew or should have known that the terms of the Agreement were so commercially unreasonable that, by entering into the Agreement, Serota was

breaching his duties of trust to the LLC Plaintiffs.

134. Defendant Cassidy participated in and substantially assisted Serota in breaching his trust duties to the LLC Plaintiffs by, among other things, colluding with Serota and Defendant Scimone by entering into the Agreement. At a minimum, Defendant Cassidy did not take any action to prevent Serota from breaching his duties of trust by entering into the Agreement.

135. Plaintiffs have been proximately damaged by Defendant Cassidy's knowing participation in Serota's breach of trust in an amount to be proven at trial.

#### **DEMAND FOR RELIEF**

136. WHEREFORE, Plaintiffs respectfully ask this Court to:

- i. Declare the Management Agreement null and void on account of Serota's lack of physical and mental capacity to enter into a contract;
- ii. Declare the Management Agreement null and void on account of the Individual Defendants' undue influence over Nathan Serota;
- iii. Declare the Agreement null and void on account of Serota's breach of trust and breach of fiduciary duty;
- iv. Declare the Agreement null and void on account of Serota's lack of power or authority to execute the Agreement on behalf of Plaintiffs;
- v. Declare the Agreement null and void on account of Serota's lack of power or authority to delegate the powers and duties of the LLC Plaintiffs' Managing Members after his death;

- vi. Declare the Agreement null and void on account of Serota's failure to comply with the requirements for a testamentary disposition or will substitute;
- vii. Enter judgment against Defendants Scimone and Lighthouse for restitution, disgorgement and damages for unjust enrichment and against Defendants Scimone and Cassidy for restitution, disgorgement and damages for knowing participation in a breach of trust, in amounts to be determined at trial; and
- viii. Award such other and further relief, including Plaintiffs' costs and fees that this Court deems just and proper.

Dated: New York, New York  
July , 2013

Respectfully submitted,

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