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17. HAZARDOUS MATERIALS:

Seller represents and warrants that, to the best of Seller's knowledge, the Property is not contaminated with any hazardous materials, including, but not limited to, asbestos, processed petroleum derivatives, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks. Seller agrees to disclose to Agent(s), to Buyer, and to all prospective buyers any and all information which Seller has or may acquire regarding the presence and location of any hazardous materials on or about the Property.

Both Buyers and Sellers should seek the advice of independent experts regarding the potential presence and/or effect of toxic or hazardous substances on real property and any improvements to be sold or purchased.

18. AGENT(S) DISCLAIMER:

Buyer and Seller acknowledges that except as otherwise expressly stated herein, Agent(s) has not made any warranty or representation with respect to any of the following: (a) the legality of the present or any possible future use of the Property under any federal, state or local law; (b) pending or possible future action by any governmental entity or agency which may affect the Property; (c) the physical condition of the Property, including but not limited to soil conditions. Buyer/Seller agrees that investigation and analysis of all matters related to the Property is their sole responsibility and that Buyer/Seller shall not hold the agent(s) responsible relating in any way to the foregoing matters.

19. CORRESPONDENCE:

All notices required or permitted hereunder shall be made and given to parties in writing with a copy thereof to Agent(s). Any such writing may be sent to the parties and Agent(s) by mail, air express (government or private carrier), or facsimile machine.

Unless otherwise specifically provided in this Agreement all notices, demands or other communications given hereunder shall be in writing and will be deemed to have been duly delivered upon personal delivery, as of the next day after deposit with a commonly accepted courier for over-night delivery, or as of the third business day after mailing by United States certified mail, return receipt required, postage prepaid on address as follows:

If to Seller, to: JOHN ILIESCU
100 COURT STREET
RENO, NEVADA 89501

If to Buyer, to: SAM CANIGLIA
732 PARKER STREET
BERKELEY, CALIFORNIA

Copies to: Richard K. Johnson Fax: 775-521-8848
6420 S. McCanna Blvd Phone: 775-823-6877
Reno Nevada 89509

Signed documents received via facsimile shall be binding and shall be used for the preliminary negotiations.

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Buyer 1 MEITZER JOHNSON GROUP Seller JOHN ILIESCU

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WITNESSES: _____

and will be followed up with original written and executed documents.

20. SEVERABILITY:

If for any reason, any provision of this Agreement shall be held to be unenforceable, it shall not affect the validity or enforceability of any other provision of the Agreement.

Waiver by one party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant, condition or promise hereunder.

21. GOVERNING LAW:

This Agreement shall be governed by the laws of the State of Nevada.

22. NO ONE DEEMED DRAFTER:

Buyer and Seller hereby agree that neither Buyer, Seller nor Agent(s) shall be deemed to be the drafter of this Agreement and that in the event this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against either Buyer, Seller or Agent(s) as the drafter hereof. Buyer and Seller hereby waive any and all rights to claims against the other party and Agent(s) relating in any way to the foregoing matter.

23. COUNTERPARTS:

The parties may execute this Agreement, any and all addenda attached hereto, and any and all future modifications of this Agreement in two or more counterparts which shall, in the aggregate, be signed by all the parties; each counterpart shall be deemed an original instrument as against any party who has signed it, all of which together will constitute but one instrument.

24. EFFECTIVE DATE OF THIS AGREEMENT:

The earliest date by which both Buyer and Seller have fully executed this Agreement shall be the "Effective Date of this Agreement". At the top of this Agreement is the "Written Date" which is used for reference purposes only.

25. AUTHORITY OF INDIVIDUALS SIGNING ON BEHALF OF ENTITY:

Each person signing this Agreement on behalf of an entity constituting either party warrants that (a) he or she is duly authorized to sign and deliver this Agreement on behalf of the entity, in accordance with a duly adopted resolution of the board of directors or the bylaws of the corporation in the case of a corporation, in accordance with the Agreement of Partnership or resolution pursuant thereto in the case of a partnership, or in accordance with the trust agreement in the case of a trust, and (b) this Agreement is binding upon the corporation, partnership or trust in accordance with its terms. Such entity shall be duly and properly organized to transact business in the State of Nevada. This Agreement shall continue and be binding on the heirs, successors, and assigns of the parties hereto.

26. EXHIBITS AND ADDENDUM:

All attached exhibits and addendum referred to in this Agreement are a part of this Agreement.

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Buyer: _____ METZGER JOHNSON GROUP Seller: [Signature]
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SUMMARY: General and Special Stipulations

loss, claim, liability, or expense, including (without limitation) reasonable attorneys' fees and costs, arising out of or in connection with its activities (including, without limitation, Buyer's agents and employees, and independent contractors retained by or acting on behalf of Buyer (collectively, "Buyer's Agents") on the Property. Buyer shall have no liability to Seller for any loss, claim, damage, diminution in value, liability or expense incurred by Seller arising out of discovery by Buyer or Buyer's Agents of any hazardous materials or toxic substances as defined in applicable state or federal law, on or about the Property, so long as the activities of Buyer and Buyer's Agents on the Property are performed with due diligence in accordance with the industry standards for such activities and further providing that neither Buyer or Buyer's Agents' is actively negligent in the performance of such activities.

32. PREPAYMENT:

Seller will pay any prepayment charge imposed on any existing Seller's loan paid off at close of escrow.

33. DUE ON SALE CLAUSE:

If the note and deed of trust or mortgage for any existing loan contain an acceleration or DUE ON SALE CLAUSE, the lender may demand full payment of the entire loan balance as a result of this transaction. Both parties acknowledge that they are not relying on any representation by the other party or the Broker with respect to the enforceability of such a provision in existing notes and deeds of trust or mortgages, or deeds of trust or mortgages to be executed in accordance with this Agreement. Both parties have been advised by the Broker to seek independent legal advice with respect to these matters.

34. REAL ESTATE BROKERS AND FEES:

For the terms and conditions as itemized under Acceptance below, Buyer and Seller herein agree that Seller shall pay the commission(s) through Close of Escrow, to Metzker Johnson Grout, Broker (Richard K. Johnson, Agent) of the Seller, and NONE Broker (NONE Agent) of the Buyer.

It is agreed by Buyer, Seller and Escrow Holder that Broker(s) is/are a third party beneficiary of this Agreement insofar as the Broker's fee is concerned, and that no change shall be made by Buyer, Seller or Escrow Holder with respect to the time of payment, amount of payment, or the conditions to payment of the Broker's fee specified in this Agreement, without the written consent of Broker(s).

Buyer and Seller each represent and warrant to the other that neither has had no dealings with any person, firm, broker or finder in connection with the negotiations of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Broker(s) named herein, and no broker or other person, firm or entity, other than said Broker(s) is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such party. Buyer and Seller do hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or similar party, other than said named Broker(s) by reason of any dealings or act of the indemnifying Party.

35. VESTED TITLE:

The Seller warrants and represents that they have title to the Property and the right and authority to transfer the same to the Buyer. The manner of taking title may have significant legal and tax consequences. Buyer should obtain advice from his legal or tax counsel regarding this matter. Title shall vest as

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Buyer

METZKER JOHNSON GROUTSeller [Signature]

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DD FORM 1300 (10-66) Use of this form is optional.

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36. IMPACT FILES:

Pursuant to Nevada Revised Statutes, the Buyer(s) of real property, for as under, development is hereby informed that such property may be subject to impact fees which have been or will be imposed by governmental agencies. Estimating impact fees shall be ☒ Paid by Seller, ☐ Assessed by Buyer.

37. DEFERRED AGRICULTURAL TAX:

In the event of any Deferred Agriculture Tax, Seller shall pay said taxes through close of escrow.

10. EXISTING CONDITION:

Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for hereon, make or have made all inspections of the Property that Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the Occupational Safety and Health Act, hazardous substance laws or any other act, ordinance of law, have been made by either Party or Broker, or relied upon by either Party hereto.

39. ADDITIONAL TERMS AND CONDITIONS:

- A. Subject to the Terms and Conditions of this agreement, the Seller hereby grants to Buyer, an irrevocable, exclusive right to purchase the Property consisting of the parcel(s) of land along with all buildings and structures (IF ANY), easements and rights appurtenant (including, without limitation, all development rights, all mineral, oil, gas, and other hydrocarbon substances (in or under the land, air rights, water, and water rights (if any)). Seller shall not solicit or accept any other offers during the term of this Agreement.
- B. To the best of Seller's knowledge the property is not in violation of any federal, state, or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on or under, or above the property including, but not limited to, soil and groundwater conditions.
- C. All covenants, representations and warranties made by Seller and Buyer to and for the benefit of each other, except and only those related to close of escrow shall survive the close of escrow under this Agreement.
- D. Purchaser has and will inspect the Property and be thoroughly acquainted with its condition. Except as expressly stated herein, Purchaser agrees to purchase the Premises "AS IS, WHERE IS, IN CURRENT CONDITION WITH ALL FAULTS".
- E. Buyer shall have a due diligence period of thirty (30) days from date of acceptance of this agreement by both Buyer and Seller, within which to at Buyer's expense, on any and all inspections and reports Buyer deems necessary such as but not limited to: availability and suitability of utilities, geological reports, well reports, zoning, flood zones, master plans, floor

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Buyer 1 **MEYER JOHNSON GROUP** Seller 1 AD
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and costs of office and major improvements, building requirements, conditions and requirements affecting the development of said property for Buyer's intended use, inspect the site inclusive of surveys and soil tests, analyze information pertaining to roadways. Buyer shall indemnify Seller for all such work performed. If upon examination and investigation of the matters above, Buyer determines that the property is unsuitable for Buyer's proposed use and/or future use of the property, Buyer may at any time within the due diligence period elect to terminate this agreement by giving Seller written notice of intention to do so, and receive full refund of unearned deposits not already dispersed, and the borrow company shall release said deposit without any further approval or instruction from Seller. Seller shall furnish to Buyer copies of all tests, investigations, surveys, studies, and other reports it has or has access to in reference to said lot. Buyer will be responsible for the reinstallation of any damage to the property that may be caused by subject inspections and/or tests.

This agreement is conditioned upon Buyer's completion of investigation(s), investigation(s), and/or test(s) and Buyer's approval of items as checked below within the above stated period.

- ☒ Zoning ☒ Private land use designations ☒ Availability of Utilities
☒ Legal Access ☒ Easements ☒ Subject Property Boundary
☒ Environmental ☐ Mineral Right ☐ Road Maintenance Agreement
☐ Phase 1 Environmental

- ☐ Corners Marked or ☒ Survey print by ☐ Seller, ☒ Buyer
☐ Percolation Test paid by ☐ Seller, ☐ Buyer
☐ Well Test, Quality, paid by ☐ Seller, ☐ Buyer
☐ Well Test, Quantity, paid by ☐ Seller, ☐ Buyer
☒ Water Rights ☒ Yes ☐ No, in the amount of _____ acre feet of ground water under claim no.
☐ Yes ☐ No, in the amount of _____ acre feet of surface water

In the event the Buyer should fail to complete any inspection, investigation, and/or test within the time provided, and/or borrow shall have closed without any of these having occurred, the Buyer shall be deemed to have waived the Seller's and broker's liability for the results that such could have reasonably provided had they been conducted, except where provided by law.

- F. This offer is conditioned upon Buyer, at ☒ Buyer's ☐ Seller's expense, obtaining the following governmental approvals within 270 days of acceptance of this agreement, as may be extended pursuant to Paragraph 1.2 above:
☒ Variance ☒ Special Use Permit ☐ Parcel Map
☒ Tentative Map ☒ Zoning Change & Land Use Designation
☒ Other architectural and design review and approval

- G. The purchase price is based upon \$a/s ☐ per acre, ☐ per square foot and ☒ will not ☐ will be adjusted in accordance with the area set forth in the survey.

- H. It is agreed to and understood that as part of the purchase price of this property, the Buyer shall deliver to Seller one of the penthouses, of approximately 1,500 square feet, in the new condominium project, subject to the following terms and conditions. Buyer shall provide Seller with detailed floor plans of each penthouse, and the listing price for each penthouse, as

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Buyer

METZNER JOHNSON GROUP

Seller: [signature]

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THE BUYER SHALL HAVE THIRTY (30) DAYS TO CHOOSE THE PENTHOUSE TO BE TRANSFERRED TO SELLER. SELLER SHALL RECEIVE CREDIT IN THE AMOUNT OF (\$2,200,000) TWO MILLION, TWO HUNDRED THOUSAND DOLLARS ("Penthouse Credit") TOWARD THE LISTING PRICE OF THE PENTHOUSE SO CHOSEN. IN THE EVENT THE LISTING PRICE OF THE PENTHOUSE SO CHOSEN IS MORE THAN THE "Penthouse Credit", SELLER SHALL PAY THE DIFFERENCE IN CASH AT THE TIME OF THE TRANSFER. IN THE EVENT THE PENTHOUSE SO CHOSEN IS LESS THAN THE "Penthouse Credit", BUYER SHALL REIMBURSE SELLER THE DIFFERENCE AT THE TIME OF TRANSFER. BUYER AND SELLER SHALL ALSO AGREE, ON OR BEFORE THE CLOSE OF CLOSING AND AS A CONDITION THEREOF, UPON SPECIFIC LANGUAGE AND FORMS OF LEGAL DOCUMENTATION OF THE RIGHT TO RECEIVE SUCH CONDOMINIUM UNIT, WHICH SHALL BE FREE OF ALL LIENS AND ENCUMBRANCES EXCEPT TAXES PAID CURRENT, ASSESSMENTS AND C.C. & R.'S UNIFORMLY APPLICABLE TO EACH BUILDING, AND UNIT.

1. The Seller warrants that there are no leases or other contractual use agreements on said property.
2. Seller authorizes Buyer and Seller's agent to place signage on said properties promoting identification of the Buyer, Seller's agent, and/or future use of said property.
3. All deposits, upon receipt, shall become immediately non-refundable and fully disbursed.
4. Seller's property adjoining the property herein is known as 260 Island St (APN 011-112-02). Seller agrees to a deed restriction that the height of this property will never exceed its current height. Buyer agrees to provide, at no cost to Seller, parking spaces within their development, as required by then governing codes, for future use of this building. Seller agrees to provide liability insurance for said parking area and will provide parking attendant(s) as required, at no cost to the buyer.
40. **MEDIATION OF DISPUTES:** If a dispute arises out of or relates to this Agreement, or its breach, by initialing in the spaces below,

☒ () Buyer agrees ☐ (n/a) () Buyer does not agree

☒ () Seller agrees ☐ (n/a) () Seller does not agree

to first try in good faith to settle the dispute by non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to court action or binding arbitration, unless the dispute is a matter excluded under the ARBITRATION clause, if any, in this document.

(Both parties must initial "agree" for mediation to be part of this agreement.)

41. ARBITRATION OF DISPUTES:

Any dispute or claim in law or equity arising out of this Agreement will be decided by neutral binding arbitration in accordance with prevailing law and applicable court rules. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The parties will have the right to discovery.

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Buyer

MEYER JOHNSON GROUP

Seller

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ATTENTION: Please Read and Sign at End of Agreement

The parties agree that the following procedure will govern the making of the award by the arbitrator: (a) a Tentative Award will be made by the arbitrator within 30 days following submission of the matter to the arbitrator; (b) the Tentative Award will explain the factual and legal basis for the arbitrator's decision as to each of the principal controverted issues; (c) the Tentative Award will be in writing unless the parties agree otherwise; provided, however, that if the hearing is concluded within one day, the Tentative Award may be made orally at the hearing in the presence of the parties. Within 15 days after the Tentative Award has been served or announced, any party may serve objections to the Tentative Award. Upon objections being timely served, the arbitrator may call for additional evidence, oral or written argument, or both. If no objections are filed, the Tentative Award will become final without further action by the parties or arbitrator. Within 30 days after the filing of objections, the arbitrator will either make the Tentative Award final or modify or correct the Tentative Award, which will then become final as modified or corrected.

The following matters are excluded from arbitration: (a) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust or mortgage; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court, or small claims court; or (e) an action for bodily injury or wrongful death. The filing of a judicial action to compel the recording of a notice of pending action, the order of attachment, receivership, injunction, or other provisional remedies, will not constitute a waiver of the right to arbitrate under this provision.

NOTICE: By initialing in the "agree" space below you are agreeing to have any dispute arising out of the matters included in this "Arbitration of Disputes" provision decided by neutral arbitration, and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. By initialing in the "agree" space below you are giving up your judicial rights to appeal. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under state law. Your agreement to this arbitration provision is voluntary. We have read and understand the foregoing and agree to submit disputes arising out of the matters included in this "Arbitration of Disputes" provision to neutral arbitration.

☐ (n/a) (n/a) Buyer agrees

☒ (X) (X) Buyer does not agree

☐ (n/a) (n/a) Seller agrees

☒ (X) (X) Seller does not agree

(Both parties must initial "agree" for Arbitration to be part of this agreement.)

42. LIQUIDATED DAMAGES:

If BUYER fails to complete the purchase of the property as provided by the agreement, or any default of BUYER, SELLER shall be relieved from his obligation to sell the property to BUYER. BUYER AND SELLER hereby acknowledge and agree that it would be impractical and/or extremely difficult to fix or establish the actual damage sustained by SELLER as a result of such a default by BUYER and agree that the ☒ AMOUNT OF DEPOSIT(s), ☐ \$ _____, made by BUYER is a reasonable approximation thereof. Accordingly, in the event that the BUYER defaults in the performance of this agreement, the above stated amount shall constitute and be deemed to be the agreed and liquidated damages of SELLER and shall be forfeited by BUYER to SELLER. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST THE BUYER WHICH

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Buyer

METZGER JOHNSON GROUP

Seller

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BUYER'S NAME: [Redacted] (Print Name of Buyer or Agent)

SELLER MIGHT OTHERWISE HAVE IN LAW OR EQUITY BY REASON OF SUCH DEFAULT BY BUYER.

☒ (X) Buyer agrees ☐ (N/A) Buyer does not agree
☒ (X) Seller agrees ☐ (N/A) Seller does not agree
(Both parties must initial for Liquidated Damages to be part of this agreement.)

43. HOLD HARMLESS:

Metzker Johnson Group and its agents accept no responsibility for items such as but not limited to repair, renovation, restoration, replacement, maintenance work, or inspections performed to or upon the property, regardless of whether or not the Contractor/Inspector performing the work was hired by Buyer or Seller at the suggestion of the Agent or any other representative of Metzker Johnson Group. By the execution of this agreement, Buyer/Seller hereby releases and agrees to hold Metzker Johnson Group and its agents harmless from any loss or liability which Buyer/Seller may incur as a result of any action of the Contractor/Inspector on or about the property, or the failure of the Contractor/Inspector to perform items such as but not limited to, the repair, renovation, replacement, maintenance work, or inspection in a good and workmanlike fashion. Buyer/Seller is encouraged to consult with a Contractor/Inspector of their own choosing regarding the satisfactory completion of any repair, renovation, replacement, maintenance work, or inspection performed to or upon the property.

44. CODE OF ETHICS:

Not all real estate licensees are REALTORS. A REALTOR is a member of the National Association of REALTORS and therefore subscribes to a higher ethical standard in the industry, the REALTOR Code of Ethics. To receive a copy of the REALTOR Code of Ethics, ask your real estate professional, the Real/Sparks Association of REALTORS, or go to www.nar.net.

45. CONSULT YOUR ADVISORS:

This document has been prepared for your advisors review and for your approval. Agent makes no representation or recommendation as to the legal sufficiency or the consequences of this document or the transactions to which it relates. There are questions for your attorney and financial advisor. In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, industrial hygienist, or other person with experience in evaluating the condition of real property.

46. BROKER(S) AND AGENT(S) DISCLAIMER:

Buyer and Seller acknowledges that except as otherwise expressly stated herein, Broker(s) and Agent(s) have not made any warranty or representation with respect to any of the following: (a) the legality of the present or any possible future use of the Property under any federal, state or local law; (b) pending or possible future action by any governmental entity or agency which may affect the Property; (c) the physical condition of the Property. Buyer/Seller agrees that investigation and analysis of all matters related to the Property is their sole responsibility and that Buyer/Seller shall not hold the Agent responsible relating in any way to the foregoing matters.

47. FAX TRANSMISSION: The facsimile transmission of a signed copy hereof or any counter offer/amendment to the other party or their licensee shall constitute delivery of said signed document. Facsimile signature may be accepted as original.

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Buyer

METZKER JOHNSON GROUP

Seller [Signature]

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UNRECORDED - This document has been prepared for your advisory review and for your approval. Broker makes no representation or recommendation as to the legal sufficiency or the consequences of this document or the transaction to which it relates. These are questions for your attorney and financial advisor. In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, industrial hygienist, or other person with experience in evaluating the condition of said Property. The parties are advised to consult with appropriate professionals concerning land use regulations, hazardous and asbestos, square footage, physical condition, legal, tax and other consequences of the transaction.

CONSULT YOUR ADVISORS: This document has been prepared for your advisory review and for your approval. Broker makes no representation or recommendation as to the legal sufficiency or the consequences of this document or the transaction to which it relates. These are questions for your attorney and financial advisor. In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, industrial hygienist, or other person with experience in evaluating the condition of said Property. The parties are advised to consult with appropriate professionals concerning land use regulations, hazardous and asbestos, square footage, physical condition, legal, tax and other consequences of the transaction.

AGENCY RELATIONSHIP CONFIRMATION. The following is the agency relationship for the Buyer:

SELLING OFFICER: NONEREPRESENTED BY: NONEIs the Broker, acting for (check one): N/A

The form of Nevada form used, "DUTIES OWED BY A NEVADA LICENSED" is hereby incorporated as an addendum to this agreement.

The undersigned Buyer has read this agreement and all addenda/attachments/updates and hereby acknowledges receipt of a copy herof. Buyer's signature hereon constitutes an offer to Seller to purchase the Property on the terms and conditions set forth herein. Buyer acknowledges further that he has not relied upon statements or representations by the undersigned Agent which are not herein expressed.

Buyer Broker: NONE Dated: _____By: None

Buyer: _____ Dated: _____ Time: _____
Authorized Signee, Print Name: Sam Campbell for Consolidated Pacific Development, Inc.

ACCEPTANCE

Seller accepts the foregoing offer and agrees to sell the herein described property for the price and on the terms and conditions herein specified.

COMMISSION:

Seller agrees to pay in cash the following real estate commission for services rendered, which commission Seller hereby irrevocably assigns from escrow.

Listing Broker's commission shall be 6 1/2% of the accepted purchase price, and 1/2% of the accepted price, or \$ 11,250 to 15/8 the Selling Broker, irrespective of the agency relationship. Escrow instructions with respect to commissions may not be amended or revoked without the written consent of the Broker herein. Commissions shall also be payable upon any default by Seller, or the mutual rescission (not covered by this

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Buyer: _____ **METZGER JOHNSON GROUP** Seller: R.A.J.
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UNWARRANTED - Buyer's Responsibility

agreement) by Buyer and Seller which prevents the completion of the Sale. If earnest money or similar deposits made by Buyer are forfeited, in addition to any other rights of Broker, Broker shall be entitled to the proportionate commission stated thereof. Sale proceeds sufficient to pay the commission are hereby assigned Broker, and Escrow Holder is hereby instructed to pay said commission to Broker out of Seller's proceeds at the time of Escrow. If this sale shall not be consummated due to the default of Seller, the Seller shall be liable to and shall pay to Broker the commission that Broker would have received had the sale been consummated. Buyer shall have no responsibility or liability to Broker or for any commission on broker or any agent of broker.

F.I.R.T.A. (TAX WITHHOLDING)

(Foreign Investment and Real Property Tax Act).

Unless the property is acquired for use as a primary residence and is sold for no more than \$300,000, Seller agrees to provide Buyer with (a) NON-FOREIGN SELLER AFFIDAVIT (TAA Form 101-V), OR (b) WITHHOLDING CERTIFICATE FORM from the Internal Revenue Service stating that withholding is not required. In the event none of the foregoing is applicable, Buyer must withhold 10% of the Gross Sales Price under the FOREIGN INVESTMENT AND REAL PROPERTY TAX ACT (IRC SECTION 1445).

A real estate broker is not qualified to give advice on withholding requirements. Buyer should inquire of the taxing authorities as to his responsibility. By signing below the Seller is warranting that he/she/they is not a foreign person, foreign corporation or partnership, or nonresident alien.

AGENCY RELATIONSHIP CONFIRMATION. The following is the agency relationship for the Seller.

SELLING OFFICE: Metzger Johnson GroupREPRESENTED BY: Richard K. Johnson

Is the Seller acting for (check one):

☐ the Buyer exclusively ☒ the Seller exclusively ☐ both the Buyer and Seller (Consent to Act)
The State of Nevada has enacted "DUTIES OWED BY A NEVADA LICENSEE" is hereby incorporated as an addendum to this agreement.

Seller acknowledges that he/she has thoroughly read the provisions of this agreement and agrees to sell the herein described property for the price and on the terms and conditions specified. In the event that Seller is in disagreement with any item or part of this Agreement, Seller should make a counter offer to clarify or change.

Seller acknowledges receipt of a copy of this agreement. Authorization is hereby given the Broker(s) in this transaction to deliver a signed copy hereof to Buyer and to disclose the terms of sale to members of a Multiple Listing Service or Board of REALTORS at closing.

Sellers Broker: Metzger Johnson Group

Dated: _____

By (agent): Richard K. Johnson

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Buyer: _____

METZGER JOHNSON GROUPSeller: Richard K. Johnson

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Also

* Johnson

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P. 21

17440555: 11/20/2011 11:20:11 AM 11/20/2011 11:20:11 AM

SELLER'S ACCEPTANCE, COUNTER OFFER OR REJECTION OF AGREEMENT.
Seller MUST check one of the following options and date, time and sign this agreement.

☒ **ACCEPTANCE:** The undersigned hereby accepts this offer to purchase, agrees and has the authority to sell above described property on the terms and conditions as stated herein. *See Addendum 1 & 2 supplementing this contract.*

Seller: John Shadle Dated: 8-3-05 Time: 7:30 PM
 Authorized Signer: John Shadle, Jr.

Seller: Donnie K. Rice Jr. Dated: 8-5-05 Time: 7:50 PM
 Authorized Signer: Donnie K. Rice Jr.

OR

OR

☐ **COUNTER OFFER:**
 Seller accepts this offer subject to the Counter Offer Dated _____
 Seller _____ Dated: _____ Time _____
 Seller _____ Dated: _____ Time _____

OR

OR

☐ **REJECTION:** By his signature below, Seller rejects the foregoing offer.

Seller _____ Dated: _____ Time _____

Seller _____ Dated: _____ Time _____

20

Bryon

METZKER JOHNSON GROUP

Sub 2, A

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Aug 03 08 11:50a

RJCH

K. Johnson

778-023-8848

r-22

ADDRESS: Johnson County, Georgia and related files



21

Buyer

METZGER JOHNSON GROUP

[Signature]

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(21)

Aug 03 05 11:52a

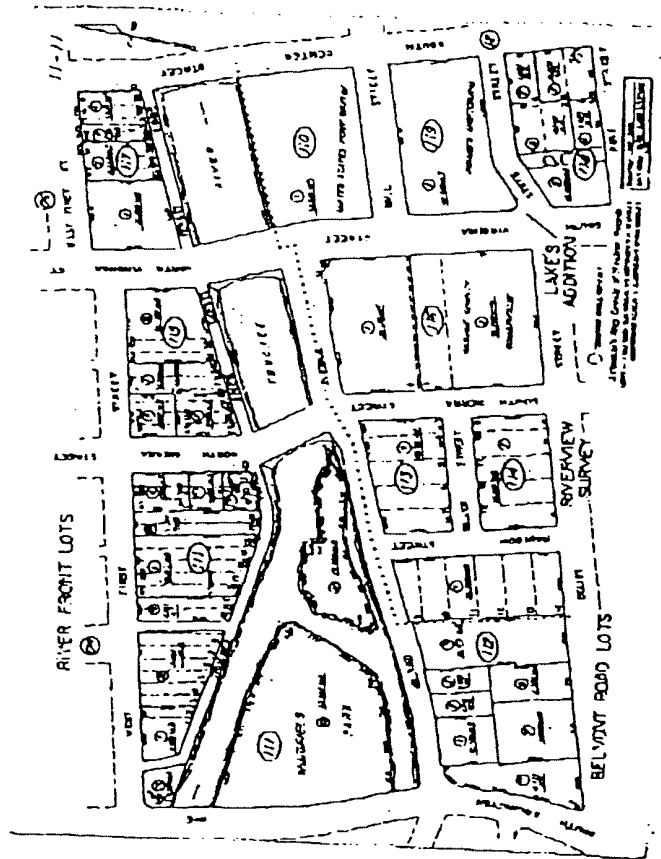
Ric.

K. Johnson

775-823-8848

P.23

APPENDIX - Report Land Use Survey (2004) Survey



22

Buyer

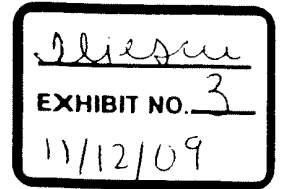
METZGER JOHNSON GROUP

Seller *RE 1/4*

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42

Consolidated Pacific Development Inc.
932 Parker Street, Berkeley, CA 94710
(510) 548-6093 (FAX) 548-6164



TELECOPIER COVER SHEET

Please deliver enclosed pages to:

NAME: DICK JOHNSON

COMPANY: _____

FAX No.: 775-823-8848 Phone No.: _____FROM: Sam Caniglia

MESSAGE/COMMENTS:

Copy of Executed O&A. Good luck
Tomorrow. Talk to you early Monday.

I had to send page 7 again together
with balance on Contract.

Disper problems!!

Also I add a short additw to
Page 15 Letter L. How John
also intial. Thanks.

No. of Pages 24
(including this sheet)

Date 7/30/05

METZKER JOHNSON GROUP
COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY

6490 S. McCarran Blvd., Reno, Nevada 89509 Phone: (775) 823-8877 Fax: (775) 823-8848

ADDENDUM NO. 1

Date Prepared: August 1, 2005

Property address APN: 011-112-06, 011-112-07, 011-112-12, 011-112-03
In reference to the offer made by CONSOLIDATED PACIFIC DEVELOPMENT INC., a Nevada Corporation, Buyer, and Iliescu, John Jr. and Sonja Trust, Seller, dated 7/29/2005 the following terms and changes are hereby incorporated as part of the Purchase Agreement:

39. ADDITIONAL TERMS AND CONDITIONS:

- H. It is agreed to and understood that as part of the purchase price of this property, the Buyer shall deliver to Seller one of the penthouses of 3,750 square feet of living area, in the new condominium project subject to the following terms and conditions. Buyer shall provide Seller with the initial floor plans for each penthouse so that Seller may select his location and commence with his input to the Architect for the completion of his unit. Seller shall select his unit within thirty (30) days after receipt of the initial floor plans. Seller shall receive credit in the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000), (Penthouse Credit) toward the hard cost of construction, as evidenced by paid invoices. Seller unit will have four (4) cars parking assigned in a location of Seller choice. Five Hundred (500) square feet storage is to be provided to Seller in the building for their personal use. Ceiling height in this unit is to be Nine (9) feet or better. Multiple build-ins will be provided and installed as selected by Seller. Buyer and Seller shall also agree, in or before the close of escrow and as a condition thereof, upon, specific language and form of legal documentation of the right to receive such condominium unit, which shall be free of all liens and encumbrances except taxes paid current, assessments and C, C, & R's uniformly applicable to such building and unit.
- L. Seller agrees to provide liability insurance for said parking area and will provide parking attendant(s) as required at no cost to buyer. ~~Seller shall provide the current height of the building as needed for addition of items such as but not limited to antenna, and television dish.~~ Buyer agrees to give easement rights for direct access from rear of existing building to new building parking being provided for existing building. Car access to parking garage for existing building shall be from Island Street. A Lot line adjustment shall be made at existing parking lot side (east side of building), enlarging the existing building's lot sufficient enough to allow for a Ten (10) foot side yard from existing building and to meet any required governmental requirements.

- M. Buyer agrees to a deed restriction through sale of said property to include that the property shall be developed for a mixed use of office, retail, and predominately condominiums. Said property to be developed as quickly as possible.

To the extent the terms of this Addendum No. 1 modify or conflict with any provisions of the Purchase Agreement, these terms shall control.

OTHER TERMS: All other terms and conditions of said purchase agreement are to remain the same.

EXPIRATION: This Addendum/Counter Offer shall expire unless written acceptance is delivered to Seller/Landlord or his/her Agent on or before 3:00 ☐ AM ☒ PM, on August 3, 2005.

Seller/Landlord: _____ Date: _____ Time: _____
Dr. John Iliescu, (Iliescu, John Jr. and Sonnia, Trust)

Seller/Landlord: _____ Date: _____ Time: _____
Sonnica Iliescu, (Iliescu, John Jr. and Sonnia, Trust)

Buyer/Tenant: *Sam Caniglia* Date 8/2/05 Time 3:05 PM
Sam Caniglia, for Consolidated Pacific Development, Inc.

Seller or Seller's Agent acknowledges receipt of a copy of the accepted agreement.

Seller/Agent: _____ Date _____ Time _____

Aug 03 05 11:52a

Ric. K. Johnson

775-823-8848

P. 24

MEYER JOHNSON GROUP
COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY

4490 S. McCarty Blvd., Reno, Nevada 89509 Phone (775) 823-8877 Fax (775) 823-8848

ADDENDUM NO. 1

Date Prepared: August 1, 2005

Property address APN: 011-112-06, 011-112-07, 011-112-12, 011-112-03
In reference to the offer made by CONSOLIDATED PACIFIC DEVELOPMENT INC. a
Nevada Corporation, Buyer, and Nigero, John Jr. and Sonala Treal, Seller, dated
7/29/2005, the following terms and changes are hereby incorporated as part of the Purchase
Agreement:

37. ADDITIONAL TERMS AND CONDITIONS:

- H. It is agreed to and understood that as part of the purchase price of this property, the Buyer shall deliver to Seller one of the penthouses of 3,750 square feet of living area, in the new condominium project subject to the following terms and conditions. Buyer shall provide Seller with the initial floor plans for each penthouse so that Seller may select his location and commence with his input to the Architect for the completion of his unit. Seller shall select his unit within thirty (30) days after receipt of the initial floor plans. Seller shall receive credit in the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000), (Penthouse Credit) toward the hard cost of construction as evidenced by paid invoices. Seller unit will have four (4) car parking assigned in a location of Seller choice. Five Hundred (500) square feet storage is to be provided to Seller in the building for their personal use. Ceiling height in this unit is to be Nine (9) feet or better. Multiple build-ins will be provided and installed as selected by Seller. Buyer and Seller shall also agree, in or before the close of escrow and as a condition thereof, upon, specific language and form of legal documentation of the right to receive such condominium unit, which shall be free of all liens and encumbrances except taxes paid current, assessments and C, C, & R's uniformly applicable to such building and unit.
- I. Seller agrees to provide liability insurance for said parking area and will provide parking attendant(s) as required, at no cost to buyer. Seller may exceed the current height of said building if needed for addition of items such as but not limited to antennas, and television dish. Buyer agrees to give pedestrian easement rights for direct access from rear of existing building to new building parking being provided for existing building. Car access to parking garage for existing building shall be from Island Street. A Lot line adjustment shall be made at existing parking lot side (east side of building), enlarging the existing building's lot sufficient enough to allow for a Ten (10) foot side yard from existing building and to meet any required governmental requirements.

1

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(23)

addendum #2 to
20

Aug 03 05 11:54a

R101

K. Johnson

775-823-8848

P.76

M. Buyer agrees to a deed restriction through sale of said property to include that the property shall be developed for a mixed use of office, retail, and predominately condominiums. Said property to be developed as quickly as possible.

To the extent the terms of this Addendum No. 1 modify or conflict with any provisions of the Purchase Agreement, these terms shall control.

OTHER TERMS: All other terms and conditions of said purchase agreement are to remain the same.

Please see Hand Purchase Agreement & Addendum #1 as part of this transaction.

EXPIRATION: This Addendum/Counter Offer shall expire unless written acceptance is delivered to Seller/Landlord or his/her Agent on or before 3:00 ☐ AM ☒ PM, on August 1, 2005.

Seller/Landlord: *John Blasco* Date: 8-3-05 Time: 7:30
(Dr. John Blasco, (Blasco, John Jr. and Sonnia, Trust)

Seller/Landlord: *Sonnio Blasco* Date: 8-3-05 Time: 7:30pm
Sonnio Blasco, (Blasco, John Jr. and Sonnia, Trust)

Buyer/Tenant: _____ Date: _____ Time: _____
Sam Cardillo, for Consolidated Pacific Development, Inc.

Seller or Seller's Agent acknowledges receipt of a copy of the accepted agreement.

Seller/Agent: _____ Date: _____ Time: _____

Consolidated Pacific Development Inc.
932 Parker Street, Berkeley, CA 94710
(510) 548-6093 (FAX) 548-6164

TELECOPIER COVER SHEET

Please deliver enclosed pages to:

NAME: DICK JOHNSON

COMPANY: _____

FAX No.: 775 823 8848 Phone No.: _____FROM: Sam Caniglia

MESSAGE/COMMENTS:

Executed ADDENDUM #2GO TIGER!!No. of Pages 2
(including this sheet)Date 8/3/05

EXHIBIT 6

EXHIBIT 6

METZKER JOHNSON GROUP®
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6490 S. McCarran Blvd., Ste. 10

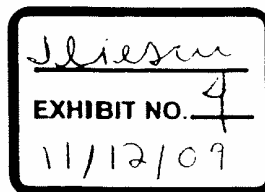
RENO, NEVADA 89509

PHONE: (775) 823-8877

CELL: 775-741-0829

FAX: (775) 823-8848

FAX



PAGES ATTACHED: 2

DATE: Aug-11-2, 2005

TO: Dr. John d. Sonnia Iliescu Room 517

FAX: 507-288-2677

PHONE: disk Phone 507-288-2677

REFERENCE: OFFER ISLAND/COURT

FROM: **Richard K Johnson, President**

COMMENTS:

Following is the additions to accomplish what we discussed. Sam Caniglia was sent this also and he has agreed.

Hope everything is going well there.

Let me know as soon as possible if this accomplishes what we discussed.

Dick

METZKER JOHNSON GROUP
COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY

6490 S. McCarran Blvd., Reno, Nevada 89509 Phone: (775) 823-8877 Fax: (775) 823-8848

ADDENDUM NO. 2

Date Prepared: August 2, 2005

Property address APN: 011-112-06, 011-112-07, 011-112-12, 011-112-03
In reference to the LAND PURCHASE AGREEMENT made by CONSOLIDATED
PACIFIC DEVELOPMENT INC., a Nevada Corporation, Buyer, and Ilescu, John Jr. and
Sonnia Trust, Seller, Date Prepared 7/29/2005 and the ADDENDUM NO. 1 Date
Prepared 8/1/2005 the Buyer and Seller hereby agrees as follows:

The purchase/sale of the said property is hereby in force and obligated by both parties. The terms and conditions of these two documents are accepted by the parties signed below conditioned upon the agreement that:

Both parties agree that the Land Purchase Agreement needs to be fine tuned as to the specifics of the intended agreement before its finalization, and that legal clarification and documentation to achieve the full intent of both parties is spelled out. This shall be accomplished as soon as possible within the time constraints of the Buyer, Seller, and legal counsel of both parties.

EXPIRATION: This Addendum shall expire unless written acceptance is delivered to Seller/Landlord or his/her Agent on or before 3:00 ☐ AM ☒ PM, on August 4, 2005

Seller/Landlord: _____ Date: _____ Time: _____
Dr. John Ilescu, (Ilescu, John Jr. and Sonnia, Trust)

Seller/Landlord: _____ Date: _____ Time: _____
Sonnia Ilescu, (Ilescu, John Jr. and Sonnia, Trust)

Buyer/Tenant: Sam Caniglia Date 8/3/05 Time 1:00 PM
Sam Caniglia, for Consolidated Pacific Development, Inc.

Seller or Seller's Agent acknowledges receipt of a copy of the accepted agreement.

Seller/Agent: _____ Date _____ Time _____

Aug 03 03 05:38p

Richa K. Johnson

775-923-8848

P.1

MEIZNER JOHNSON GROUP
COMMERCIAL • RESIDENTIAL • INVESTMENT • REAL ESTATE

6490 S. McCarty Blvd., Reno, Nevada 89509 Phone: (775) 823-8877 Fax: (775) 823-8848

ADDENDUM NO. 2

Date Prepared: August 2, 2005

Property address APNs 011-112-06, 011-112-07, 011-112-12, 011-112-03
Is reference to the LAND PURCHASE AGREEMENT made by CONSOLIDATED
PACIFIC DEVELOPMENT INC., a Nevada Corporation, Buyer, and Blasco, John Jr. and
Sonia Traci, Seller, Date Prepared 7/29/2005 and the ADDENDUM NO. 1 Date
Prepared 10/2/2005 the Buyer and Seller hereby agree as follows:

The purchase/sale of the said property is hereby in force and obligated by both parties. The
terms and conditions of these two documents are accepted by the parties signed below
conditioned upon the agreement that:

Both parties agree that the Land Purchase Agreement needs to be fine tuned as to the
specifics of the intended agreement before its finalization, and that legal clarification and
documentation to achieve the full intent of both parties is spelled out. This shall be
accomplished as soon as possible within the time constraints of the Buyer, Seller, and legal
counsel of both parties.

*Please see Land Purchase Agreement & Addendum #1 as
part of this transaction. JH*

EXPIRATION: This Addendum shall expire unless written acceptance is delivered to
Seller/Landlord or his/her Agent on or before 3:00 ☐ AM ☒ PM, on August 4, 2005.

Seller/Landlord: John Blasco Date: 8-3-05 Time: 7:30 PM
Dr. John Blasco, (Blasco, John Jr. and Sonia, Traci)

Seller/Landlord: Sonia Blasco Date: 8-3-05 Time: 7:30 PM
Sonia Blasco, (Blasco, John Jr. and Sonia, Traci)

Buyer/Tenant: _____ Date _____ Time _____
Sam Caudlin, for Consolidated Pacific Development, Inc.

Seller or Seller's Agent acknowledges receipt of a copy of the accepted agreement.

Seller/Agent: _____ Date _____ Time _____

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(45)

EXHIBIT 7

EXHIBIT 7

Addendum No. 3

Iliescu
EXHIBIT NO. 5
11/12/09

This Addendum No. 3 ("Third Addendum") is made by and between Consolidated Pacific Development, Inc., a Nevada corporation, ("Buyer"), and John Iliescu, Jr. and Sonnia Santee Iliescu, individually and as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust (collectively "Seller"), to amend and modify that certain Land Purchase Agreement dated July 29, 2005 ("Land Purchase Agreement"), together with Addendum No. 1 dated August 1, 2005 ("First Addendum"), and Addendum No. 2 dated August 2, 2005 ("Second Addendum"), for the sale and purchase of that certain real property located in the City of Reno, County of Washoe, State of Nevada, identified as APNs 011-112-05, 06, 07 and 12 and more particularly described in the Title Report (defined below). The Land Purchase Agreement, the First Addendum and the Second Addendum are collectively referred to herein as the "Agreement". Seller and Buyer hereby amend the Agreement as set forth below.

1. Paragraph 1.2 of the Land Purchase Agreement is hereby amended and restated as follows:

1.2 Additional Cash Deposit: \$475,000.00

The deposit described in Paragraph 1.1 hereof shall be increased in the form of cash or cashier's check to be deposited with escrow holder for immediate disbursement to the Seller and Seller's agent proportionately, as follows.

an additional \$75,000.00 within 30 days from August 3, 2005;
an additional \$100,000.00 within 90 days from August 3, 2005;
an additional \$100,000.00 within 150 days from August 3, 2005;
an additional \$100,000.00 within 210 days from August 3, 2005;
and
an additional \$100,000.00 within 270 days from August 3, 2005.

Provided that Buyer has exercised reasonable diligence in obtaining the Governmental Approvals (defined in Paragraph 6 of this Third Addendum) and through no fault of Buyer, Buyer is unable to obtain all Governmental Approvals within 270 days from August 3, 2005, then Seller agrees to extend the date for close of escrow (as set forth in Section 4 hereof); provided, that, Buyer so notifies Seller in writing prior to the date or extended date for close of escrow, each such extension period shall not exceed 30 days, Buyer shall not request more than six (6) extensions, and each request for an extension shall be accompanied by an extension deposit of \$50,000.00 in immediately available funds. All deposits described in Section 1.1 and 1.2 hereof are collectively referred to as the "Deposit". The Deposit shall be non-refundable and shall be credited to the purchase price for the Property upon close of escrow. Buyer shall have a 15 day grace period to pay any of the aforesaid Deposits.

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10/8/05

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2. The first paragraph under Section 5 of the Land Purchase Agreement is hereby amended and restated as follows:

On the date of closing, Title Company shall issue a CLTA or an ALTA policy of title insurance as determined by Buyer, which may include appropriate endorsements as desired by Buyer and to be paid by Buyer, insuring Buyer's title in the Property in an amount equal to the purchase price for the Property. Said title policy shall insure that Buyer has good and marketable title to the Property, subject only to the Permitted Exceptions. As used herein, "Permitted Exceptions" shall mean the standard form printed title exceptions of the form of policy chosen by Buyer and the following Schedule B exceptions shown on the Preliminary Report ("Title Report") of First Centennial Title Company of Nevada ("Title Company") No. 145279-MI, dated as of July 13, 2005, a copy of which is attached hereto as Exhibit "A": Item Nos. 1 through 6, inclusive (showing none due or payable) and 7 through 13, inclusive, any encumbrances to be created pursuant to this Agreement and any encumbrances created by Buyer. Buyer's inability to obtain any title policy endorsements requested by Buyer shall not affect Buyer's obligation to close escrow.

3. The following sentence of Paragraph 6.21 (Additional Inspections) of the Land Purchase Agreement is hereby deleted:

However, if repair expenses are considered excessive by Buyer, then Buyer may terminate this agreement at Buyer's discretion unless Seller agrees to repair at Seller's expense by written addendum.

4. Paragraph 12 (Encumbrances) of the Land Purchase Agreement is hereby amended and restated as follows:

Buyer shall take title to the property, subject to the Permitted Exceptions.

5. Paragraph 31 is hereby amended to add the following paragraph:

Buyer agrees to keep the Property free from all liens and to indemnify, defend and hold harmless Seller, and its successors and assigns, from and against any and all claims, actions, losses, liabilities, damages, costs and expenses (including, but not limited to, attorneys' fees, charges and disbursements) incurred, suffered by, or claimed against Seller by reason of any work performed with respect to the Property at the instance or request of Buyer or any damage to the Property or injury to persons caused by Buyer and/or its agents, employees or contractors arising out of or in any way connected with their entry upon the Property and/or the performance of any inspections, tests or other activities thereon. Buyer's obligations under this paragraph shall survive the Closing or termination of the Agreement.

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J. L. Allen
10/9/05

ALL
10/8/05

6. Paragraph 36 is hereby amended to add the following:

As used in this paragraph "Existing Impact Fees" shall not include any impact fees which result from the Project.

7. Paragraph 39(F) is hereby amended and restated as follows:

This offer is conditioned upon, as conditions precedent ("Conditions Precedent"), Buyer obtaining, at Buyer's expense, all necessary approvals ("Governmental Approvals") for the construction of a mixed use residential and commercial high rise condominium project on the Property approximately 28 stories in height (the "Project") within 270 days after August 3, 2005, as such time period may be extended pursuant to Paragraph 1.2 above, including, but not limited to:

- (1) Any required height, setback or other variances;
- (2) Any required special use permit;
- (3) Any required zoning or land use designation changes;
- (4) Any required master plan amendment;
- (5) An approved tentative condominium map for the Project; and
- (6) Any required design approvals.

In addition, Buyer shall obtain, at Buyer's sole cost and expense, all approvals for the Boundary Line Adjustment (as defined in Paragraph 8 of this Third Addendum).

Buyer shall use its best efforts and reasonable diligence to satisfy all Conditions Precedent described in this Paragraph 39(F) prior to close of escrow.

8. Paragraph 39(H) as amended by Addendum No. 1 is hereby amended and fully restated as follows:

The Project will include a number of condominium penthouses located on the upper floors of the Project. It is agreed and understood that as part of the purchase price of the Property, the Seller shall have the first right to select a penthouse condominium unit from all penthouse condominium units to be constructed on the Property and Seller shall receive a credit of \$2,200,000.00, of Actual Hard Costs, toward the purchase and ownership of all right, title and interest in one of the penthouses ("Seller's Penthouse Unit") which shall be 3,750± square feet in size with a minimum ceiling height throughout of nine feet (9'), together with (a) an exclusive easement to four (4) parking spaces of Seller's choice within the parking garage of the Project, which parking spaces shall be limited common elements appurtenant to Seller's Penthouse Unit and which shall be maintained by the owner of the Property, the operator of the parking garage, if any, or the homeowners association to be formed for the Project ("Association") in the same manner that other parking spaces are maintained, and (b) an exclusive easement to an enclosed unfinished storage space within the Project having a floor

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J. J. [Signature]
10/9/05

[Signature]
10/8/05

area of five (500) hundred square feet ("Storage Unit"), which Storage Unit shall be a limited common element appurtenant to Seller's Penthouse Unit. In the event parking fees are charged for use of the parking spaces pursuant to the declaration of covenants, conditions and restrictions for the Project (the "Declaration") or rules and regulations enacted pursuant thereto, then Seller shall pay the parking fees which are uniformly applied to all parking spaces. The sale and purchase of Seller's Penthouse Unit shall be pursuant to the following terms and conditions:

(1) When the Project has progressed to a point where the architect is designing the preliminary floor plans for the penthouses, Seller shall meet with the architect and participate in the selection and design of Seller's Penthouse Unit. Seller's Penthouse Unit shall meet the specifications set forth in the preceding paragraph and Seller shall be entitled to choose the location, floor plan and overall design of the Seller's Penthouse Unit and the amenities which Seller desires be added to the basic unit plans. Seller shall be entitled to select the finish improvements to Seller's Penthouse Unit. From the time the preliminary plans have been reviewed by Seller, Seller shall have thirty (30) days to choose Seller's Penthouse Unit. Seller shall be entitled to review and approve the final building plans for Seller's Penthouse Unit prior to submittal of such plans to the City of Reno Building Department, which approval shall not be unreasonably withheld or delayed. Seller shall provide Buyer with any changes to the final plans within ten (10) business days after receiving the same, and Buyer shall make reasonable efforts to accommodate Seller's changes. In the event Buyer does not receive Seller's changes to the final plans within such ten (10) business day period, then Seller shall be deemed to have approved the same.

(2) Within thirty (30) days after Seller's approval or deemed approval of the final plans for Seller's Penthouse Unit, Buyer shall provide Seller with an estimated statement of the estimated hard costs related to the construction of Seller's Penthouse Unit, which statement shall be updated from time to time as construction progresses to reflect the Actual Hard Costs. "Actual Hard Costs" shall mean Buyer's actual out-of-pocket costs for labor, materials and other tangible items to be installed in or on Seller's Penthouse Unit and the limited common elements appurtenant to Seller's Penthouse Unit, together with a pro rata share of costs incurred by Buyer for construction of the common elements of the Project (excluding Seller's limited common elements), which pro rata share shall be equal to Seller's undivided interest in the common elements of the Project ("Seller's Pro Rata Share"). "Actual Hard Costs" shall also include Seller's Pro Rata Share of the following out-of-pocket costs: reasonable fees paid to architects, engineers, appraisers, real estate taxes and insurance. "Reasonable fees" shall mean the fees generally charged for similar services in the community. In the event Seller submits any written change orders to the final plans which increase the cost of construction as estimated on the original statement, then "Actual Hard Costs" shall include such increased costs. Upon written request, Buyer shall provide Seller a written itemization and receipts for all Actual Hard

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10/9/05

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Costs. The cumulative total of the Actual Hard Costs shall be the purchase price for Seller's Penthouse Unit ("Penthouse Purchase Price").

(3) Close of escrow for Seller's Penthouse Unit shall occur, at Seller's election, (i) within five (5) business days after the date Seller is notified in writing that a certificate of occupancy is issued for Seller's Penthouse Unit or (ii) on such earlier date which Seller may elect in writing. In the event the Penthouse Purchase Price exceeds \$2,200,000.00, Seller shall pay the difference between the Penthouse Purchase Price and \$2,200,000.00 in full at the close of the escrow transferring Seller's Penthouse Unit to Seller. In the event the Penthouse Purchase Price is less than \$2,200,000.00, then Buyer shall pay Seller the difference between \$2,200,000.00 and the Penthouse Purchase Price at the close of such escrow. The closing costs for Seller's Penthouse Unit shall be paid by Seller and Buyer as follows: Buyer shall pay any real estate broker's commission owed to any real estate broker which Buyer has engaged. Buyer shall pay for the cost of a CLTA title insurance policy and one-half (1/2) of the real property transfer tax. Seller shall pay any real estate broker's commission owed to any real estate broker which Seller has engaged. Seller shall pay one-half (1/2) of the real property transfer tax and the additional cost of any ALTA policy and any title endorsements requested by Seller. Buyer and Seller shall each pay one-half (1/2) of the remaining costs and fees of the escrow related to the transfer of Seller's Penthouse Unit.

(4) As soon as practicable after determination of which unit is Seller's Penthouse Unit, and in any event prior to the close of escrow on Seller's Penthouse Unit, Seller shall choose which four (4) parking spaces shall be designated for Seller's Penthouse Unit. Seller and Buyer shall mutually determine the location of Seller's Storage Unit which Storage Unit shall be constructed by the date of the close of escrow on Seller's Penthouse Unit.

(5) Seller shall acquire its right, title and interest in Seller's Penthouse Unit, together with the four (4) parking spaces and the Storage Unit by grant bargain and sale deed (the "Deed"), and title thereto shall be free of all liens and encumbrances, except taxes paid current, the Permitted Exceptions (excluding monetary encumbrances created by Buyer) and the Declaration. To ensure that Seller receives either (a) title to Seller's Penthouse Unit within three (3) years after the close of escrow for the Property, or (b) if the Project and Seller's Penthouse Unit is not constructed within three (3) years after close of such escrow, \$3,000,000.00 in cash, Buyer agrees as follows:

(a) Concurrently with the close of escrow for the Property, a Memorandum of Agreement, in a form acceptable to Seller, shall be recorded memorializing of record Seller's right to Seller's Penthouse Unit on the Property; and

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(b) Buyer shall post a bond in the amount of \$3,000,000.00 wherein Seller is the obligee insuring either (i) the lien-free completion of Seller's Penthouse Unit within three (3) years after close of the escrow for the Property or (ii) in the alternative, the payment to Seller of the cash sum of \$3,000,000.00 on the date which is three (3) years after close of such escrow.

Seller may extend the date for completion of Seller's Penthouse Unit, in Seller's sole discretion, from time to time.

9. Paragraph 39(I) as amended by Addendum No. 1 is hereby amended and fully restated as follows:

Seller owns the adjoining parcel commonly known as 260 Island Avenue, Reno, Nevada ("Island Property"). Seller intends, but shall not be obligated, to convert the building located on the Island Property into a restaurant/bar business or, in the event a restaurant/bar business is not permitted by city, county or state regulations or is not feasible in Seller's sole judgment, then Seller may convert the Island Property to another use of Seller's choice ("Seller's Business"). Buyer and Seller each agree to the following terms and conditions related to the Island Property:

(1) Seller agrees to place a deed restriction on the Island Property at close of escrow, providing that Seller shall not, in any way, construct any structure or add to the existing structure to increase the existing height of the building located on the Island Property, which is _____ () feet above street level and shall further not install any equipment or items which exceed fifteen feet (15') above the current height of the existing building located on the Island Property. Such deed restriction shall terminate by its terms if construction of the Project is not commenced on the Property within one (1) year after close of escrow for the Property.

(2) Buyer agrees to obtain, at Buyer's sole cost and expense, all approvals necessary for a boundary line adjustment ("Boundary Line Adjustment") which will add to the Island Property a strip of land along the entire east boundary of the Island Property which strip shall be ten feet (10') in width or wider if required to meet additional city, county, state or other governmental requirements for the conversion of the existing building on the Island Property, as provided above. The Boundary Line Adjustment shall be recorded at close of escrow.

(3) At close of escrow for the Property, Seller shall reserve in the Deed conveying title to the Property a perpetual exclusive easement for fifty-one (51) contiguous full size parking spaces (as required by the applicable parking ordinance), including required ADA spaces ("Island Property Parking Spaces") on the Property, which Island Property Parking Spaces shall be appurtenant to, and for the benefit of, the Island Property. The Island Property Parking Spaces shall be located within the parking garage of the Project on the ground level (Island

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Avenue street level) convenient to Seller's Business with signage indicating that such spaces are for the exclusive use of the Island Property, including, but not limited to, the owner, the operator, the business invitees and guests of the Island Property. Buyer shall further provide Seller a non-exclusive ingress and egress easement to the Island Property Parking Spaces providing access from Island Avenue, and a reasonable pedestrian ingress and egress access easement from the Island Property Parking Spaces to the Island Property, in a location to be mutually agreed upon by Seller and Buyer, which is convenient to the Seller's Business. Seller and Buyer shall reasonably cooperate to design such parking entrance to discourage unauthorized parking. The reservation in the Decd for the Island Property Parking Spaces shall include a provision that in the event the Project is not built, Seller shall nevertheless be entitled to a perpetual exclusive easement for the Island Property Parking Spaces on the Property (contiguous to the Island Property) for the benefit of the Island Property, together with vehicular and pedestrian access easements at locations to be selected by Seller.

(4) During such time as the Island Property Parking Spaces are used for the benefit of the Island Property, Seller, and any successor owners of the Island Property agree to maintain, at their sole cost and expense, liability insurance for the Island Property Parking Spaces in the initial amount of \$1,000,000.00 per person and \$3,000,000.00 per occurrence, as may be determined by Seller or its successors using prudent business judgment, which insurance shall be issued by an insurance company licensed to issue insurance in the State of Nevada, subject to Buyer's approval, which approval shall not be unreasonably withheld. Seller further agrees to keep the Island Property Parking Spaces in a clean and orderly condition. At the sole discretion of Seller, Seller may provide a parking attendant and/or parking valet, at Seller's sole cost and expense. Except as otherwise provided herein, all costs of repair and maintenance of the Island Property Parking Spaces shall be borne by the owner of the Property, the operator of the parking garage, if any, or the Association, and the Declaration shall provide for the maintenance of the Island Property Parking Spaces to the same standard as the other parking spaces within the Project.

10. Paragraph 39 (J) is hereby amended to add the following sentence:

All signs which Buyer places on the Property shall comply with all applicable sign ordinances.

11. The following paragraphs are hereby added to the Agreement:

48. Miscellaneous.

(a) All of Seller's representations, warranties and covenants set forth in the Agreement which are made to "Seller's knowledge" or "Seller's actual knowledge" are made without any duty of inquiry or investigation on the part of Seller.

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Richard L. Johnson

(b) Time is of the essence of this Agreement.

(c) Buyer shall not assign this Agreement without Seller's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the forgoing, Buyer shall be entitled to assign this Agreement to an entity in which Buyer owns no less than thirty-three and one-third percent (33.33%) of the ownership interests, without Seller's consent.

Except as modified herein, all other terms and conditions of the Land Purchase Agreement are hereby ratified and affirmed.

This Addendum No. 3 is dated this 8 day of OCTOBER, 2005.

Seller:

John Iliescu Jr.
John Iliescu Jr.

Sonia Santee Iliescu
Sonia Santee Iliescu

John Iliescu Jr. Trustee
John Iliescu Jr., as Trustee of the John Iliescu Jr.
and Sonia Iliescu 1992 Family Trust

Sonia Santee Iliescu
Sonia Santee Iliescu, as Trustee of the John
Iliescu Jr. and Sonia Iliescu 1992 Family Trust

Buyer:

Consolidated Pacific Development, Inc.,
a Nevada corporation

By: Sam A. Caniglia
Sam A. Caniglia, President

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Oct 07 05 02:17p

Rich: K. Johnson

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P. 9

Exhibit "A"
Preliminary Title Report

(See attached.)

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Rich: K. Johnson

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P. 10

FIRST CENTENNIAL TITLE COMPANY OF NEVADA

- ☐ 1430 RIDGEVIEW DR., SUITE 101 - RENO, NV 89509 (775) 689-8510
- ☐ 300 DANMONTE RANCH PARKWAY, SUITE 200 - RENO, NV 89521 (775) 651-2550
- ☐ 716 NORTH CARSON STREET, #100 - CARSON CITY, NV 89701 (775) (307-3560)
- ☐ 6121 LAKEVIEW DR., SUITE 150 - RENO, NV 89511 (775) 689-8530
- ☐ 329 TALLIE BLVD., SUITE 300 - P.O. BOX 828, INCLINE VILLAGE, NV 89450 (775) 531-8200
- ☐ 1025 ROBERTA LANE - SPARKS, NV 89431 (775) 683-2121
- ☐ 3748 LAKEVIEW DR., SUITE 100 - RENO, NV 89509 (775) 689-8235
- ☐ 6150 MAEANNE AVENUE SUITE 1 - RENO, NV 89523 (775) 746-7080

Issuing Policies Of

First American Title Insurance Company

Today's Date:
August 13, 2005

PRELIMINARY REPORT

PROPOSED BUYER:
PROPERTY ADDRESS:

Consolidated Pacific Development, Inc.
APN 011-112-03, 06, 07 and 12,
Reno, NV

Metzger Johnson Group
Richard K. Johnson
6490 S. McCarran Boulevard
Suite 10
Reno, NV 89509

Escrow Officer: Maryann Infantino

Our No.: 145279-MI

The information contained in this report is through the date of
July 13, 2005 at 7:30 A.M.

In response to the above referenced application for a policy of title insurance, First Centennial Title Company of Nevada, Inc. hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a California Land Title Association Standard Coverage Policy of Title Insurance describing the land and the estate or interest therein set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy form.

This report (and any supplements or amendments thereof) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby.

Julie Moreno

by: _____
Julie Moreno, Title Officer

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Julie Moreno
10/9/05

Julie Moreno
10/9/05

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Rich K. Johnson

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P. 11

SCHEDULE A

The estate or interest in the land hereinafter described or referred to covered by this report is:

Fee Simple

Title to said estate or interest at the date hereof is vested in:

Sonia Sauter Ilescu, John Ilescu, John Ilescu Jr. and John Ilescu Jr. and Sonia Ilescu
as Trustees of the John Ilescu Jr. and Sonia Ilescu 1992 Family Trust all as their
interests appear of record

The land referred to in this Report is situate in the State of NEVADA, County of Washoe.

See Exhibit "A" Attached Hereto And Made A Part Hereof

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SCHEDULE B

At the date hereof Exceptions to coverage in addition to the printed exceptions and exclusions in said policy form would be as follows:

1. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$1,501.77
First Installment: \$376.77, Unpaid
Said Installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$375.00, each Unpaid
Assessors Parcel No.: 011-112-03
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
2. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$2,010.02
First Installment: \$504.02, Unpaid
Said Installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$502.00, each Unpaid
Assessors Parcel No.: 011-112-06
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
3. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$3,541.47
First Installment: \$886.47, Unpaid
Said Installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$385.00, each Unpaid
Assessors Parcel No.: 011-112-07
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
4. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$4,984.02
First Installment: \$1,276.02, Unpaid
Said Installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$1,236.00, each Unpaid
Assessors Parcel No.: 011-112-12
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.

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SCHEDULE B (Continued)

5. Any additional tax that may be levied against said land due to the supplemental tax roll, by reason of a change in ownership or completion of new construction thereon.
6. Liens for delinquent sewage charges, if it be determined that the same has attached to said premises, pursuant to Ordinance No. 51096, amending Section 9, Article XIV of the Reno Municipal Code.
7. Any facts, rights, interests, easements, encroachments or claims which a correct survey would show.
8. Easements for any and all ditches, pipe and pipe lines, conduits, transmission lines, poles, roads, trails, and fences on or traversing said land which would be disclosed and located by an accurate survey.
9. Terms and conditions as contained in an agreement for an open driveway, recorded May 29, 1926, in Book 1, Page 97, as Document No. 37015, Bonds and Agreements.
AFFECTS PARCEL 1
10. An exclusive easement for the installation, maintenance and use of street light poles and incidental purposes as granted to CITY OF RENO, a Nevada municipal corporation, by instrument recorded September 16, 1992, in Book 3566, Page 281, as Document No. 1605637, Official Records, located along a portion of the Northerly and Easterly boundaries of said land.
AFFECTS PARCELS 1 & 4
11. The terms, covenants, conditions and provisions as contained in an instrument, entitled "An ordinance of the City council of The City of Reno Amending Ordinance No. 4041, as amended, to extend the duration of the redevelopment plan for the downtown redevelopment area, and providing for other matters relating thereto," recorded July 8, 2005, as Document No. 3242447, of Official Records.
12. Except all water, claims or rights to water, in or under said land.
13. Any rights, interest or claims of parties in possession of the land not disclosed by the public records.
14. Prior to the close of escrow this office will require:
 - a. A Copy of the Trust Agreement, or a Notarized Certificate of Trust, for the trust set forth in the vesting herein.

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EXHIBIT "A"
Legal Description

All that certain real property situate in the City of Reno, County of Washoe, State of NEVADA,
described as follows:

PARCEL 1:
Commencing at the intersection of the East line of Flint Street (if said Flint Street were
protracted Northerly) with the North line of Court Street, in the City of Reno, Nevada;
thence Easterly along the North line of Court Street 125 feet, more or less, to the Westerly
line of what is known as and called "The Gregory" property; thence at an angle of $89^{\circ}58'$
Northerly 140 feet to the Northwestern corner of the aforesaid "Gregory" property;
thence Easterly along the Northerly line of the said "Gregory" property a distance of 25
feet, said last point being the place of beginning; thence at an angle of $90^{\circ}5'$ Easterly a
distance of 50 feet; thence at a right angle Northerly a distance of 136 feet, more or less, to
the South bank of the South channel of the Truckee River; thence Westerly along the
South bank of said Truckee River to a point on a line drawn Northerly and parallel with
the Easterly line of said property from the point of beginning; thence Southerly and
parallel with the said Easterly line of said property to the point of beginning.

SAVING AND EXCEPTING, however, from the above described premises, all that
portion thereof conveyed by Antonio Rebori and Charlotta Rebori, his wife, to the City of
Reno, a municipal corporation, by deed dated February 16, 1922, and recorded in Book
59 of Deeds, Page 297, Washoe County, Records.

APN: 011-112-03

PARCEL 2:

Commencing at a point 129.6 feet West of where the center line of Hill Street projected
Northerly will intersect the North line of Court Street; thence running Westerly along the
North line of Court Street, 75 feet; thence running Northerly at an angle of $89^{\circ}58'$ 140
feet; thence running Easterly at an angle of $90^{\circ}05'$ 75 feet; thence running Southerly at
an angle $80^{\circ}55'$, 140 feet to the place of beginning, comprising a parcel of land 75 by 140
feet.

APN: 011-112-06

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Richa K. Johnson

PARCEL 3:

BEGINNING at the intersection of the Northerly extension of the Eastern line of Flint Street with the Northern line of Court Street, in the City of Reno, County of Washoe, State of Nevada; thence Easterly along the Northern line of Court Street, 125 feet, more or less, to the Western line of the parcel conveyed to WALKER J. BOUDWIN, et ux, by Deed recorded in Book 143, File No. 100219, Deed Records; thence Northerly along said last mentioned line 140 feet; thence Westerly parallel to the Northern line of Court Street, 125 feet; thence Southerly parallel to the Western line of said Boudwin parcel 140 feet to the point of beginning.

APN: 011-112-07

PARCEL 4:

Commencing on the North line of Court Street, at the intersection of the North line of Court Street with the West line of Hill Street, if said Hill Street was protracted Northerly to said point of intersection, according to the official plat of LAKE'S SOUTH ADDITION TO RENO, Washoe County, State of Nevada; thence running Westerly and along the North line of said Court Street 100 feet; thence Northerly and parallel with the West line of said Hill Street, if protracted, 276 feet, more or less to the South bank of the Truckee River; thence Easterly and along the South bank of the Truckee River to the West line of Hill Street, protracted, 324 feet, more or less to the North line of Court Street and the place of beginning, being the same lands conveyed by Antonio Rebori and Charlotta Rebori, his wife, to Charles Snyder, May 27, 1907, and by Antonio Rebori to Charles Snyder, January 12, 1905, by deed duly recorded in Book 32 of Deeds, Page 405, and Book 26 of Deeds, Page 296, Records of said Washoe County.

EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded August 4, 1922, as Document No. 26097, in Book 61, Page 280, of Deeds.

FURTHER EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded December 17, 1971, as Document No. 229332, in Book 680, Page 759, of Official Records.

APN: 011-112-12

The above legal description was taken from previous Document No. 2472304.

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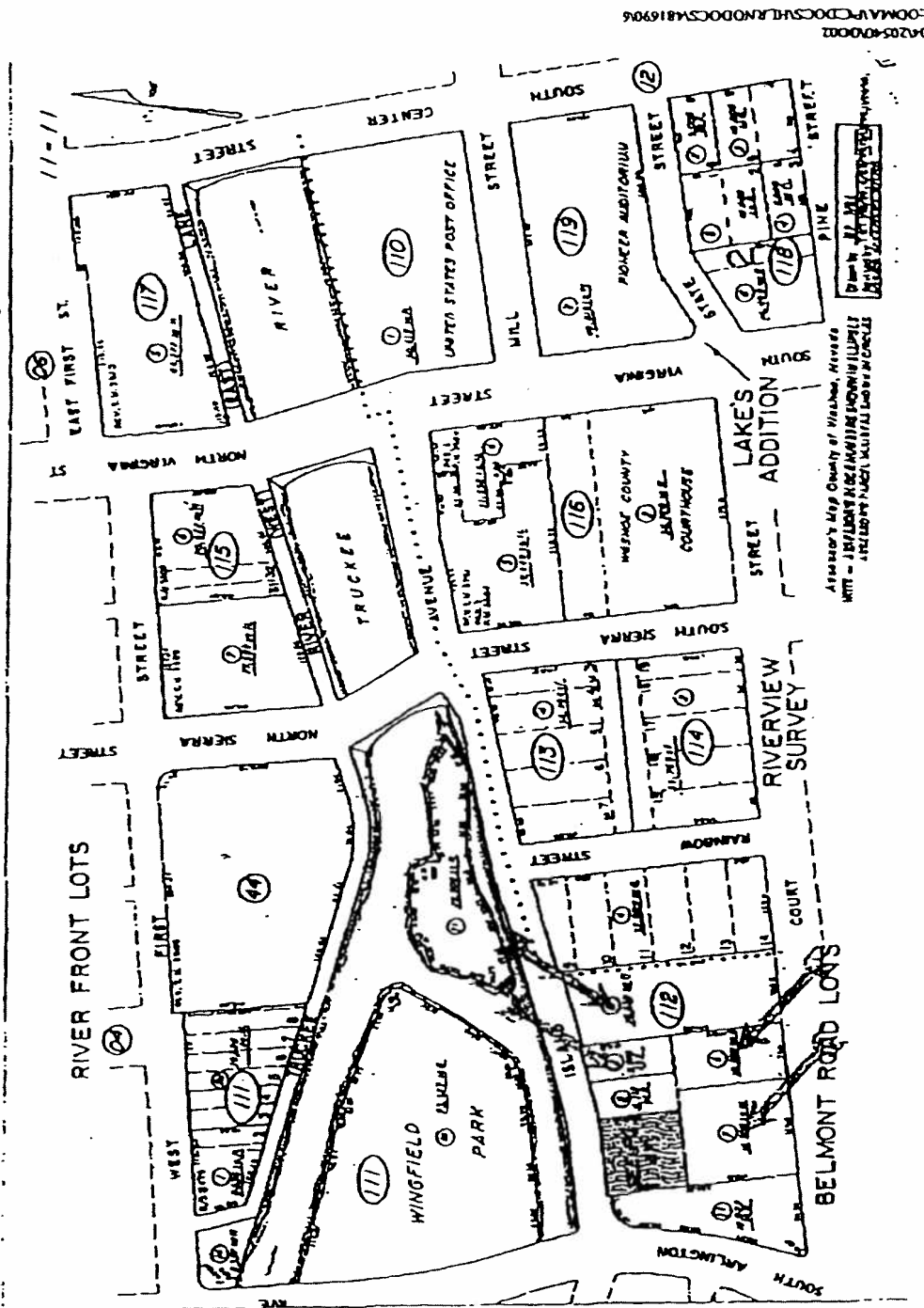
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EXHIBIT 8

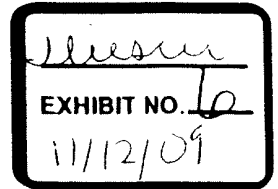
EXHIBIT 8

HALE LANE

ATTORNEYS AT LAW

5441 Kietzke Lane | Second Floor | Reno, Nevada 89511
Telephone: (775) 327-3000 | Facsimile: (775) 786-6179
www.halelane.com

December 14, 2005



Edward Everett Hale
(1879-1993)
Steve Lane
J. Stephen Pech
Karen D. Dennison
R. Craig Howard
Stephen V. Newman
Richard L. Elmore
Richard Bennett
Robert C. Anderson
Alan J. Flanagan
James L. Kelly
Kelly Torselin
N. Patrick Flanagan
Matthew E. Woodhead
Michelle D. Mullins
Roger W. Jeppson
Lance C. Bart
Jeremy J. North
David A. Garcia
Elissa F. Cadish
Therese A. Liska
Frederick J. Schmidt
James Newman
Terry R. Seaton
Patrick J. Reilly
Sean D. Fleming
Scott Scherer
Anthony L. Hall
Jerry M. Snyder
Brent C. Eckersley
Frederick R. Raichow
Patricia C. Halstead
Matthew J. Kreuzer
Matthew B. Hippler
Brad M. Johnson
Bryce K. Kauder
Douglas C. Plowers
Justin C. Jones
Nicole M. Vance
Kimberlee Ratchy
Dora V. Djikunova
Simon Johnson
Sarah E. L. Claus
Melvin E. Mandarian

Of Counsel

Roy Farrow
Pauline Ng Lee
Andrew Pezri

*Admitted to New York
and New Jersey only

John Ilescu, Jr., an individual
Sonnja Santee Ilescu, an individual
John Ilescu, Jr. and Sonnia Ilescu,
as Trustees of the John Ilescu, Jr. and Sonnia Ilescu 1992 Family Trust
200 Court Street
Reno, Nevada 89501

Calvin Baty, an individual
c/o Consolidated Pacific Development, Inc.
932 Parker Street
Berkeley, California 94710-2524

Consolidated Pacific Development, Inc.
932 Parker Street
Berkeley, California 94710-2524

Re: Court Street/Island Avenue Condominium Project

Lady and Gentlemen:

As you are aware, this law firm has an existing attorney-client relationship with John Ilescu, Jr., an individual, and Sonnia Santee Ilescu, an individual, and John Ilescu, Jr. and Sonnia Ilescu, as Trustees of the John Ilescu, Jr. and Sonnia Ilescu 1992 Family Trust (collectively "Ilescu") the owners of property located between Court Street and Island Avenue in Reno, Nevada (the "Property"). Our law firm has been requested to act as special counsel to the buyers of the Property in obtaining the necessary entitlements for a condominium project to be developed on the Property.

With your consent, we will represent Calvin Baty, an individual ("Baty"), and Consolidated Pacific Development, Inc., a Nevada corporation ("Consolidated") in assisting in obtaining the condominium entitlements and any entity to be formed by them (Baty, Consolidated and such new entity being collectively referred to as "Buyer").

HALE LANE PECK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone: (702) 322-2500 | Facsimile: (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone: (775) 684-6000 | Facsimile: (775) 684-6001

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December 14, 2005
Page 2

HALE LANE
ATTORNEYS AT LAW

It is understood and agreed that in the event a conflict between Iliescu and Buyer should arise in matters involving the Property, this law firm will continue to represent Iliescu in such matter. It is also understood and agreed by Buyer that our representation of Buyer on this one matter will not preclude our representation of Iliescu in matters not involving the Property in the event that Buyer, or any of them, is an adversary to Iliescu on such other matters.

If you consent to our representation of Buyer as set forth in this letter and waive any and all potential conflicts of interest which may exist as a result of such representation, please execute the acknowledgement of your consent which follows and return a signed copy of this letter to us.

Please call if you have any questions or if you wish to discuss this matter further.

Very truly yours,



Karen D. Dennison

KDD:csr

HALE LANE

ATTORNEYS AT LAW

100 West Liberty Street | Tenth Floor | Reno, Nevada 89501
Telephone (775) 3273000 | Facsimile (775) 7866179
Website: <http://www.halelane.com>

FACSIMILE TRANSMITTAL SHEET

FROM: Sarah E. L. Class, Esq. DATE: December 15, 2005
OUR FILE NO.: 20540-0002 TOTAL NO. OF PAGES INCLUDING COVER: 4
RE: Court Street/Island Avenue

SEND TO (NAME/COMPANY)	FACSIMILE NO.	TELEPHONE NO.
John and Sonia Ilescu	775-322-4112	775-771-6263

MESSAGE:

Greetings:

RETURN TO: Danielle Aragon

Once you have both executed the attached letter, please forward a copy by facsimile to 775-786-6179 and the original letter to us by U.S. Mail at your earliest convenience. If you have any questions, please do not hesitate to call. Thank you and have a wonderful trip.

HALE LANE PECK DENNISON AND HOWARD

CONFIDENTIALITY NOTICE: The information contained in this facsimile message is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or as the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. postal service. We will gladly reimburse your telephone and postage expenses. Thank you.

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RS - 173

HALE LANE
ATTORNEYS AT LAW

Original
mailed, 2/22/0

The foregoing waiver of conflict is hereby given as of the date set forth below.

Date:

12-15-05

Date:

12-15-05

Date:

12-15-08

Date:

12-15-05

Date:

Date:

By:

Sam A. Caniglia, President

EXHIBIT 9

EXHIBIT 9

OWNER AFFIDAVIT

I am an owner of property/authorized agent involved in this petition and that I authorize SAM CANIGLIA to request development related applications on my property. I declare under penalty of perjury that the foregoing is true and correct.

Executed on JAN 17 2006 in RENO, Nevada.
(date) (City)

Name:

Title:

Signed:

JOHN ILIESCU
John Iliescu
Owner
John Iliescu

OWNER AFFIDAVIT

I am an owner of property/authorized agent involved in this petition and that I authorize SAM CAVIGLIA to request development related applications on my property. I declare under penalty of perjury that the foregoing is true and correct.

Executed on JAN 17, 2006 in RENO, Nevada.
(date) (City)

Name:

Sonia Iliescu
Annice Iliescu

Title:

OWNER

Signed:

Annice Iliescu



EXHIBIT 10

EXHIBIT 10

FILE / COPY

Claudia C. Hanson, AICP, Interim Planning Manager
Community Development Department
P. O. Box 1900
Reno, NV 89505
(775) 334-2381

October 5, 2006



RECEIVED

OCT 12 2006

FISHER FRIEDMAN ASSOCIATES

Consolidated Pacific Development
932 Parker Street
Berkley, CA 94710

Subject: LDC06-00321 (Wingfield Towers)
APN No. 011-112-03, 06, 07 and 12

Dear Applicant:

At the regular meeting of the Planning Commission on October 4, 2006, the Planning Commission approved your request for: (1) a tentative map to develop a 499 unit residential condominium subdivision; (2) special use permits to allow: (a) hillside development; (b) cuts of 20 feet or more, (c) modification to the building setback envelope for a building within the South Esplanade Frontage; and (d) 100 or more condominium units; and (3) a variance to allow the buildings to cast a shadow on a public park between the hours of 10 a.m. and 2 p.m. on December 21st. In addition to the condominium units, $\pm 19,817$ square feet of retail space and $\pm 20,603$ square feet of office space will be located within two towers which are ± 492 and ± 374 feet tall, respectively from Court Street. The ± 1.36 acre site is located on the south side of Island Avenue ± 200 feet east of Arlington Avenue and north of Court Street in the MU/DRRC (Mixed Use/Downtown Reno Regional Center Plan) zones.

Your approved request is subject to the following conditions:

1. The project shall comply with all applicable City codes, plans, reports, materials, etc., as submitted. In the event of a conflict between said plans, reports, materials and City codes, City codes in effect at the time the building permit is applied for, shall prevail.
2. The applicant shall record the final map in accordance with the time limit contained in state law or this approval shall be null and void.
3. Prior to the approval of a final map, the applicant shall demonstrate that a homeowner's association or equivalent has been formed to provide for the maintenance of all common areas.

STEPAN 0446

RS - 179

4. Prior to the approval of a final map, the applicant shall demonstrate that pedestrian amenities will be provided in an amount equal to 1% of the entire project's costs exclusive of land and financing for buildings. These improvements shall be installed, prior to issuance of the first residential certificate of occupancy.
5. Grading and construction activities shall be allowed between the hours of 7:00 am and 7:00 pm Monday through Saturday. Grading or construction activities shall not take place on Sundays or on holidays.
6. Prior to approval of a final map, the applicant shall have plans approved for installation of landscaping around and on the parking structure up to the podium level as discussed on page 9 in the Urban Design section of the October 4, 2006, Planning Commission staff report for LDC06-00321.
7. Prior to the approval of any permit or final map, the applicant shall have an approved Sewerage Report in accordance with the Public Works Design Manual. Adequate access shall be provided for all sanitary sewer improvements per the Public Works Design Manual. All required on-site and off-site sanitary sewer improvements necessary to serve the project shall be complete and functional prior to the issuance of any certificate of occupancy.
8. Prior to the approval of any permit or final map, the applicant shall have approved plans for all proposed public sanitary sewer system improvements, abandonments, modifications, or relocations. The applicant shall coordinate the project improvements with completion of the City's sewer rehabilitation project in Arlington Avenue, between Court Street and Island Drive, which closely resemble the proposed sewer relocations shown in this application. These plans shall be approved by Community Development Department staff to the satisfaction of the Public Works Sanitation Engineering Division.
9. All proposed on-site sewer facilities and improvements shall be privately owned and maintained and shall be designed and constructed, with adequate access, in accordance with the City's minimum standards set forth in the Public Works Design Manual.
10. Prior to the approval of any permit or final map, the applicant shall have an approved Hydrology Report addressing on-site and off-site storm water flows and facility capacities for the pre-development and post-development site conditions. Specifically, the report shall analyze and provide mitigations for any impacts to floodwater flows in the Truckee River from the development of the project.

11. Prior to the approval of any permit or final map, the applicant shall demonstrate on-site storm water facilities meet minimum water quality standards for discharge into the Truckee River in accordance with RMC sections 12.16.530 and 12.12.555. Plans for the collection and treatment of roof-top, parking garage area, and elevator basin storm water effluent discharges shall be approved by Community Development Department staff to the satisfaction of the Public Works Sanitation Engineering Environmental Control Division.
12. On-site storm water management facilities and appurtenances will be privately owned and maintained. Adequate maintenance access shall be provided for all storm water management improvements per the Public Works Design Manual.
13. Prior to approval of any permit or final map, applicant shall demonstrate how Truckee River flood waters are to be accommodated through the building/site design in accordance with FEMA and City regulations.
14. Prior to the approval of any permit (excluding grading) or final map, the applicant shall demonstrate adequate gravity flow overland escape routes are provided for all roof-top and surface storm water collection and conveyance facilities.
15. Prior to the approval of any permit or final map, the applicant shall demonstrate compliance with flood control regulations regarding storm water detention and how the project will deal with parking garage levels that may be situated below flood elevations in the Truckee River. The applicant shall demonstrate how the subterranean elements of this project will be protected from shallow ground waters in accordance with the project geotechnical report.
16. Prior to the approval of each final Map, the applicant shall demonstrate all necessary on-site and off-site easement vacations, relocations, and grants are complete or in place. These easements include, but are not limited to; project construction, site access and cross access, utility access, emergency access, maintenance access, sewer lines, surface drainage, storm drains, irrigation ditches, and utility improvements. All required access, sewer, storm drainage, and utility improvements shall be constructed prior to the issuance of any certificates of occupancy.

17. Prior to the approval of any permit for public improvements or final map, the applicant shall have plans for all public improvements approved by the Community Development Department and shall obtain associated encroachment and excavation permits. Additionally, the applicant shall provide necessary dedications for rights-of-way and/or public use easements for the roadway, sidewalk, and pedestrian ramp improvements proposed along each project frontage.
18. Prior to the approval of each permit, the applicant shall have a preconstruction meeting and an approved Construction Management Plan. This plan shall include provisions for on-site and off-site construction material storage, employee parking and shuttle services (as appropriate), and construction activity phasing and staging. The plan shall also depict the proposed construction transportation and delivery routes within the project vicinity bounded by Center Street, California Avenue, Interstate 80, and Keystone Avenue. Access to adjacent businesses and properties shall be maintained during construction.
19. Prior to the approval of any permit for public improvements or final map, the applicant shall comply with the Quality Assurance Program as set forth in the Public Works Design Manual, Chapter VI, titles "Inspection, Testing and Verification" and "Quality Assurance Program."
20. Prior to the issuance of any permit, the applicant shall have plans and appropriate easements for the relocating or undergrounding of all overhead utilities proposed with this project in accordance with City standards and RMC Section 18.12.603 "Underground Utility Services."
21. Site circulation design, traffic control devices, and operational characteristics of the site accesses, common use driveways, on-site drive aisles, emergency accesses, fire access lanes, pedestrian routes, sidewalks, and parking areas shall be in accordance with the Public Works Design Manual and shall meet with the approval of the City Fire and Community Development Departments.
22. The applicant shall provide sidewalks and demonstrate accessible and ADA compliant pedestrian routes from all adjacent public rights-of-way to the on-site buildings.
23. Prior to the approval of any final map, the applicant shall demonstrate adequate street lighting exists or shall propose street lighting in accordance with City standards for the project entrances and adjoining properties. If new lighting is required, a private on-site street light shall be installed at the back of sidewalk near the private roadway entrances. This

street light can match other private on-site parking area lights provided adequate levels of lighting are achieved.

24. Prior to the approval of any final map, the applicant shall demonstrate adequate sight distance is provided in accordance with City code for the parking structure accesses and adjoining intersections. Sight distances shall be evaluated both horizontally and vertically.
25. Project accesses shall be located and designed in conformance with the master traffic study (prepared by Solaegui Engineers dated September 21, 2006, with all addenda and updates thereto) on file for the project and in accordance with the geometric standards of the Public Works Design Manual.
26. All traffic study updates shall be to the approval of the Community Development Department and shall provide analyses and review of the site plan and proposed mitigations for project generated impacts, relative to the trip generation distribution estimates included in the September 21, 2006 master traffic study, on the adjacent roadway network, site accesses, pedestrian routes, and cut-through traffic concerns.
27. Prior to the approval of each permit (excluding grading and underground improvements) and final map, the applicant shall provide a Transportation Management Plan for the project in accordance with the master traffic study and updates thereto. This plan shall stipulate specific strategies and management policies to control site generated traffic with regards to the operation of the parking structure, site accesses and turning movements, valet parking procedures, trip distributions from the site, pedestrian routes, off-site parking, shuttle service, loading zones/areas, metered parking, and mass transit utilization. This plan shall be on file with the Community Development Department and updated with each permit generating additional project traffic. This plan shall be continuously maintained in perpetuity, incorporated into the project Home Owners Association (HOA or equivalent) Covenants, Conditions, and Restrictions (CC& R's or equivalent), and a note shall be placed on each final map stating:

"The Transportation Management Plan, and all updates and addenda thereto, as required by Condition of Approval {##} for LCD06-00321 and finally approved by the City of Reno on {date}, shall remain in full force and effect for the life of this map and subsequent modifications thereof. The Transportation Management Plan shall be maintained and enforced by the Home Owners Association (HOA or equivalent) and filed with the Reno Community Development Department."

28. Prior to the issuance of the certificate of occupancy for the combined residential and non-residential portions of the project that will generate 50-percent (approximately 1,500 ADT) of the total project trips, the applicant shall have City approved traffic study and Transportation Management Plan updates for the project. This update shall evaluate background and project traffic patterns, site accesses, and pedestrian routes and review of the roadway capacities and intersection levels of service for the roadway network included in the project master traffic study. Prior to the issuance of any certificate of occupancy beyond a 65-percent combined occupancy threshold, the applicant shall have approved plans and securities in place for all recommended roadway or intersection improvements and/or shall provide alternate traffic mitigation plans as identified in the City approved 50-percent occupancy traffic study update.
29. Prior to the issuance of the certificate of occupancy for the combined residential and non-residential portions of the project that will generate 85-percent (approximately 2,600 ADT) of the total project trips, the applicant shall have City approved traffic study and Transportation Management Plan updates for the project. This update shall evaluate background and project traffic patterns, site accesses, and pedestrian routes and review of the roadway capacities and intersection levels of service for the roadway network included in the project master traffic study. Prior to the issuance of any certificate of occupancy beyond a 95-percent combined occupancy threshold, the applicant shall have approved plans/securities and shall construct and install all recommended roadway improvements and/or shall execute alternate traffic mitigation plans as identified in the City approved 85-percent occupancy traffic study update.
30. Prior to the approval of each permit (excluding grading and underground improvements) and final map, the applicant shall provide an updated estimate of the traffic generated from previously permitted and proposed project development.
31. Prior to the approval of any final map, the applicant shall provide a written response from RTC defining transit requirements for this project and shall dedicate rights-of-way or grant appropriate easements and construct transit improvement in accordance with RTC's requirements prior to the approval of any certificate of occupancy.
32. Prior to the issuance of the building permit containing 100-percent of the project commercial development and additional residential units that, collectively, will generate no less than 45-percent and no more than 55-percent of the total project trip generation estimate, the applicant shall develop a rehabilitation plan in conjunction with requirements established by engineering staff to determine the extents and nature of upgrades,

repairs, renovations, or reconstruction of the pavement structure and surface for the roadways identified as construction transportation and delivery routes within the project vicinity as depicted in the Construction Management Plan and all updates thereto. As a minimum, the applicant shall provide a 2-inch grind and overlay, with full depth replacement in required areas, for the full street widths of Court Street, Island Avenue, Arlington Avenue, and Rainbow Street within the block formed by these roadways. Prior to the issuance of the building permit containing 100-percent of the commercial development and residential units that, collectively, will generate no less than 85-percent and no more than 95-percent of the total project trip generation estimate, the applicant shall complete all pavement structure and roadway surface improvements necessary to sustain minimum roadway functional classifications within the project vicinity resulting from construction and project traffic impacts. The applicant shall replace all roadway markings and striping affected or displaced by the pavement improvements.

33. Prior to the issuance of each permit, the applicant shall have an approved Construction Traffic Control and Event Access Plan accommodating special events within the downtown and Wingfield Park areas. This plan shall be formulated in conjunction with and to the approval of the Community Development and Public Works Departments and shall be maintained on site at all times during construction. The plan shall include strategies for controlling construction traffic and potential temporary road closures for Island Avenue, Court Street, and Arlington Avenue and shall be updated at pre-determined intervals established within the plan or as required by the City.
34. Prior to approval of a final map the applicant shall have plans approved demonstrating that at least 25 bicycle parking spaces will be provided.
35. Prior to approval of a final map the applicant shall prepare, in coordination with the City's Historical Resources Commission, an architectural analysis and view shed inventory of historic structures in the area affected by construction of this project, to the satisfaction of Community Development Department staff.
36. Prior to approval of a final map, the applicant shall place a note on the final map and include in the project CC&R's a disclosure statement notifying residents of the potential for public events and street closures associated with adjacent downtown parks to occur.

The decision of the Planning Commission may be appealed by completing an appeal form and filing it with the City Clerk and paying any fee within ten (10) days of the date of the meeting at which the decision was made. The City Clerk shall set the appeal for

public hearing before the City Council and mail a notice of the hearing to the appellant and all others who were mailed a notice of the hearing of the Planning Commission. Appeals may be filed by any person who is aggrieved by the decision. The City Council may affirm, reverse, or modify the decision.

In the absence of an appeal, no building permit may be issued until this letter has been on file with the City Clerk for ten (10) days.

You must attach a copy of this letter to your application for a building/sign permit.

Sincerely,



Claudia C. Hanson, AICP, Interim Planning Manager
Community Development Department

LDC06-00321 (Wingfield Towers) - VAK.doc

xc: John and Sonia Iliescu
219 Court Street
Reno, NV 89501

Fisher Friedman Associates
Nathan Ogle, AIA
1485 Park Avenue, Suite 103
Emeryville, CA 94608

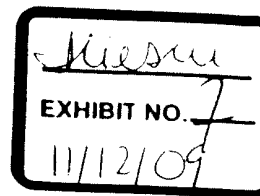
Lynnette Jones, City Clerk
Denny Peters, P.E., Interim Engineering Manager
Gary Warren, Washoe County Tax Assessor
Tonia Meyers, Management Assistant

EXHIBIT 11

EXHIBIT 11

METZKER JOHNSON GROUP
COMMERCIAL * RESIDENTIAL * INVESTMENT * REALTY

6490 S. McCarran Blvd., RENO, NEVADA, 89502 PHONE: (775)823-8877 FAX: (775) 823-8848



ADDENDUM No. 4.

Date Prepared: September 18, 2006

This Addendum No. 4 ("Fourth Addendum") is made by and between Consolidated Pacific Development, Inc., a Nevada corporation, ("Buyer"), and John Iliescu, Jr. and Sonnia Santee Iliescu, individually and as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust (collectively "Seller") with reference to the following facts and is as follows:

RECITALS:

A. Seller and Buyer entered into that certain Land Purchase Agreement dated July 29, 2005 ("Land Purchase Agreement"), together with Addendum No. 1 dated August 1, 2005 ("First Addendum"), and Addendum No. 2 dated August 2, 2005 ("Second Addendum"), and Addendum No. 3 dated October 8, 2005 ("Third Addendum"). The Land Purchase Agreement, the First Addendum, the Second Addendum, and the Third Addendum are collectively referred herein as the "Agreement". The Agreement is for the sale and purchase of that certain real property located in the City of Reno, County of Washoe, State of Nevada, identified as APNs 011-112-05, 06, 07 and 12 and more particularly described in the Title Report attached to the Third Addendum. *03*

B. Seller and Buyer desire to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Seller and Buyer hereby amend the Agreement as follows:

1. Seller and Buyer hereby agree to extend the date for Close of Escrow (as set forth in the Agreement) to on or before April 25, 2007. In consideration of such extension, Buyer agrees to pay, on or before October 15, 2006, through escrow at First Centennial Title Company of Nevada, an additional sum of \$376,000 (Three Hundred Seventy Six Thousand Dollars) in immediately available funds ("Additional Extension Deposit"), which Additional Extension Deposit shall be added to the Purchase Price, as set forth below, and shall be credited to the Purchase Price. Three Hundred Sixty Five Thousand Dollars (\$365,000.00) of such sum shall be released immediately to Seller and Eleven Thousand Dollars (\$11,000.00) of such sum shall be payable immediately to Metzker Johnson Group as partial payment of its broker's commission. The Additional Extension Deposit is non-refundable.

2. The Additional Extension Deposit shall be in addition to all other sums payable under the Agreement, including, but not limited to, the extension deposits described in the Agreement.
3. The purchase price of \$7,500,000.00 (Seven Million Five Hundred Thousand Dollars) as set forth in the Agreement shall be increased to Seven Million Eight Hundred Seventy Six Thousand Dollars (\$7,876,000) (herein "Purchase Price").
4. Except as modified by this Addendum No. 4, all other terms and conditions of the Agreement shall remain in full force and effect.

This Addendum No. 4 is dated this 19th day of September, 2006.

Seller:

John Iliescu
John Iliescu Jr.

Sonia Santee Iliescu
Sonia Santee Iliescu

John Iliescu Jr., as Trustee of the John Iliescu Jr and Sonia Iliescu 1992 Family Trust
John Iliescu Jr., as Trustee of the John Iliescu Jr
and Sonia Iliescu 1992 Family Trust

Sonia Santee Iliescu, Trustee
Sonia Santee Iliescu, as Trustee of the John Iliescu Jr.
And Sonia Iliescu 1992 Family Trust

Buyer:

Consolidated Pacific Development, Inc.,
a Nevada corporation

By: Sam A Caniglia
Sam A Caniglia, President

EXHIBIT 12

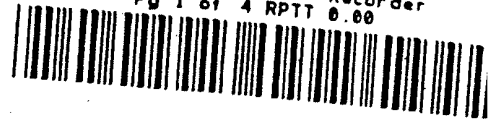
EXHIBIT 12

When Recorded Mail To:

Gayle A. Kern, Esq.
Gayle A. Kern, Ltd.
5421 Kietzke Lane, Suite 200
Reno, NV 89511

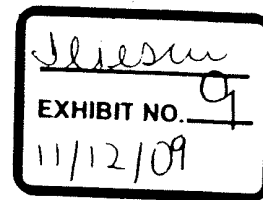
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BK1

Requested By
GAYLE A KERN LTD
Washoe County Recorder
Kathryn L. Burke - Recorder
Pg 1 of 4 RPTT 0.00



APN: 011-112-03; 011-112-06; 011-112-07; 011-112-12

GRANTEE'S ADDRESS:
Mark B. Steppan, AIA, CSI, NCARB
1485 Park Avenue, #103
Emeryville, CA 94608



NOTICE AND CLAIM OF LIEN

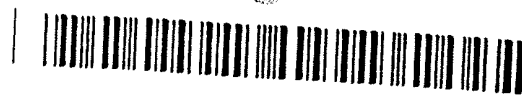
NOTICE IS HEREBY GIVEN that Mark Steppan, AIA, CSI, NCARB claims a Mechanic's and Materialman's Lien upon the property hereinafter particularly described, which property is located in Washoe County, Nevada, and which claim is made pursuant to the laws of the State of Nevada, particularly Chapter 108 of the Nevada Revised Statutes, as amended, for the value of work, labor, materials and/or services furnished by lien claimant for the improvement of real property hereinafter particularly described, located in the County of Washoe, State of Nevada.

That the whole or real property hereinafter particularly described has been or is in the process of improvement and is reasonably necessary for the convenient use and occupation of said property.

Claimant further states:

1. That the name of the owner or reputed owner of the premises sought to be charged is as follows: 011-112-03; 011-112-07; 011-112-12 - JOHN ILIESCU, JR., and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; and 011-112-06 - John Ilescu, a married man as his sole and separate property.
2. That the name of the person by whom lien claimant was employed and to whom lien claimant furnished work, labor, materials and/or services in connection with the project is: BSC Financial, LLC, c/o Consolidated Pacific Development, Inc., 932 Parker Street, Berkley, CA 94710; Job name: Residential Project, Reno, Nevada, Job Address: North Arlington Avenue, Island Avenue and Court Street; Owner's Designated Representative: Sam Caniglia.
3. That the terms, time given and conditions of the contract were: Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Statement of services for the building, structure or other work of improvement located at North Arlington Avenue, Island Avenue and Court Street, Reno, Nevada. All services were to be invoiced based on work performed as reflected in applications for payment, no retainage to be withheld from monthly progress payments. All invoices are due in fifteen days.

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4. That work, labor, materials and/or services have been furnished to and actually used upon the above-described project in the remaining amount of ONE MILLION SIX-HUNDRED THIRTY-NINE THOUSAND ONE-HUNDRED THIRTY AND NO/100 DOLLARS (\$1,639,130.00), reimbursable expenses of ONE-HUNDRED FIFTEEN THOUSAND THREE HUNDRED SIXTY-TWO AND NO/100 DOLLARS (\$115,362.00) plus interest through October 31, 2006 in the amount of TWENTY-NINE THOUSAND FIFTY-SIX DOLLARS AND 85/100 (\$29,056.85), continuing interest, attorney's fees and costs and the amount is now due and owing to lien claimant.
5. That the first labor and materials furnished by lien claimant to and incorporated in the project was on or about April 21, 2006 and that the last labor and materials furnished by lien claimant and incorporated in the project was within the past ninety days; that there are no other just credits or off-sets to be deducted and the total amount due and owing to lien claimant is the sum of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FOURTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85), plus continuing interest, attorney's fees and costs.
6. That a demand for payment has been made by lien claimant and that no part or portion of the amount due and owing has been paid; that there are no further off-sets to the claim and that the sum of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FOURTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85), plus continuing interest, attorney's fees and costs is now due and owing to lien claimant on account of the work, labor, materials and/or services furnished as above specified and that the undersigned claims a lien upon the real property particularly described herein for said sum, together with continuing interest and attorney's fees as provided by law.
7. That the real property sought to be charged with this Claim of Lien upon which the above described work of improvement has been made is located in Washoe County of State of Nevada, and is particularly described as:

Commencing at a point formed by the intersection of the East line of Flint Street (if protracted Northerly) with the North line of Court Street in the City of Reno; running thence Easterly, along the North line of Court Street, a distance of 100 feet, thence at a right angle Northerly, a distance of 140 feet to the true point of beginning; said true point of beginning being the Southeast corner of the parcel of land heretofore conveyed to Atha Carter by Antonio Rebori and wife, by deed duly recorded in Book 64 of Deeds, Page 294, Washoe County Records: running thence Easterly, parallel with the North line of Court Street, a distance of 50 feet to the Southwest corner of the property formerly owned by H. F. Holmshaw and wife thence Northerly at a right angle, along the west line of the property formerly owned by said H. F. Holmshaw and wife, to the South bank of the South channel of the Truckee River; thence Westerly along the South bank of said channel of the Truckee River to a point which would intersect a line drawn northerly and parallel with the East line of said property from the said true point of beginning; thence southerly along said line to the true point of beginning.



SAVE AND EXCEPTING, however, from the above described premises, all that portion thereof conveyed by Antonio Rebori and Charlotta Rebori, his wife, to the City of Reno, a municipal corporation, by deed dated February 16, 1922, and recorded in Book 59 of Deeds, Page 297, Washoe County, Records.
APN: 011-112-03

Commencing at the point 129.6 feet West of where the center line of Hill Street projected Northerly will intersect the North line of Court Street thence running Westerly along the North line of Court Street, 75 feet; thence running Northerly at an angle of 89°58' 140 feet; thence running Easterly at an angle of 90°05" 75 feet; thence running Southerly at an angle 80°55', 140 feet to the place of beginning, comprising a parcel of land 75 by 140 feet.
APN: 011-112-06

BEGINNING at the intersection of the Northerly extension of the Eastern line of Flint Street with the Northern line of Court Street, in the City of Reno, County of Washoe, State of Nevada, thence Easterly along the Northern line of Court Street, 125 feet, more or less to the Western line of the parcel conveyed to WALKER J. BOUDWIN, et ux, by Deed recorded in Book 143, File No. 100219, Deed Records; thence Northerly along said last mentioned line 140 feet; thence Westerly parallel to the Northern line of Court Street, 125 feet; thence Southerly parallel to the Western line of Said Boudwin parcel 140 feet to the point of beginning.
APN: 011-112-07

Commencing on the North line of Court Street, at the intersection of the North line of Court Street with the West line of Hill Street, if said Hill Street was protracted Northerly to said point of inter-section according to the official plat of Lake's South Addition to Reno, Washoe County, State of Nevada; thence running westerly and along the North line of said Court Street 100 feet; thence Northerly and parallel with the West line of said Hill Street, if protracted, 276 feet more or less to the South Bank of the Truckee River; thence Easterly and along the south bank of the Truckee River to the West line of Hill Street, protracted, 324 feet more or less to the North line of Court Street and the place of beginning, being the same lands conveyed by Antonio Robori and Carlotta Robori, his wife, to Charles Snyder, May 27, 1907, and by Antonio Robori to Charles Snyder, January 12, 1905, by deeds duly recorded in Book 32 of Deeds, page 405, and book 26 of deeds, page 296, Records of said Washoe County.

EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded August 4, 1922, as Document No. 26097, in Book 61, Page 280, of Deeds.

FURTHER EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded December 17, 1971, as Document No. 229332, in Book 600, Page 759 of Official Records.

APN: 011-112-12



3460499
11/07/2006
4 of 4

8. That the four parcels are to be developed as the project and it is appropriate to equally apportion the amount due between the four parcels identified herein.

DATED: This 7th day of November, 2006.

By Gayle A. Kern
Gayle A. Kern, Esq.

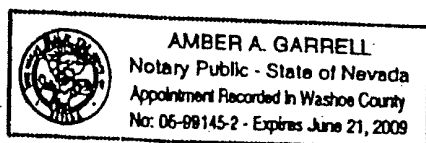
STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

Gayle A. Kern, Esq., being first duly sworn, deposes and says that: I am the Attorney for Mark Steppan, the lien claimant in the foregoing Notice and Claim of Lien. I have read the above and foregoing Notice and Claim of Lien, know the contents thereof and state that the same is true based on the information provided by my client. I further state that I have been informed and based thereon believe that it contains, among other things, a correct statement of the demand of said lien claimant, after deducting all just credits and off-sets.

Gayle A. Kern
Gayle A. Kern, Esq.

SUBSCRIBED AND SWORN to before me
this 7th day of November, 2006.

Amber A. Garrell
Notary Public



ILIESCU000328

CAYLE A. KERN, LTD.
ATTORNEYS AT LAW
5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511

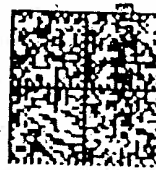
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RENO NV 895

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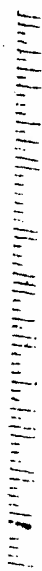


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John and Sonnia Ilescu
200 Court Street
Reno, NV 89501

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COPI

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FIRST CENTENNIAL TITLE COMPANY OF NEVADA

1450 RIDGEVIEW DRIVE, STE. 100

RENO, NV 89519

PHONE: (775) 689-8510 • FAX: (775) 689-8520

December 8, 2006

Mark Steppan, AIA, CSI, NCARB

Via email to Counsels:

Sanford Margolin @margolin@oaklaw.com

blatch@oaklaw.com

Gayle Kern @kernltd.com

RE: Escrow No: 145279-MI

I have been instructed to pay your demand for the Claim of Lien filed 11/7/06 as document No. 3460499, Washoe County Nevada Official Records involving property owned by John Iliescu, et al for work performed for DeCal Homes, or one of their subsidiaries.

on the property located on Court Street and Island Ave., Reno Nevada having APN 011-112-03, 06, 07 and 12, Reno, NV

We ask that you complete and sign the requested information below, and sign and have notarized the Lien Release enclosed.

Very truly yours,

First Centennial Title Company of Nevada

Maryann Infantino

Commercial Escrow Officer

The Outstanding Principal Balance is: \$ _____

Interest to _____ \$ _____

Daily Interest Is: \$ _____

Or Interest Rate Is: _____

Any Other Fees, Charges, Etc. Due _____

Description _____ \$ _____

You are also handed herewith a Lien Release, which you are authorized, and instructed to record in Washoe County, Nevada, when you hold for my account the above requested amounts.

Disbursement of said amount shall be sent to the undersigned in the following manner:

Federal Express to: _____

Wire to: _____ Acct # _____

Routing # _____

Date: _____

Signed: _____

Address: _____

ILIESCU000330

EXHIBIT 13

EXHIBIT 13

HALE LANE

ATTORNEYS AT LAW

5441 Kietzke Lane | Second Floor | Reno, Nevada 89511
Telephone (775) 327-3000 | Facsimile (775) 786-6179
www.halelane.com

December 26, 2006

John Iliescu, Jr., individually
Sonia Santee Iliescu, individually
John Iliescu, Jr. and Sonia Iliescu,
as Trustees of the John Iliescu, Jr.
and Sonia Iliescu 1992 Family Trust
200 Court Street
Reno, Nevada 89501

BSC Financial LLC
c/o DeCal Custom Homes
440 Columbia Blvd.
St. Helens, OR 97051

BSC Financial LLC
c/o Decal Nevada, Inc.
6121 Lakeside Drive, Suite 125
Reno, NV 89511

**Re: Wingfield Towers
Court Street/Island Avenue Condominium Project**

Dr. and Mrs. Iliescu and Messrs Baty, Caniglia and Schleining:

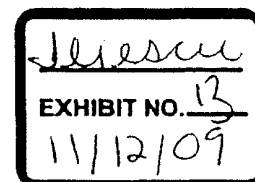
As you are aware, this law firm has an existing attorney-client relationship with John Iliescu, Jr., an individual, and Sonia Santee Iliescu, an individual, and John Iliescu, Jr. and Sonia Iliescu, as Trustees of the John Iliescu, Jr. and Sonia Iliescu 1992 Family Trust (collectively "Iliescu") the owners of property located between Court Street and Island Avenue in Reno, Nevada (the "Property"). Our law firm also has an existing attorney-client relationship with Decal Custom Homes and BSC Financial LLC, the Buyers of the Property. BSC Financial LLC is referred to herein as "Buyer". Our law firm has been requested to act as counsel to both Iliescu and Buyers because of the unity of interest in resolving the dispute with the Architect for the Property involving the AIA Architectural Services Contract, and the mechanic's lien recorded by the Architect and related issues.

We will represent both Iliescu and Buyer jointly regarding the resolution of the mechanic's lien issue with the Architect. An Indemnity Agreement has been executed by Buyer

HALE LANE PEEK DENNISON AND HOWARD

LAS VEGAS OFFICE: 3930 Howard Hughes Parkway | Fourth Floor | Las Vegas, Nevada 89169 | Phone (702) 222-2500 | Facsimile (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Facsimile (775) 684-6001

C:\Documents and Settings\Dick\My Documents\O&A\ILIESCU & CANIGLIA_FINAL\waiver ref\lein - decal and Iliescu.doc



ILIESCU000338

December 26, 2006
Page 2

HALE LANE
ATTORNEYS AT LAW

indemnifying the Seller as more fully set forth therein which includes provisions that Buyer is responsible, among other obligations, to pay this law firm's fees regarding the mechanic's lien issue with the Architect.

It is understood and agreed that in the event a conflict between Iliescu and Buyer should arise in matters involving the mechanic's lien issue, this law firm may continue to represent Iliescu in such matter. This law firm will continue to represent Iliescu in the closing of the purchase and sale of the Property transaction.

If you consent to our joint representation as set forth in this letter and waive any and all potential conflicts of interest which may exist as a result of such representation, please execute the Acknowledgement of your consent attached hereto and return a signed copy of this letter to us.

Please call if you have any questions or if you wish to discuss this matter further.

Sincerely,

R. Craig Howard

RCH:dvt

Acknowledgement

Iliescu and Buyer consent to joint representation in the above-referenced matter and waiver of any potential conflict is hereby given as of the date set forth below.

Iliescu:

Date: _____

John Iliescu, Jr., individually, and as Trustee of the
John Iliescu, Jr. and Sonnia Iliescu 1992 Family
Trust

Date: _____

Sonnia Santee Iliescu, individually, and as Trustee
of the John Iliescu Jr. and Sonnia Iliescu 1992
Family Trust

BSC Financial LLC:

BSC Financial LLC, a limited liability company

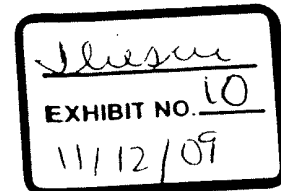
Date: _____

By: _____
Calvin Baty, Manager



EXHIBIT 14

EXHIBIT 14



INDEMNITY

THIS INDEMNITY ("Agreement") is executed by BSC FINANCIAL, LLC, a limited liability company ("BSC"), CALVIN BATY, individually ("Baty"), and JOHN SCHLEINING, individually ("Schleining") (collectively, the "Indemnifying Parties"), in favor of JOHN ILIESCU, JR., and SONNIA SANTEE ILIESCU, individually and as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST (collectively, "Iliescu"), and is effective as of the date set forth by the parties' respective signatures.

RECITALS:

A. Consolidated Pacific Development, Inc., a Nevada corporation ("Consolidated"), entered into a Land Purchase Agreement with Iliescu dated July 29, 2005, together with Addendum No. 1 dated August 1, 2005, Addendum No. 2 dated August 2, 2005, Addendum No. 3 dated October 8, 2005, and Addendum No. 4 dated as of September 18, 2006 (collectively, "Purchase Agreement"), concerning certain real property located in the City of Reno, County of Washoe, State of Nevada, identified as APNs 011-112-05, 06, 07 and 12, and more particularly described in the Title Report attached to Addendum No. 3 ("Property"). Sam Caniglia, President of Consolidated, Baty and Schleining formed BSC in order to proceed with the entitlement of the project on the Property.

B. BSC entered into an AIA Architectural Agreement ("AIA Contract") with Mark Steppan, AIA ("Architect"), for architectural services for a mixed-use development including residential, retail, and parking ("Project"). The architectural schematic drawings were necessary to obtain the land use entitlements for the Project. The land use entitlements were approved by the City of Reno.

C. On November 7, 2006, the Architect recorded in Washoe County, Nevada, a Notice and Claim of Lien against the Property in the amount of \$1,783,548.85 for claims of unpaid architectural services ("Mechanic's Lien"). These unpaid amounts are contested by BSC. In addition, the Mechanic's Lien is an improper lien not in compliance with Nevada law because the Architect failed to deliver to Iliescu (i) a Notice of Right to Lien pursuant to NRS 108.245, and (ii) a Notice of Intent to Lien pursuant to NRS 108.226(6).

D. Baty and Schleining are principals of BSC.

E. Baty, Schleining and BSC desire to indemnify Iliescu for any and all claims and costs related to the Architect's recording of the Mechanic's Lien on the Property.

NOW, THEREFORE, for valuable consideration, Baty, Schleining and BSC hereby agree as follows:

1. Indemnity. Baty, Schleining and BSC hereby, jointly and severally, agree to indemnify, defend, protect and hold Iliescu harmless against all damages, losses, expenses, costs, liabilities, including, without limitation, payments due or which may be due to the Architect arising out of services performed pursuant to the AIA Contract or any change order or extras

related thereto, including interest, penalties and attorney fees which may be claimed by Architect to be owed by either BSC or Consolidated.

2. Attorneys' Fees. Baty, Schleining and BSC hereby jointly and severally agree to pay all attorney's fees and costs incurred to contest and discharge the Mechanic's Lien. In the event that a discharge of the Mechanic's Lien does not occur pursuant to a resolution of the dispute with Architect within ten (10) days of the date of this Indemnity, the Indemnifying Parties agree to initiate an action in the Washoe County District Court to contest and to discharge the Mechanic's Lien for (i) failing to comply with Nevada law, and (ii) the excessive amount. The Indemnifying Parties agree to diligently prosecute such action in an expedited manner to eliminate the Mechanic's Lien.

IN WITNESS WHEREOF, the Indemnifying Parties have executed this Indemnity as of the date set forth below.

BSC FINANCIAL, LLC, a limited liability company

Dated: December 8, 2006

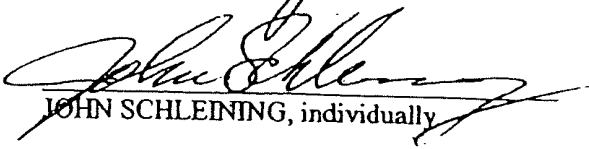
By: 

Calvin Baty
Manager

Dated: December 8, 2006


CALVIN BATY, individually

Dated: December 8, 2006


JOHN SCHLEINING, individually

Code 3880

Thomas J. Hall, Esq.
Nevada State Bar No. 675
305 South Arlington Avenue
Post Office Box 3948
Reno, Nevada 89505
Telephone: 775-348-7011
Facsimile: 775-348-7211

Attorney for John Iliescu, Jr.
and Sonnia Iliescu and The John
Iliescu, Jr. and Sonnia Iliescu
1992 Family Trust

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**IN AND FOR THE COUNTY OF WASHOE**

MARK B. STEPPAN,

Case No.: CV07-00341

Plaintiff,

Dept. No.: 1

v.

Consolidated with:

JOHN ILIESCU, JR. and SONNIA
ILIESCU, as Trustees of the JOHN
ILIESCU, JR. AND SONNIA ILIESCU
1992 FAMILY TRUST AGREEEMNT; JOHN
ILIESCU, individually; DOES I-V,
Inclusive; and ROE CORPORATIONS
VI-X, inclusive,

Case No.: CV07-00341

Dept. No.: 1

Defendants.

AND RELATED CROSS-CLAIMS AND
THIRD-PARTY CLAIMS. /

OPPOSITION AND RESPONSE TO THIRD PARTY DEFENDANT**HALE LANE'S MOTION FOR SUMMARY JUDGMENT****REGARDING THIRD PARTY CLAIMS BY JOHN ILIESCU**

COME NOW, Defendants John Iliescu, Jr., and Sonnia Iliescu,
individually, and as Trustees of the John Iliescu, Jr. and

1 Sonnia Iliescu 1992 Family Trust ("Iliescu"), by and through
2 their counsel Thomas J. Hall, Esq., and in opposition and in
3 response to the Third Party Defendant Hale Lane's Motion for
4 Summary Judgment Regarding Third-Party Claims by John Iliescu
5 hereby informs the Court as follows.

6
7 **A. Discussion.**

8 Inasmuch as the subject Motion is directed solely to the
9 single allegation contained in paragraph 59-60 in the Third
10 Party Complaint, Iliescu has no objection to striking the phrase
11 "they failed to advise Iliescu to record a Notice of
12 Nonresponsibility." As set forth in the Motion to Amend Third
13 Party Complaint filed herewith, the remaining allegations of the
14 Third Party Complaint stand, as augmented, in that the Hale Lane
15 law firm was negligent in certain other regards including the
16 fact that they failed to advise Iliescu that by signing Addendum
17 No. 3, Iliescu became a Participating Seller and therefore
18 subjecting the Property to lien.

19
20 **B. General Facts.**

21 Iliescu owns four parcels of real property situated between
22 Court Street in the City of Reno, County of Washoe, State of
23 Nevada, known as APN 011-112-03, 011-112-07 and 011-112-12 and
24 Defendant John Iliescu, Jr., is the owner of APN 011-112-06 as
25 his sole and separate property (collectively the "Property").
26 See, Complaint ¶ 6.
27

1 Iliescu desired to sell this Property.

2 On July 29, 2005, Iliescu entered into a Purchase Agreement
3 for the sale of the Property. See Exhibit 1 attached to the
4 Motion for Partial Summary Judgment filed April 17, 2008. The
5 Purchase Agreement was subsequently amended by four addendums¹.
6 See Purchase Agreement and Addendums, attached as Exhibit 1 to
7 Motion for Partial Summary Judgment filed April 17, 2008.
8 Pursuant to the Purchase Agreement, Iliescu agreed to sell the
9 Property to Consolidated Pacific Development, Inc., ("CPD"), for
10 \$7,500,000.00, plus other consideration. The cash amount was
11 later increased to \$7,876,000.00 by Addendum No. 4.
12

13 As part of the Purchase Agreement, Iliescu was to receive a
14 condominium located within the Project CPD proposed to build and
15 several parking spaces. Id at ¶ 39(H). The Purchase Agreement
16 was made expressly contingent on the Buyer obtaining certain
17 Governmental Approvals. Specifically, the Hale Lane law firm
18 drafted Addendum No. 3, which expressly provided under paragraph
19 39(F) the following conditions and requirements:
20

21 7. Paragraph 39(F) is hereby amended and restated as
22 follows:

23 This offer is conditioned upon, as conditions
24 precedent ("Conditions Precedent"), Buyer obtaining,
25 at Buyer's expense, all necessary approvals
26 ("Governmental Approvals") for the construction of a
mixed use residential and commercial high rise

27 ¹ Addendum No. 1 was entered into on August 1, 2005. Addendum No. 2 was
28 entered into on August 2, 2005. Addendum No. 3 was entered into on October
8, 2005. Addendum No. 4 was entered into on September 18, 2006.

1 condominium project on the Property approximately 28
2 stories in height (the "Project") within 270 days
3 after August 3, 2005, as such time period may be
extended pursuant to Paragraph 1.2 above, including
but not limited to:

- 4 (1) Any required height, setback or other variances;
5 (2) Any required special use permit;
6 (3) Any required zoning or land use designation
changes;
7 (4) Any required master plan amendment;
8 (5) An approved tentative condominium map for the
Project; and
9 (6) Any required design approvals.

10 In addition, Buyer shall obtain, at Buyer's sole cost
and expense, all approvals for the Boundary Line
11 Adjustment (as defined in Paragraph 8 of this Third
Addendum).

12 Buyer shall use its best efforts and reasonable
13 diligence to satisfy all Conditions Precedent
14 described in this Paragraph 39(F) prior to close of
escrow.

15 [Emphasis added.]

16 Iliescu understood that the Buyer of the Property intended
17 to construct residential condominium units and in pursuit of
18 paragraph 39(F) quoted above, Iliescu did execute Owner
19 Affidavits on January 17, 2006, appointing and authorizing Sam
20 Caniglia, a principal within the Buyer's group, to file
21 development applications with and obtain Governmental Approvals
22 from the City of Reno for the Property. See, Exhibit 9 to Third
23 Party Defendant Hale Lane's Motion for Summary Judgment
24 Regarding Third Party Claims by John Iliescu filed on March 30,
25 2011.
26
27
28

1 As stated in Hale Lane's Motion for Summary Judgment, Karen
2 D. Dennison of the Hale Lane law firm prepared Addendum No. 3
3 (Motion, page 3, lines 14-19):

4 Ms. Dennison prepared Addendum No. 3, which sought to
5 clarify the agreement in several respects. (Ex. 1, at
6 ¶¶ 18 through 19; see also Addendum No. 3 attached as
7 Exhibit 7.) Of particular importance for purposes of
8 this motion, Addendum No. 3 explained that obtaining
9 the necessary entitlements was a "condition
precedent." (Ex. 7, at no. 7.) It also mandated that
the developer "use its best efforts and reasonable
diligence to satisfy all Conditions Precedent."

10 In addition, John Iliescu attended the City of Reno
11 Planning Commission and City of Reno Council meetings where the
12 Project was reviewed and approved, thereby gaining all
13 Governmental Approvals as called for in paragraph 39(F).

14 In the meantime, once the Purchase Agreement was signed,
15 Caniglia, for the Buyer, sought out a reputable architect to
16 help obtain the Governmental Approvals. Nevada architect Mark B.
17 Steppan and his California firm, Fisher-Friedman & Associates,
18 were retained by Caniglia on a time and materials basis to
19 conceptually design the Project, to prepare certain schematic
20 drawings and to present these drawings to the Reno Planning
21 Commission and the Reno City Council in support of gaining the
22 Governmental Approvals.
23
24

25 The Buyer paid \$430,870.00 to Fisher-Friedman & Associates
26 on a time and materials basis. The Buyer later signed a more
27 extensive architectural agreement with Steppan that gave rise to
28

1 the filing of the Notice of Lien herein on November 7, 2006, as
2 Document 3460499, Washoe County Records, in the amount of
3 \$1,783,548.85. An Amended Notice of Claim and Lien was recorded
4 on May 3, 2007, as Document 3528313, Washoe County Records.
5 See, Plaintiff's Complaint ¶ 12.

6
7 At no time did the Hale Lane law firm discuss with or
8 advise Iliescu as to the effect or implication of requiring
9 Iliescu to become a Participating Seller in this sales
10 transaction. Moreover, the Hale Lane law firm was specifically
11 retained to "fine tune" the sales agreement originally prepared
12 by Realtor Richard K. Johnson to "better reflect the parties'
13 intentions". Hale Lane Motion for Summary Judgment, page 3,
14 lines 10-12. Iliescu's intention was to sell the Property, not
15 to expose the Property to lien caused by the Buyer. See
16 Affidavit of John Iliescu attached hereto as Exhibit 1.

17
18 As set forth in the instant Motion for Summary Judgment and
19 the Motion to Amend filed concurrently herewith, once Iliescu,
20 as Seller, actively participated in the effort to gain
21 Governmental Approvals, the Property was lienable. That is
22 exactly what was provided for in the Hale Lane drafted Addendum
23 No. 3. Iliescu was not advised otherwise, to his substantial
24 damage.

25
26 While Iliescu believes that Steppan's lien claim is
27 unfounded and that Steppan has been sufficiently paid for all
28

1 the services he rendered, nevertheless, a lien still exists on
2 the Property and must be dealt with. The Court by its Order
3 entered June 22, 2009, found:

4 The Applicants, specifically Iliescu, viewed the
5 architectural drawings as well as attended meetings
6 where the design team presented the drawings. The
7 Court finds even though Iliescu alleges he did not
8 know the identity of the architects who were working
9 on the project, he had actual knowledge that the
10 Respondent and his firm were performing architectural
11 services on the project.

12 Accordingly, the motion for partial summary judgment
13 is denied. The cross motion for summary judgment is
14 granted.

15 Because the Court has determined on cross-motions for
16 summary judgment that Iliescu had actual knowledge that a
17 designer and his firm were performing architectural services for
18 the Project, Iliescu, as owner of the Property, could not avoid
19 the lien by simply recording a Notice of Non-Responsibility.
20 Further, because Iliescu participated in obtaining Governmental
21 Approvals, he became what is known as a Participating Seller.
22 By the very cases Hale Lane cites in the Motion for Summary
23 Judgment, and cited in the Motion to Amend filed herewith, the
24 Property became lienable. Iliescu was unprotected and unguarded.
25 Because of the fault of the Hale Lane law firm, the Property has
26 been lienied and, therefore, the Hale Lane law firm must
27 indemnify Iliescu.
28

1 The recording of a Notice of Non-responsibility by a
2 Participating Seller is ineffective. The Hale Lane law firm did
3 not inform Iliescu of this result at the time Addendum No. 3 was
4 drafted, presented to Iliescu and signed.

5 **B. Conclusion.**

6
7 It is respectfully requested that Hale Lane's Motion for
8 Summary Judgment be denied. By its own Motion, Hale Lane admits
9 that it drafted and prepared the Addendum which placed the
10 Property in jeopardy of potential lien claims caused by the
11 Buyer's hired vendors and service providers. Here, the Property
12 would not be protected by an owner's recorded Notice of Non-
13 Responsibility. The Hale Lane law firm did not so advise the
14 Property owner, Iliescu, and did not draft Addendum No. 3 to
15 properly reflect the parties' intentions to protect the Property
16 from lien.
17

18 The undersigned does hereby affirm that the preceding
19 document does not contain the social security number of any
20 person.

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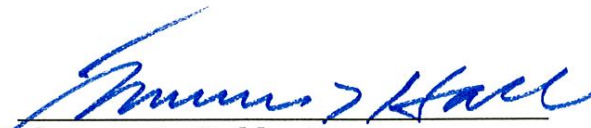
26 \\\

27 \\\

28

1 DATED this 18th day of August, 2011.

2 LAW OFFICES OF THOMAS J. HALL

3
4 

5 Thomas J. Hall, Esq.
6 Law Offices of Thomas J. Hall
7 305 South Arlington Avenue
8 Post Office Box 3948
9 Reno, Nevada 89505
Telephone: (775) 348-7011
Facsimile: (775) 348-7211

10 Attorney for Iliescu
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John Iliescu, Jr., M.D.
Sonnia Iliescu
200 Court Street
Reno, Nevada 89501

Misti A. Hale

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EXHIBIT LIST

EXHIBIT 1: Affidavit of John Iliescu, Jr.

EXHIBIT 1

EXHIBIT 1

1 **Code 1030**

2 Thomas J. Hall, Esq.
3 Nevada State Bar No. 675
4 305 South Arlington Avenue
5 Post Office Box 3948
6 Reno, Nevada 89505
7 Telephone: 775-348-7011
8 Facsimile: 775-348-7211

6 Attorney for John Iliescu, Jr.
7 and Sonnia Iliescu and The John
8 Iliescu, Jr. and Sonnia Iliescu
1992 Family Trust

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11
12 MARK B. STEPPAN,

Case No.: CV07-00341

13 Plaintiff,

Dept. No.: 1

14 v.

Consolidated with:

15 JOHN ILIESCU, JR. and SONNIA
16 ILIESCU, as Trustees of the JOHN
17 ILIESCU, JR. AND SONNIA ILIESCU
18 1992 FAMILY TRUST AGREEEMNT; JOHN
19 ILIESCU, individually; DOES I-V,
20 Inclusive; and ROE CORPORATIONS
21 VI-X, inclusive,

Case No.: CV07-00341

Dept. No.: 1

22 Defendants.

21 AND RELATED CROSS-CLAIMS AND
22 THIRD-PARTY CLAIMS. /

23 **AFFIDAVIT OF JOHN ILIESCU, JR., IN SUPPORT OF**
24 **MOTION TO AMEND THIRD PARTY COMPLAINT AND IN OPPOSITION AND**
25 **RESPONSE TO HALE LANE'S MOTION FOR SUMMARY JUDGMENT**

26 \\\

1 JOHN ILIESCU, JR., being duly sworn upon his oath, deposes
2 and says:

3 1. I am one of the Defendants in the above reference
4 matter. I have personal knowledge of the matters stated herein,
5 except to those matters stated upon information and belief, and
6 to those matters, I believe them to be true. If called as a
7 witness, I would be competent to testify as to the matters
8 stated in this Affidavit.

9 2. Along with Sonnia Santee Iliescu, as Trustee, and the
10 John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust, I am the
11 owner of the land located between Court Street and Island
12 Avenue, in Reno, Nevada, APNs 011-112-05, 011-112-06, 011-112-07
13 and APN 011-112-12 (the "Property").

14 3. On July 29, 2005, I entered into a contract with
15 Consolidated Pacific Development, Inc., ("CPD") for the sale of
16 the Property. I understand that CPD subsequently transferred its
17 interest in this property to BCS Financial, Inc., ("BCS"). As of
18 this date, this sale has not closed.

19 4. On or before September 22, 2005, I retained the Hale
20 Lane law firm to review, "fine tune", clarify, prepare Addendum
21 No. 3 to the Purchase Agreement and in all respects advise me
22 relative to the Purchase Agreement.

23 \\\\
24

25 \\\\
26
27

1 5. Addendum No. 3 was thereafter prepared by Karen D.
2 Dennison, of the Hale Lane law firm. Addendum No. 3 was executed
3 by CPD and myself on or about October 8, 2005.

4 6. The Hale Lane law firm never discussed with or advised
5 me at any time as to the effect or non-effect of recording a
6 Notice of Non-Responsibility with the Washoe County Recorder to
7 ensure the Property would not be encumbered by mechanic's or
8 architect's liens recorded by individuals or firm hired by CPD
9 or BCS as contemplated by the Purchase Agreement.

11 7. On or before December 14, 2005, the Hale Lane law firm
12 undertook representation of CPD and BCS, as Buyer, and myself,
13 as Seller, in relation to obtaining the necessary Governmental
14 Approvals and entitlements for the Property as contemplated by
15 the Purchase Agreement.

17 8. At no time during the Hale Lane law firm's "fine
18 tuning" of the Purchase Agreement or thereafter did I intend to
19 become a Participating Seller.

20 9. My intention was to sell the Property. I did not
21 intend to subject the Property to lien by participating in any
22 of the Buyer's actions to development of the Property.

24 10. At no time did Karen D. Dennison, or any other
25 attorney at Hale Lane law firm, advise me that by entering into
26 Addendum No. 3, particularly with reference to paragraph 37(F),
27 that I was becoming a Participating Seller and thereby
28

subjecting the Property to lien from vendors and service providers employed by CPD or BCS.

11. At no time did Karen D. Dennison, or any other attorney at the Hale Lane law firm, advise me of the consequences associated with becoming a Participating Seller.

12. At no time did Karen D. Dennison, or any other attorney at the Hale Lane law firm, advise me of the term "Participating Seller".

13. On November 7, 2006, an architect named Mark B. Steppan recorded a Mechanic's Lien against the Property claiming to be owed \$1,783,548.85.

14. I have personal knowledge of the statements contained in this Affidavit and could testify under oath and at hearing concerning these matters.

Further, your Affiant saeth naught.

John Iliescu, Jr.

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 On August 18, 2011, before me, the undersigned, a Notary
5 Public in and for said State, personally appeared JOHN ILIESCU,
6 JR., personally known to me or proved to me on the basis of
7 satisfactory evidence to be the person who executed the above
8 instrument.

9 I certify under penalty of perjury under the laws of the
10 State of Nevada that the foregoing paragraph is true and
11 correct.

12 WITNESS my hand and official seal.

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Sharon M. Knudson
NOTARY PUBLIC



1 **3795**

2 David R. Grundy, Esq., NSB #864
3 Christopher Rusby, Esq., NSB #11452
4 Lemons, Grundy & Eisenberg
5 6005 Plumas Street, Third Floor
6 Reno, Nevada 89519
7 (775) 786-6868

8 Attorneys for Third Party Defendant

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 MARK B. STEPPAN,

12 Plaintiff,

13 vs.

14 JOHN ILIESCU JR. and SONNIA ILIESCU, as
15 Trustees of the JOHN ILIESCU, JR. AND
16 SONNIA ILIESCU 1992 FAMILY TRUST
17 AGREEMENT; JOHN ILIESCU, individually;
18 DOES I-V, inclusive; and ROE CORPORATIONS
19 VI-X, inclusive,

20 Defendants.

21 AND RELATED CLAIMS

CONSOLIDATED

Case No. CV07-00341

Dept. No.: 10

**THIRD PARTY DEFENDANT HALE LANE'S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT REGARDING
THIRD-PARTY CLAIMS BY JOHN ILIESCU**

22 Third Party Defendant, HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL
23 CORPORATION, KAREN D. DENNISON, R. CRAIG HOWARD, and JERRY M. SNYDER (collectively,
24 "Hale Lane"), by and through their undersigned attorneys, Lemons, Grundy & Eisenberg,
25 hereby submit their reply in support of their motion for summary judgment filed on March 30,
26 2011. This reply is based on the following Memorandum of Points and Authorities and upon
27 such other matters as the court may consider.

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MEMORANDUM OF POINTS AND AUTHORITIES

Summary judgment must be granted on all Iliescu's legal malpractice claims against Hale Lane. Iliescu cannot escape or pass on liability for any lien asserted against his property by alleging that his attorneys failed to advise him as to the consequences of his own personal interest in the property.

According to Nevada lien law, every improvement constructed upon property is deemed to have been constructed at the insistence of the owner of the property, and unless a Notice of Nonresponsibility is filed, the property may be subject to lien by a person who performed work thereon. NRS 108.234(1). A Notice of Nonresponsibility is only available to a "disinterested owner." NRS 108.234(2). If the owner in any way, either directly or indirectly, contracted for or caused the improvements, the owner is not considered a "disinterested owner" and cannot claim the protection of a Notice of Nonresponsibility. NRS 108.234(7).

In this case, Iliescu was at all times an "interested owner" under the terms of the Purchase Agreement and could not avoid a lien being asserted against his property. Iliescu's opposition admits that he entered into the Purchase Agreement. (Iliescu Opposition, p. 3:2-4.) He admits that the Purchase Agreement makes the purchase of the property contingent on the Buyer obtaining the necessary government entitlements. (*Id.*, p. 3:16-18.) He admits that he stood to gain more than \$7.5 million from the sale of the property, as well as a 3,750 sq. ft. penthouse overlooking all of Reno with four street level parking spots (valued at over \$2.2 million dollars). (*Id.*, p. 3:10-16.) Even though the contract ultimately fell through, he admits that valuable entitlements were obtained, which greatly increased the value of his property and which remain valid to this day. (*Id.*, p. 5:10-14.) He furthermore admits that he received approximately \$876,000 in cash and never had to convey the property to the Buyer. These undisputed facts compel entry of summary judgment in Hale Lane's favor because none of Hale Lane's actions caused a lien to be asserted against Iliescu's property and Iliescu has suffered no compensable damage.

As will be discussed more thoroughly below, Iliescu's opposition is deficient both procedurally and substantively. He concedes numerous dispositive facts and arguments, and

1 wholly fails to address other independent dispositive grounds for summary judgment. Where
2 Iliescu does attempt to draw distinctions, his analysis falls short of identifying any factual
3 disputes that would preclude summary judgment. Because the essential elements of
4 causation and damages are clearly lacking, Hale Lane is entitled to judgment as a matter of
5 law.

6 **I. OBJECTIONS**

7 **1. Iliescu's affidavit should be excluded or otherwise disregarded by the court
8 because Iliescu has failed to comply with NRCP 16.1(a)**

9 Iliescu attaches an affidavit by himself in support of his opposition to summary
10 judgment. (Iliescu Opposition, Exhibit 1.) Iliescu should be prohibited from submitting this
11 affidavit or otherwise testifying in this matter pursuant to NRCP 16.1(e)(3)(B), because he has
12 not been disclosed as a witness in this case.

13 NRCP 16.1(a) provides that a party must, without awaiting a discovery request,
14 disclose and identify all witnesses that have discoverable information and who may be called
15 to testify at trial. If a party or their lawyer fails to reasonably comply with NRCP 16.1(a), the
16 court shall impose upon the party appropriate sanctions, including an order prohibiting the
17 use of any witness who should have been disclosed pursuant to NRCP 16.1(a). NRCP
18 16.1(e)(3)(B).

19 Here, Iliescu has never served formal NRCP 16.1(a) initial disclosures upon Hale Lane.
20 (See Affidavit of Chris Rusby, ¶ , attached as Exhibit 17.) Dr. John Iliescu has therefore never
21 been disclosed as a potential witness by Iliescu in this case. Because Dr. John Iliescu, or any
22 other witness for that matter, has not been disclosed by Iliescu, he should be prohibited from
23 offering witness testimony in opposition to Hale Lane's motion for summary judgment or at
24 trial. NRCP 16.1(e)(3)(B).

25 **2. Iliescu has waived the arguments in his opposition by failing to cite any
26 authority in support thereof**

27 Both DCR 13(3) and WDCR 12(2) require a party to support an opposition to a motion
28 with citation to facts and legal authority. The absence of such support "may be construed as
an admission that the motion is meritorious and a consent to granting the same." DCR 13(3).

1 Even though Iliescu is making legal arguments which he contends preclude summary
2 judgment, not a single case is referenced or cited in Iliescu's opposition. Such arguments
3 should be disregarded by the court and should be deemed waived. *U.S. v. Calabrese*, 825 F.2d
4 1342, 1346-47 (9th Cir. 1987) (failure to support argument by reason or authority waived
5 argument).

6 **II. ILIESCU HAS FAILED TO OPPOSE HALE LANE'S MOTION IN SEVERAL RESPECTS**

7 **1. Iliescu Does Not Oppose Dismissal of His Action for Failure to Comply with**
8 **NRCP 16.1(c)**

9 On July 22, 2011 Hale Lane filed supplemental points and authorities in support of its
10 motion for summary judgment. (See Supplement to Motion for Summary Judgment, on file
11 with the court.) Iliescu had not responded to the motion at the time, even though the motion
12 had been filed 114 days prior.

13 The supplemental points and authorities cited NRCP 16.1(e)(2) as another independent
14 and dispositive ground for dismissal. According to NRCP 16.1(e)(2), "if the plaintiff does not
15 file a case conference report within 240 days after an appearance by a defendant, the case
16 may be dismissed as to that defendant." The supplemental points and authorities
17 demonstrated that more than 640 days had lapsed since Hale Lane filed its answer in this case
18 and Iliescu had not filed a case conference report. To this day, Iliescu still has not filed a case
19 conference report. Accordingly, Iliescu's claims should be dismissed pursuant to NRCP
20 16.1(e)(2). See also *Moon v. McDonald, Carano & Wilson*, 126 Nev. ___, 245 P.3d 1138, 1139
21 (2010); and *Arnold v. Kip*, 123 Nev. 410, 414, 168 P.3d 1050 (2007).

22 Despite being served with a copy of the supplemental points and authorities and the
23 same being on file with the court, Iliescu's opposition does not address this basis for the
24 dismissal of his action. The failure to respond to or oppose a dispositive basis for dismissal
25 constitutes an admission that the motion is meritorious and his consent to granting the same.
26 DCR 13(3). Therefore, Hale Lane's motion must be granted on this independent and
27 dispositive ground for dismissal. See *Foster v. Dingwall*, __ Nev. ___, 227 P.3d 1042, 1049
28 (2010), (citing *King v. Cartlidge*, 121 Nev. 926, 927, 124 P.3d 1161 (2005) (stating that an

unopposed motion may be considered as an admission of merit and consent to grant the motion)).

2. Iliescu Does Not Dispute that Summary Judgment Should Be Entered on his Claims Related to an Alleged Conflict of Interest

On pages 11 and 12 of Hale Lane's motion for summary judgment, Hale Lane contended that summary judgment should be granted on Iliescu's claims related to a conflict of interest. Iliescu's opposition does not address or oppose this point. Iliescu's opposition only discusses his contention that Hale Lane's actions caused him to be a "Participating Owner." Accordingly, Iliescu's failure to oppose this portion of Hale Lane's motion constitutes an admission that the motion is meritorious and his consent to grant the motion in this respect. DCR 13(2); *Foster v. Dingwall*, 227 P.3d at 1049.

3. Iliescu Does Not Dispute that Summary Judgment Should Be Entered on his Claim for Attorney's Fees as Damages

On pages 10 and 11 of Hale Lane's motion for summary judgment, Hale Lane contended that attorney's fees are not allowable damages in this case. As discussed in the motion, it is well-established in Nevada that "in the absence of a rule, statute, or contract authorizing an award of attorney's fees, such fees may not be allowed." See *Lubritz v. Circus Circus Hotels*, 101 Nev. 109, 112, 693 P.2d 1261 (1985). Iliescu does not oppose this contention in his opposition. Nor does Iliescu identify any rule, statute, or contract which authorizes recovery of attorney's fees as damages in this case. Accordingly, Iliescu's failure to oppose this portion of Hale Lane's motion constitutes an admission that the motion is meritorious and his consent to grant the motion in this respect. DCR 13(2); *Foster v. Dingwall*, 227 P.3d at 1049.

III. THE UNDISPUTED FACTS ESTABLISH THAT HALE LANE DID NOT CAUSE ILIESCU HARM AND, THEREFORE, HALE LANE IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON ALL ILIESCU'S CLAIMS FOR RELIEF

Iliescu's complaint asserts two claims for relief against Hale Lane: (1) professional malpractice; and (2) negligence. His claims are rooted in the misguided notion that Hale Lane

could have protected Iliescu from Steppen's lien by recording a Notice of Nonresponsibility pursuant to NRS 108.234. As demonstrated in Hale Lane's motion for summary judgment, Iliescu as an "interested owner" is not eligible for the protection of a Notice of Nonresponsibility and, thus, could not avoid a lien from being asserted against his property. Iliescu's opposition concedes this dispositive fact and, in fact, agrees to withdraw these allegations from his complaint. (Iliescu Opposition, pp. 2:8-12; 7:12-19; 8:1-2; and 8:11-14.) This concession by itself, warrants the entry of summary judgment on all Iliescu's claims for relief, because under no circumstances could Hale Lane have prevented a lien from being recorded against Iliescu's property.

Even though Iliescu concedes that he was not entitled to the protection of a Notice of Nonresponsibility, he contends that Hale Lane should be liable for the lien because it "failed to advise him that by signing Addendum No. 3, Iliescu became a Participating Seller and therefore subjecting the Property to lien." (*Id.*, p. 2:15-19.) This contention is apparently based on the language in Addendum No. 3 which states that (1) the offer is contingent upon the buyer obtaining all the necessary government approvals; and (2) that the offer requires buyer to use its best efforts to obtain the government approvals. (*Id.*, pp. 3:18-4:15.) According to Iliescu's opposition, it was at this point that Iliescu became a "participating seller," and not at any time prior thereto. (*Id.*, pp. 2:16-19; 6:18-25; and 8:8-11.) This contention is unsupportable for two reasons.

First, this contention overlooks the fact that the original Purchase Agreement signed and negotiated by Iliescu himself, before Hale Lane was even involved, made Iliescu an "interested owner" and "participating seller." Page 14 of the July 21, 2005, Purchase Agreement contains the language: "This offer is contingent upon Buyer at Buyer's expense, obtaining the following governmental approvals within 270 days of acceptance of this agreement." (See Exhibit 5 to Hale Lane's Motion.) Iliescu himself negotiated the July 21 Purchase Agreement, without any involvement by Hale Lane. Hale Lane was engaged several months later merely to fine tune the Purchase Agreement which was already in place and agreed to the by parties. (Exhibit 6 to Hale Lane's Motion.) Therefore, Iliescu was a

1 “participating seller” long before any participation by Hale Lane.

2 Additionally, the inclusion in Addendum No. 3 of the language “Buyer shall use its best
3 efforts and reasonable diligence to satisfy all Conditions Precedent” is not the triggering
4 language that made Iliescu a participating seller as Iliescu contends. The requirement that the
5 Buyer use its best efforts is implied, even though not explicitly stated, in the original Purchase
6 Agreement. It is well-established that a party to a contract has an implied obligation to use
7 reasonable efforts to satisfy any conditions precedent. *See Western Hills v. Pfau*, 508 P.2d 201,
8 203 (Or. 1973) (court held that defendants had a similar duty, arising by implication, to make a
9 reasonable effort to secure the city’s approval of a planned development). Accordingly, the
10 addition of this language by Addendum No. 3 did not add anything to the Purchase Agreement
11 that was not already a material term.

12 Furthermore, the nature of the Purchase Agreement required Iliescu to assist the
13 buyer in obtaining the necessary government approvals, thereby requiring his participation as
14 the property owner. Because the purchase was contingent and title did not pass with the
15 Purchase Agreement, Iliescu was required to authorize any application for the governmental
16 approvals. Without such authorization, the Buyer would not even be allowed to apply for the
17 entitlements. Iliescu satisfied this obligation by executing the necessary Owner Affidavits
18 which are attached as Exhibit 9 to Hale Lane’s motion. (*See also* Iliescu Opposition, p. 4:16-23.)
19 Iliescu also attended the City of Reno Planning Commission meetings to ensure that the
20 entitlements would be obtained. (*Id.*, p. 5:10-13.) Thus, by the very essence of the transaction
21 Iliescu was required to become a “participating seller.” Iliescu could not have escaped this
22 obligation without breaching the terms of the Purchase Agreement which he negotiated and
23 agreed upon prior to Hale Lane’s involvement. Accordingly, Iliescu was at all times a
24 participating seller and Hale Lane’s fine tuning of the Purchase Agreement did not trigger the
25 right to lien his property.

26 Second, Nevada’s lien statute makes it clear that the only way a property owner may
27 avoid liability for improvements made to the property at the request of another, is by being a
28 “disinterested owner” and by recording a Notice of Nonresponsibility. NRS 108.234(1). By

1 definition, Iliescu was not a "disinterested owner" because he had a real and substantial
2 interest in the completion of the sale which required the entitlements to be obtained. He
3 stood to gain approximately \$7.5 million cash from the sale of the property, as well as a 3,750
4 sq. ft. penthouse overlooking all of Reno with four street level parking spots (valued at over
5 \$2.2 million dollars). Even though the contract ultimately fell through, he received
6 approximately \$876,000 in cash and continues to hold title to the property. Valuable
7 entitlements were also obtained for his property, which greatly increased its value and which
8 remain valid to this day. Iliescu admits all of these facts. (Iliescu Opposition, pp. 3:2-18 and
9 5:10-14.) Therefore, by definition, Iliescu was at all times an "interested owner" and could not
10 have prevented a lien for the improvements which he agreed to.

11 Iliescu's own actions and what he stood to gain from the transaction subjected him to
12 liability for Steppan's lien, not any alleged subsequent negligence by Hale Lane. Iliescu would
13 be liable for Steppan's lien by the very nature of the Purchase Agreement. Consequentially,
14 Hale Lane is entitled to judgment as a matter of law because the essential elements of
15 causation and damages are clearly lacking.

16 **IV. CONCLUSION**

17 For the foregoing reasons, third party defendant, Hale Lane respectfully requests that
18 summary judgment be entered dismissing all of Iliescu's third party claims against Hale Lane.

19 **The undersigned does hereby affirm that the preceding document does not contain**
20 **the social security number of any person.**

21 DATED: August 29, 2011.

22 Lemons, Grundy & Eisenberg
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24 Reno, Nevada 89519
25 (775) 786-6868

26 By: 

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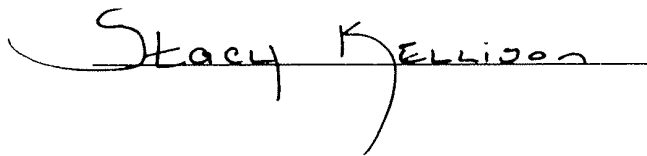
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on August 29, 2011, I deposited for mailing in the United States Mail, postage prepaid, a true and correct copy of the within THIRD PARTY DEFENDANT HALE LANE'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT REGARDING THIRD-PARTY CLAIMS BY JOHN ILIESCU, addressed to the following:

Thomas J. Hall, Esq.
305 South Arlington Ave.
P.O. Box 3948
Reno, Nevada 89505

Michael D. Hoy, Esq.
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417 West Plumb Lane
Reno, Nevada 89509



Code: **3095**

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

* * *

MARK B. STEPPAN,

Plaintiff,

vs.

Case No: CV07-00341
(Consolidated with CV07-01021)

Dept. No.: 10

JOHN ILIESCU, JR. and SONNIA ILIESCU,
as Trustees of the JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST
AGREEMENT; JOHN ILIESCU, individually;
DOES I-V, inclusive; and ROE
CORPORATIONS VI-X, inclusive,

Defendants.

AND RELATED MATTERS.

**ORDER GRANTING THIRD-PARTY DEFENDANT HALE LANE'S MOTION FOR
SUMMARY JUDGMENT REGARDING THIRD-PARTY CLAIMS BY JOHN ILIESCU**

Presently before the Court is a Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu, filed by Third-Party Defendants HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION, KAREN D. DENNISON, R. CRAIG HOWARD, and JERRY M. SNYDER (hereinafter collectively referred to as "Defendants") on March 30, 2011. Following, on July 22, 2011, Defendants filed a Supplement to Third-Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu.

1 Thereafter, on August 18, 2011, Third-Party Plaintiffs JOHN ILIESCU, JR. and
2 SONNIA ILIESCU, individually, and as Trustee of the John Iliescu, Jr. and Sonnia Iliescu
3 1992 Family Trust (hereinafter collectively referred to as "Plaintiffs") filed an Opposition
4 and Response to Third-Party Defendant Hale Lane's Motion for Summary Judgment
5 Regarding Third-Party Claims by John Iliescu. Subsequently, on August 29, 2011,
6 Defendants filed a Reply in Support of Motion for Summary Judgment Regarding Third-
7 Party Claims by John Iliescu. Contemporaneously with their Reply, Defendants also filed a
8 Request for Submission, thereby submitting the matter for the Court's consideration. Later
9 that same day, Plaintiffs filed an Opposition to Supplement to Third-Party Defendant Hale
10 Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu.

11 **I. Factual & Procedural Background**

12 This matter comes before the Court as the result of a 2005 property transaction that
13 fell through, involving a parcel of property located in downtown Reno, which Plaintiffs
14 owned and was to be developed by a group of developers headed by Consolidated Pacific
15 Development, Inc. (hereinafter "Developers"). As part of that transaction, Plaintiffs agreed
16 to sell the parcel of property at issue to the Developers, who would then use the property
17 to construct a high-rise condominium project known as Wingfield Tower.

18 The Developers first contacted Plaintiffs about purchasing the parcel of property in
19 July of 2005, when the Developers contacted Plaintiffs through their broker, Sam Canglia.
20 Following this contact, on July 29, 2005, the Developers and Plaintiffs, acting without the
21 assistance of counsel, executed a form agreement prepared by Dick Johnson in order to
22 facilitate the sale of the property. That contract provided that Developers would purchase
23 the property from Plaintiffs for \$7.5 million, with a \$500,000 non-refundable cash deposit
24 to be paid to Plaintiffs in advance, as well as Plaintiffs receiving a 3,750 square foot
25 penthouse and four parking spaces, valued at \$2.2 million, upon the completion of
26 construction. However, the sale was contingent upon Developers obtaining the necessary
27 entitlement and permits from the City of Reno, with which Plaintiffs were to assist.
28 Furthermore, the Contract afforded Developers 270 days to obtain the requisite

1 entitlements, while allowing an extension of time at the cost of \$50,000 per 30 days;
2 otherwise, the Developers would forfeit their \$500,000 deposit.

3 Following the execution of the form contract, the Parties realized that it was
4 inadequate for the magnitude of the deal they were entering into. Consequently, the
5 Parties elected to hire legal counsel to assist in supplementing the contract. As a result,
6 Dick Johnson brought the contract to Ms. Dennison, who then prepared Addendum No. 3,
7 which sought to clarify the contract and its terms. Included in these clarifications was a
8 clause that recognized obtaining the necessary entitlements was a condition precedent to
9 the completion of the sale, and that the Developers would use their "best efforts and
10 reasonable diligence to satisfy all Conditions Precedent." Addendum No. 3 further specified
11 Plaintiffs' interest in completing the sale because of their ability to select the penthouse of
12 their choice. Following, on October 8, 2005, the Parties executed Addendum No. 3.

13 Thereafter, the Developers sought an architect to help in obtaining the required
14 entitlements. In doing so, the Developers hired Fisher Friedman & Associates, to design
15 the building, prepare the architectural plans, and present the information to the Reno City
16 Council for approval, which it did. Nevertheless, during this process, Plaintiffs signed a
17 conflict waiver permitting Defendants to assist Developers in obtaining the necessary
18 entitlements. Moreover, Plaintiffs actively participated in the application process by
19 submitting an affidavit permitting Developers to submit an application to the City of Reno
20 on Plaintiffs' behalf and by attending all public hearings on the matter. Subsequently, the
21 City acted to approve the project and authorized the necessary entitlements.

22 Then, some sixteen months following the commencement of the project, Developers
23 defaulted when they were unable to obtain the necessary financing to conclude the sale of
24 the property. As a consequence of this default, Developers were unable to pay Fisher
25 Friedman & Associates for the services rendered. This caused Fisher Friedman &
26 Associates to file a \$1.8 million mechanics lien against the property.

27 Following the recording of this lien, the Parties approached Defendants to help
28 resolve the issue. In doing so, the Parties executed a second conflict waiver. Defendants

1 then brokered an indemnity agreement between the Parties, whereby Developers,
2 including Co-Third Party Defendant John Schleining, agreed to indemnify Plaintiffs against
3 any harm that might occur as a result of the lien. Furthermore, the indemnity agreement
4 also provided that Developers would work to discharge the lien on Plaintiffs' behalf at no
5 expense to Plaintiffs. As a result, acting on Plaintiffs' behalf, Defendants then filed an
6 application for release of the lien. This in turn caused Fisher Friedman & Associates to file
7 a complaint against Plaintiffs in order to foreclose on the lien.

8 Subsequently, on September 27, 2007, Plaintiffs filed their third-party complaint
9 against Defendants, alleging causes of action for legal malpractice and negligence.
10 Plaintiffs premised their third-party complaint on allegations that Defendants committed
11 legal malpractice by failing to file a Notice of Nonresponsibility pursuant to NRS 108.234.
12 Defendants have now moved for summary judgment on the matter, arguing that Plaintiffs'
13 claims fail as a matter of law, as there is no evidence of causation or that Plaintiffs suffered
14 damages. Moreover, Defendants assert that because Plaintiffs executed two conflict
15 waivers, any claim relating to a conflict of interest must fail. Finally, Defendants assert that
16 the Court should dismiss Plaintiffs' claims for failure to comply with NRCP 16.1.

17 **II. Standard of Review**

18 A court should only grant summary judgment when, based upon the pleadings and
19 discovery on file, no genuine issue of material fact exists for trial and the moving party is
20 entitled to judgment as a matter of law. NRCP 56(c). A genuine issue of material fact
21 exists when a reasonable jury could return a verdict in favor of the nonmoving party.
22 *Kopicko v. Young*, 114 Nev. 1333, 1336, 971 P.2d 789, 790 (1998). Summary judgment is
23 properly regarded not as a disfavored procedural shortcut, but rather as an integral part of
24 civil procedure as a whole. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S.Ct. 2548,
25 2555 (1986).

26 In reviewing a motion for summary judgment, the Court must view the evidence,
27 and any reasonable inference drawn there from, in the light most favorable to the
28 nonmoving party. *Lipps v. S. Nev. Paving*, 116 Nev. 497, 498, 998 P.2d 1183, 1184

1 (2000). However, the nonmoving party may not avoid summary judgment by relying "on
2 the gossamer threads of whimsy, speculation, and conjecture." *Pegasus v. Reno*
3 *Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002) (quoting *Collins v. Union*
4 *Fed. Sav. & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983). Rather, the nonmoving
5 party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of
6 a genuine issue for trial. *Pegasus*, 118 Nev. at 713, 57 P.3d at 87.

7 **III. Legal Analysis**

8 As noted above, Defendants presently seek an order from the Court granting
9 summary judgment on Plaintiffs' claims for legal malpractice and negligence. Specifically,
10 Defendants argue that the claims of Plaintiffs fail as a matter of law because Plaintiffs were
11 not eligible to file a Notice of Nonresponsibility as they were "Interested Owners," and
12 thus, no evidence of causation exists. In addition, Defendants assert that even if Plaintiffs
13 were not "Interested Owners," no evidence of damages exists because Plaintiffs received a
14 substantial benefit from the actions of Fisher Friedman & Associates, and because
15 Defendants and Mr. Schleining have reached an agreement releasing the lien without any
16 cost to Plaintiffs. Furthermore, Defendants assert that because Plaintiffs executed two
17 conflict waivers, any claim relating to a conflict of interest must fail. Finally, as an
18 alternative theory, Defendants assert that pursuant to NRCP 16.1(e), the Court should
19 dismiss Plaintiffs' claims as Plaintiffs failed to file a case conference report within 240 days
20 following Defendants' appearance as required by NRCP 16.1(c).

21 In opposition to Defendants' arguments, Plaintiffs merely assert that Defendants
22 breached the legal duties owed to Plaintiffs by failing to advise Plaintiffs to avoid actively
23 participating in the sale of the property. In addition, Plaintiffs assert that the Court should
24 not dismiss their claims pursuant to NRCP 16.1 because this matter has been ongoing for
25 the past four years and there is still time to hold a case conference report. The Court will
26 address each matter as follows:

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28 ///

1 **a. Conflict of Interest**

2 As it pertains to Plaintiffs' claims regarding a conflict of interest, Defendants argue
3 that such claims must fail as a matter of law because Plaintiffs suffered no compensable
4 harm as a result of the conflict and because Plaintiffs knowingly executed two conflict
5 waivers in accordance with NRPC 1.7(b), waving the conflict of which Plaintiffs now
6 complain. To this argument, Plaintiffs have not raised any opposition. Accordingly, the
7 Court must find that Defendants' Motion, as it relates to the conflict of interest claims, is
8 meritorious. Accordingly, to the extent Defendants seek summary judgment on this issue,
9 their Motion shall be granted.

10 **b. Legal Malpractice & Negligence**

11 In order to recover under the theories of legal malpractice and negligence, Plaintiffs
12 must demonstrate: (1) the existence of an attorney client relationship; (2) a duty owed to
13 the client by the attorney to use such skill prudence, and diligence as lawyers of ordinary
14 skill and capacity possess in exercising and performing the tasks which they undertake; (3)
15 a breach of that duty; (4) that the lawyer's negligence was the proximate cause of the
16 client's damages; and (5) actual loss or damage resulting from the negligence. *Mainor v.*
17 *Nault*, 120 Nev. 750, 774, 101 P.3d 308, 324 (2004). Accordingly, where there is no
18 evidence of causation or damages, a claim for legal malpractice or negligence must fail as
19 a matter of law.

20 In the instant case, Plaintiffs assert that Defendants breached the duty of care owed
21 to Plaintiffs by failing to file a Notice of Nonresponsibility and by failing to advise Plaintiffs
22 not to actively participate in the sale of the property at issue. Plaintiffs further assert that
23 this caused them to suffer damages, in that Defendants' failure permitted Fisher Friedman
24 & Associates to file a lien against Plaintiffs' property and forced Plaintiffs to incur the legal
25 expenses of fighting that lien. In contrast, Defendants assert that when they became
26 involved in the matter, Plaintiffs had already become active participants in the sale of the
27 property, and therefore, there is nothing Defendants could have done to protect Plaintiffs'
28 interests. Accordingly, the proper question before the Court is whether Plaintiffs were

1 eligible for the protections afforded by a Notice of Nonresponsibility at the time Defendants
2 became involved in the case.

3 Pursuant to NRS 108.234(2), a "disinterested owner" can avoid a lien from attaching
4 to his property by filing a Notice of Nonresponsibility within three days after learning that
5 improvements are being made to his property. However, in order to qualify as a
6 "disinterested owner" the property owner must be one who: "(a) Does not record a notice
7 of waiver as provided in NRS 108.2405; and (b) Does not personally or through an agent
8 or representative, directly or indirectly, contract for or cause a work of improvement, or
9 any portion thereof, to be constructed, altered or repaired upon the property or an
10 improvement of the owner." NRS 108.234(7).

11 As applied to the instant matter, this Court must find that Plaintiffs were no longer
12 "disinterested owners" at the time Defendants became involved in the case. This is
13 because the undisputed evidence before the Court demonstrates that Plaintiffs entered into
14 a contract with Developers for improvements to the property even before Defendants
15 became involved in the matter. Plaintiffs negotiated and signed this contract by
16 themselves. Furthermore, that contract contained language that required Plaintiffs to
17 participate actively in the development of the property. Specifically, the language within
18 the original contract made the offer contingent upon obtaining the necessary government
19 approvals, with which Plaintiffs were required to assist. Moreover, the Court will note that
20 as a result of those negotiations, Plaintiffs were to receive some \$7.5 million in payments
21 and a penthouse valued at approximately \$2.2 million. Accordingly, these actions clearly
22 demonstrate that Plaintiffs personally contracted for and were to benefit from the
23 improvements to their property, thus making Plaintiffs "interested owners" before
24 Defendants had any part in the matter.

25 It was only after Plaintiffs and Developers completed their negotiations that
26 Defendants became involved in the matter in order to "fine tune" the agreement.
27 However, because Plaintiffs had already become "interested owners" at that point in time,
28 there is nothing Defendants could have said or done to avoid the existing contract. *See*

1 *Howard S. Wright Construction Co. v. Superior Court*, 106 Cal.App.4th 314, 321, 130
2 Cal.Rptr.2d 641 (2003); *see also Verdi Lumber Co. v. Bartlett*, 40 Nev. 317, 161 P. 933,
3 934-35 (1916). Therefore, the Court must conclude that Defendants' alleged malpractice
4 was not the cause of Plaintiffs' injuries. Furthermore, there is nothing more Plaintiffs could
5 allege to fix this problem. Consequently, the Court believes that the grant of summary
6 judgment in favor of Defendants is appropriate.

7 **c. NRCP 16.1**


8 As a final matter, the Court will turn its attention to those NRCP 16.1 arguments
9 raised by Defendants. Under this rule, once the parties hold their early case conference,
10 the plaintiff must file a case conference report within 30 days thereof. NRCP 16.1(c); *see*
11 *also Moon v. McDonald Carano & Wilson*, 245 P.3d 1138, 1139 (Nev. 2010). If the plaintiff
12 fails to make such a filing within 240 days following the defendant's first appearance, upon
13 motion or its own initiative, the Court may dismiss the case without prejudice as to that
14 defendant. NRCP 16.1 (e)(2).

15 As applied to the instant matter, this Court must find that the claims of Plaintiffs are
16 subject to dismissal pursuant to NRCP 16.1(e)(2). As the Court recognized above, it was
17 on September 27, 2007, that Plaintiffs filed their third-party complaint against Defendants.
18 However, because of a stipulation between the Parties, Defendants did not file their answer
19 until October 7, 2009. Based on this date, Plaintiffs had at the latest, until June 4, 2010, to
20 file their case conference report. Nevertheless, as of August 30, 2011, Plaintiffs have yet
21 to file the required report. Accordingly, more than 690 days have passed since Defendants'
22 appearance without Plaintiffs having filed their case conference report as required by NRCP
23 16.1(c). Furthermore, Plaintiffs have not offered a single reason for their failure to do so.
24 Instead, Plaintiffs merely assert that this matter has been ongoing for more than four years
25 and that there is still time to file a report following another case conference. In the Court's
26 view, such an argument is unpersuasive and fails to justify Plaintiffs' failure. Given this
27 analysis, the Court is inclined to grant Defendants' Motion.

28 ///

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NOW, THEREFORE, IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu is **GRANTED**.


STEVEN P. ELLIOTT
District Judge

CERTIFICATE OF MAILING

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

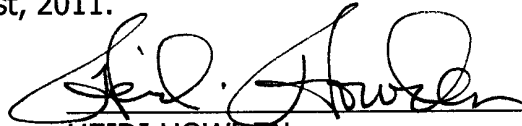
GREGORY WILSON, ESQ. for JOHN SCHLEINING

THOMAS HALL, ESQ. for TRUSTEE OF THE JOHN ILIESCU, JR. & SONNIA ILLIESCU, JOHN ILIESCU, JR., SONNIA ILIESCU

DAVID GRUNDY, ESQ. for KAREN DENNISON, HOLLAND & HART, LLP, JERRY SNYDER, R. HOWARD, HALE LANE PEEK DENNISON HOWARD

MICHAEL HOY, ESQ. for MARK STEPPAN

DATED this 31 day of August, 2011.



HEIDI HOWDEN
Judicial Assistant

Trial Exhibit 5

Trial Exhibit 5

(Originally Exhibit A to Answers to Interrogatories)

Computation of Prejudgment Interest

Interest computed thru: 12/9/13

Invoice Date	Interest From	Interest To	Cumulative Principal	Principal Received	Principal Owed	Days	Interest 18%
5/18/06	6/17/06	8/18/06	481,275.00	(380,870.00)	100,405.00	62	3,112.56
7/19/06	8/18/06	9/22/06	581,670.00	(380,870.00)	200,800.00	35	3,514.00
8/23/06	9/22/06	10/21/06	923,841.00	(380,870.00)	542,971.00	29	7,873.08
9/21/06	10/21/06	11/24/06	1,266,012.00	(380,870.00)	885,142.00	34	15,047.41
10/25/06	11/24/06	12/21/06	1,608,183.00	(380,870.00)	1,227,313.00	27	16,568.73
11/21/06	12/21/06	12/9/13	2,070,000.00	(380,870.00)	1,689,130.00	2545	2,149,417.93

Interest: 0515 (Primarty Design) 2,195,533.70

Invoice Date	Interest From	Interest To	Billed Principal	Principal Received	Principal Owed	Days	Interest 18%
4/19/06	5/19/06	12/9/13	13,761.16	13,134.75	626.41	2761	864.76
7/19/06	8/18/06	12/9/13	869.08	-	869.08	2670	1,160.22
8/23/06	9/22/06	12/9/13	523.70	-	523.70	2635	689.97
9/21/06	10/21/06	12/9/13	943.87	-	943.87	2606	1,229.86
11/21/06	12/21/06	12/9/13	1,153.00	-	1,153.00	2545	1,467.19
12/22/06	1/21/07	12/9/13	553.81	-	553.81	2514	696.14
2/28/07	3/30/07	12/9/13	132.62	-	132.62	2446	162.19
						4,802.49	

Interest 0515-R (Reimburseables) 6,270.34

Invoice Date	Interest From	Interest To	Billed Principal	Principal Received	Principal Owed	Days	Interest 5.25%
7/19/06	8/18/06	12/9/13	6,730.00	-	6,730.00	2670	2,620.49
9/21/06	10/21/06	12/9/13	1,392.50	-	1,392.50	2606	529.21

Interest 0515-03 (Church Parking Studies) 3,149.70

Invoice Date	Interest From	Interest To	Billed Principal	Principal Received	Principal Owed	Days	Interest 5.25%
8/23/06	9/22/06	12/9/13	22,100.00	-	22,100.00	2635	8,492.39
9/21/06	10/21/06	12/9/13	10,675.00	-	10,675.00	2606	4,056.94
10/25/06	11/24/06	12/9/13	1,800.00	-	1,800.00	2572	675.15
11/21/06	12/21/06	12/9/13	1,980.00	-	1,980.00	2545	734.87

Interest 0515-05 (City Staff Comments) 13,959.35

Invoice Date	Interest From	Interest To	Billed Principal	Principal Received	Principal Owed	Days	Interest 5.25%
11/21/06	12/21/06	12/9/13	66620	1/0/00	66,620.00	2545	24,725.74

Interest 0515-06 (Video Fly-Through Production) 24,725.74

Total Interest due through: December 9, 2013 2,243,638.83

Electronically Filed
Jul 12 2016 10:55 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

In the Supreme Court of the State of Nevada

JOHN ILIESCU, JR., individually; John
Iliescu Jr. and Sonnia Santee Iliescu,
as trustees of the JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST
AGREEMENT,

Appellants,

vs.

MARK B. STEPPAN,

Respondent.

Appeal No. 68346

Respondent's Appendix Volume 1

Michael D. Hoy
HOY CHRISSINGER KIMMEL VALLAS, PC
50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000
mhoy@nevadalaw.com

Attorneys for Respondent

Respondent's Appendix

Chronologic Index

Doc	Date	Description	Vol.	Pages
1	09/02/09	John Schleining's Answer to Third-Party Complaint, Cross-claim, and Third-Party Complaint	1	001-024
2	10/07/09	Answer (Hale Lane) to Cross-Claim of John Schleining	1	025-030
3	10/07/09	Answer (Hale Lane) to Third-Party Complaint (Iliescu)	1	031-037
4	10/07/09	Answer of Holland & Hart LLP to Third-Party Complaint of John Schleining	1	038-043
5	03/30/11	Third Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu	1	044-203
6	08/18/11	Opposition and Response to Third Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third Party Claims by John Iliescu	1	204-221
7	08/29/11	Third Party Defendant Hale Lane's Reply in Support of Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu	1	222-230
8	09/01/11	Order Granting Third-Party Defendant Hale Lane's Motion for Summary Judgment Regarding Third-Party Claims by John Iliescu	1	231-240
9	12/09/13	Trial Exhibit 5: Schedule showing computation of interest	1	241-242
10	12/09/13	Trial Exhibit 6: Standard Form of Agreement Between Owner and Architect	2	243-262
11	12/09/13	Trial Exhibit 7: Addendum No. 1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect	2	263-266
12	12/09/13	Trial Exhibit 8: Waiver of conflict letter	2	267-272
13	12/09/13	Trial Exhibit 9: Steppan proposal transmitting AIA B141 Form	2	273-293
14	12/09/13	Trial Exhibit 10: Memo from Sarah Class to Calvin Baty	2	294-296
15	12/09/13	Trial Exhibit 11: Email from Sarah Class to Calvin Baty, Sam Caniglia, Danielle Bacus-Aragon, and Doug Flowers	2	297-299
16	12/09/13	Trial Exhibit 12: Email from Sarah Class to Sam Caniglia and Danielle Bacus-Aragon	2	300-301
17	12/09/13	Trial Exhibit 13: Letter from Mark Steppan, AIA to Sam Caniglia	2	302-305
18	12/09/13	Trial Exhibit 35: January 17, 2006 Application for Special Use Permit (Partial Exhibit)	2	306-369

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Doc	Date	Description	Vol.	Pages
19	12/09/13	Trial Exhibit 36: February 7, 2007 Application for Tentative Map (Partial Exhibit)	2	370-450
20	12/09/13	Trial Exhibit 37: May 7, 2006 Application for Special Use Permit and Tentative Map (Partial Exhibit)	2	451-477
21	12/09/13	Trial Exhibit 40: Powerpoint Presentation (First Page)	2	478-479
22	12/09/13	Trial Exhibit 47: October 5, 2008 letter – Planning Commission Approval of Tentative Map	3	440-489
23	12/09/13	Trial Exhibit 48: November 30, 2006 letter – Reno City Council Approval of Tentative Map	3	490-498
24	12/09/13	Trial Exhibit 49: Application for two-year extension to file final map	3	499-518
25	12/09/13	Trial Exhibit 50: November 24, 2008 approving two-year extension to file final map	3	519-521
26	12/09/13	Trial Exhibit 51: Application for further extension to file final map	3	522-554
27	12/09/13	Trial Exhibit 53: November 12, 2010 letter approving one-year extension to file final map	3	555-557
28	12/09/13	Trial Exhibit 68: Land Purchase Agreement	3	558-580
29	12/09/13	Trial Exhibit 69: Addendum No. 1 to Land Purchase Agreement	3	581-585
30	12/09/13	Trial Exhibit 70: Addendum No. 2 to Land Purchase Agreement	3	586-588
31	12/09/13	Trial Exhibit 71: Addendum No. 3 to Land Purchase Agreement	3	589-605
32	12/09/13	Trial Exhibit 72: Addendum No. 4 to Land Purchase Agreement	3	606-608
33	12/09/13	Trial Exhibit 73: Addendum No. 5 to Land Purchase Agreement	3	609-613
34	12/09/13	Trial Exhibit 74: Addendum No. 1 to Land Purchase Agreement	3	614-633
35	12/09/13	Trial Exhibit 82: Purchase and Sale Agreement	3	634-637
36	12/09/13	Trial Exhibit 88: Assignment of Rights and Assumption of Obligations Under Land Purchase Agreement	3	638-648
37	12/09/13	Trial Exhibit 132: Revised Campbell Report	3	649-677
38	09/15/14	Defendants' Motion for Relief from Court's Attorneys' Fees and Costs Orders and for Correction, Reconsideration, or Clarification of Such Orders to Comply with Nevada Mechanics Lien Law	3	678-691
39	09/25/14	Opposition to Defense Motion for Relief from Court's Attorneys' Fees and Costs Orders	3	692-707

Respondent's Appendix

Doc	Date	Description	Vol.	Pages
40	09/29/14	Reply Points and Authorities in Support of Defendants' Motion for Relief from Court's Attorneys' Fees and Costs Orders and for Correction, Reconsideration, or Clarification of Such Orders to Comply with Nevada Mechanics Lien Law	3	708-724

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Respondent's Appendix

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33	12/09/13	Trial Exhibit 73: Addendum No. 5 to Land Purchase Agreement	3	609-613
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13	12/09/13	Trial Exhibit 9: Steppan proposal transmitting AIA B141 Form	2	273-293

CODE: 1165

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mfquint@wilsonquint.com

Attorneys for JOHN SCHLEINING

FILED

2009 SEP -2 PM 1:54

HOWARD W. CONYERS
BY R. Simpson
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

vs.

JOHN ILIESCU JR. and SONNIA ILIESCU, as Trustees of the
JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY
TRUST AGREEMENT; JOHN ILIESCU, individually; DOES I-
V, inclusive; and ROE CORPORATIONS VI-X, inclusive,

Defendants.

Case No.: CV07-01021

Dept. No.: B6

JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the
JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY
TRUST AGREEMENT; JOHN ILIESCU, JR., individually;
SONNIA ILIESCU, individually,

Third-Party Plaintiffs,

vs.

CONSOLIDATED PACIFIC DEVELOPMENT, INC., a Nevada
Corporation; DECAL OREGON, INC., an Oregon Corporation;
CALVIN BATY, individually; JOHN SCHLEINING,
individually; HALE LANE PEEK DENNISON AND HOWARD
PROFESSIONAL CORPORATION, a Nevada professional
corporation, dba HALE LANE; KAREN D. DENNISON; R.
CRAIG HOWARD; JERRY M. SNYDER; and DOES I thru X,

Third-Party Defendants.

Consolidated with:

Case No. CV07-00341

Department No. B6

1 JOHN SCHLEINING,

2 Cross-Claimant,

3 vs.

4 HALE LANE PEEK DENNISON AND HOWARD
5 PROFESSIONAL CORPORATION, a Nevada professional
corporation, dba HALE LANE and DOES XXI – XXX, inclusive,

6 Cross-Defendant.

7 _____ /
8 JOHN SCHLEINING,

9 Third-Party Plaintiff,

10 vs.

11 HOLLAND & HART, LLP, a professional corporation, R.
12 CRAIG HOWARD and DOES XXXI – XL, inclusive,

13 Third-Party Defendants.

14 _____ /
15 **JOHN SCHLEINING'S ANSWER TO THIRD-PARTY COMPLAINT, CROSS-CLAIM**
16 **AND THIRD-PARTY COMPLAINT**

17 **ANSWER TO THIRD-PARTY COMPLAINT**

18 Third-Party Defendant JOHN SCHLEINING ("Schleining") by and through his attorneys
19 WILSON & QUINT LLP, hereby answers the THIRD-PARTY COMPLAINT filed by Third-
20 Party Plaintiffs JOHN ILIESCU, JR. and SONNIA ILIESCU, individually and as Trustees of the
21 John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement (collectively "Iliescu") and in
22 support thereof, admit, deny and allege as follows.

23 **PARTIES**

- 24 1. Answering paragraph 1, Schleining lacks sufficient information and belief to form
25 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.
26 2. Answering paragraph 2, Schleining lacks sufficient information and belief to form
27 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.
28

3. Answering paragraph 3, Schleining lacks sufficient information and belief to form an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

4. Answering paragraph 4, Schleining lacks sufficient information and belief to form an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

5. Schleining admits the allegations of paragraph 5.

6. Answering paragraph 6, Schleining lacks sufficient information and belief to form an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

7. Schleining admits the allegations of paragraph 7.

8. Schleining admits the allegations of paragraph 8.

9. Schleining admits the allegations of paragraph 9.

10. Answering paragraph 10, Schleining lacks sufficient information and belief to form an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

11. Schleining denies the allegations contained in paragraph 11.

GENERAL ALLEGATIONS

12. Answering paragraph 12, Schleining lacks sufficient information and belief to form an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

13. Answering paragraph 13, Schleining lacks sufficient information and belief to form an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

14. Answering paragraph 14, Schleining lacks sufficient information and belief to form an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

15. Answering paragraph 15, Schleining lacks sufficient information and belief to form an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

16. Answering paragraph 16, Schleining admits that the Purchase Agreement, as amended, included an Addendum No. 1 and Addendum No. 2. Schleining alleges that the Purchase Agreement and Addenda speak for themselves. Other than as specifically admitted or alleged, Schleining denies the allegations contained in paragraph 16.

17. Answering paragraph 17, Schleining lacks sufficient information and belief to form an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

1 18. Answering paragraph 18, Schleining lacks sufficient information and belief to form
2 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

3 19. Answering paragraph 19, Schleining admits that an Addendum No. 3 was prepared.
4 Schleining alleges that Addendum No. 3 speaks for itself. Other than as specifically admitted or
5 alleged, Schleining denies the allegations contained in paragraph 19.

6 20. Answering paragraph 20, Schleining admits the first sentence thereof but denies
7 that Calvin Baty was ever a "purchaser". Schleining further admits that a copy of a December 14,
8 2005 letter is attached as Exhibit A to the Complaint. Schleining alleges that Exhibit A speaks for
9 itself. Other than as specifically admitted or alleged, Schleining denies the allegations contained
10 in paragraph 20.

11 21. Answering paragraph 21, Schleining lacks sufficient information and belief to form
12 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

13 22. Answering paragraph 22, Schleining lacks sufficient information and belief to form
14 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

15 23. Answering paragraph 23, Schleining lacks sufficient information and belief to form
16 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

17 24. Answering paragraph 24, Schleining admits the allegations contained in the first
18 two sentences thereof. Other than as specifically admitted, Schleining lacks sufficient information
19 and belief to form an opinion as to the truth of the allegations contained in paragraph 24 and
20 therefore denies said allegations.

21 25. Schleining admits the allegations of paragraph 25.

22 26. Answering paragraph 26, Schleining alleges that the Mechanic's Lien speaks for
23 itself. Other than as specifically alleged, Schleining lacks sufficient information and belief to
24 form an opinion as to the truth of the allegations contained in paragraph 26 and therefore denies
25 said allegations.

26 27. Answering paragraph 27, Schleining lacks sufficient information and belief to form
27 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

28 28. Schleining admits the allegations of paragraph 28.

1 29. Answering paragraph 29, Schleining admits that an Addendum No. 4 to the
2 Purchase Agreement was prepared by Hale Lane, et al. Other than as specifically admitted,
3 Schleining lacks sufficient information and belief to form an opinion as to the truth of the
4 allegations contained in paragraph 29 and therefore denies said allegations.

5 30. Answering paragraph 30, Schleining lacks sufficient information and belief to form
6 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

7 31. Answering paragraph 31, Schleining admits that Hale Lane, et al. and R. Craig
8 Howard prepared an indemnity agreement for their clients, a copy of which is attached as Exhibit
9 C to the Third-Party Complaint. Other than as specifically admitted, Schleining lacks sufficient
10 information and belief to form an opinion as to the truth of the allegations contained in paragraph
11 31 and therefore denies said allegations.

12 32. Answering paragraph 32, Schleining lacks sufficient information and belief to form
13 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

14 33. Answering paragraph 33, Schleining lacks sufficient information and belief to form
15 an opinion as to the truth of the allegations contained therein and therefore denies said allegations.

16 34. Schleining admits the allegations of paragraph 34.

17 35. Schleining admits the allegations of paragraph 35.

18 36. The allegations contained in paragraph 36 are legal conclusions to which no
19 response is required.

20 **ANSWER TO FIRST CLAIM FOR RELIEF**

21 37. Answering paragraph 37, Schleining realleges and incorporates herein by reference
22 his responses to paragraphs 1 through 36, inclusive, as though fully set forth.

23 38. Schleining admits the allegations of paragraph 38.

24 39. Answering paragraph 39, Schleining admits that Third-Party Plaintiffs so contend.
25 Other than as specifically admitted, Schleining denies the allegations contained in paragraph 39.

26 40. Answering paragraph 40, Schleining admits that he disputes Ilescu's interpretation
27 and assertion of rights.
28

1 41. Answering paragraph 41, Schleining denies that a judicial declaration of the
2 parties' respective rights, duties and obligations is appropriate under the circumstances alleged in
3 the Third-Party Complaint.

4 **ANSWER TO SECOND CLAIM FOR RELIEF**

5 42. Answering paragraph 42, Schleining realleges and incorporates herein by reference
6 his responses to paragraphs 1 through 41, inclusive, as though fully set forth.

7 43. Schleining denies the allegations contained in paragraph 43. Without limiting the
8 generality of the foregoing, Schleining denies that he has any obligation whatsoever to indemnify
9 Iliescu under any circumstances, or that he is liable to Iliescu in any amount whatsoever.

10 **ANSWER TO THIRD THROUGH SIXTH CLAIMS FOR RELIEF**

11 44. Neither the Third, Fourth, Fifth or Sixth Claims For Relief purport to allege any
12 claims against Schleining. Therefore, Schleining need not respond to the factual allegations set
13 forth therein.

14 WHEREFORE, Schleining prays for judgment as hereinafter set forth.

15 **SEPARATE, ADDITIONAL AND AFFIRMATIVE DEFENSES**

16 Schleining further alleges the following as his separate, additional and affirmative defenses
17 to the causes of action alleged in the Third-Party Complaint.

18 1. The Third-Party Complaint fails to state a claim upon which relief can be granted
19 against Schleining.

20 2. The claims alleged in the Third-Party Complaint are barred by the doctrine of
21 unclean hands.

22 3. The claims alleged in the Third-Party Complaint are barred by the doctrine of laches.

23 4. The claims alleged in the Third-Party Complaint are barred by the doctrines of
24 waiver, release, acquiescence or ratification.

25 5. The claims alleged in the Third-Party Complaint are barred by the doctrine of
26 estoppel.

27 6. The claims alleged in the Third-Party Complaint are barred by the doctrine of
28 superior equities.

1 7. Third-Party Plaintiffs have failed to take reasonable action to mitigate their alleged
2 damages, if any, and therefore the contracts alleged in the Third-Party Complaint are void,
3 unenforceable and exonerated as to Schleining.

4 8. Third-Party Plaintiffs are barred from the relief requested in the Third-Party
5 Complaint because of the absence of consideration, insufficiency of consideration or failure of
6 consideration for the alleged indemnity agreement.

7 9. Third-Party Plaintiffs failed to disclose to Schleining facts known to Third-Party
8 Plaintiffs as to Third-Party Plaintiffs' conduct with respect to the transactions alleged in the Third-
9 Party Complaint at such times when Third-Party Plaintiffs had reason to believe such facts
10 materially increased the risk beyond which Schleining intended to assume, at which times Third-
11 Party Plaintiffs had reason to believe that such facts were unknown to Schleining, and at which
12 times Third-Party Plaintiffs had reasonable opportunities to communicate such facts to Schleining.
13 Third-Party Plaintiffs breached their legal duties to Schleining by such failures to disclose. The
14 indemnity agreement alleged in the Third-Party Complaint is therefore void, unenforceable and
15 exonerated as to Schleining.

16 10. Third-Party Plaintiffs breached the covenant of good faith and fair dealing implied
17 in the contracts alleged in the Third-Party Complaint and therefore such contracts are void,
18 unenforceable and exonerated as to Schleining.

19 11. Third-Party Plaintiffs are barred from the relief requested in the Third-Party
20 Complaint by the doctrine of mutual mistake.

21 12. Third-Party Plaintiffs are barred from the relief requested in the Third-Party
22 Complaint by the doctrine of unilateral mistake.

23 13. Third-Party Plaintiffs are barred from the relief requested in the Third-Party
24 Complaint because Schleining has been discharged and exonerated from any and all obligations
25 and duties arising out of the indemnity agreement alleged in the Third-Party Complaint.

26 14. Third-Party Plaintiffs are barred from the relief requested in the Third-Party
27 Complaint because Schleining is excused from performance on any indemnity agreement between
28 Schleining and Third-Party Plaintiffs by reason of mistake of fact or mistake of law.

1 15. Third-Party Plaintiffs are barred from the relief requested in the Third-Party
2 Complaint because the indemnity agreement alleged in the Third-Party Complaint is void and/or
3 unenforceable.

4 16. Third-Party Plaintiffs are barred from the relief requested in the Third-Party Complaint
5 because the indemnity agreement alleged in the Third-Party Complaint with Schleining and others, as
6 written and as performed by Third-Party Plaintiffs, is unconscionable.

7 17. Third-Party Plaintiffs are barred from the relief requested in the Third-Party
8 Complaint because Third-Party Plaintiffs substantially and materially breached their agreements
9 with Defendants, Schleining, and others, which conduct extinguishes Third-Party Plaintiffs' right
10 to maintain its claim against Schleining.

11 18. Third-Party Plaintiffs are barred from the relief requested in the Third-Party
12 Complaint because of Third-Party Plaintiffs' misrepresentations, concealments and false promises.

13 19. Schleining reserves his right to amend this Answer to allege additional affirmative
14 defenses in light of the subsequently discovered or appreciated facts.

15 WHEREFORE, Third-Party Defendant JOHN SCHLEINING prays for judgment as
16 follows.

17 1. That Third-Party Plaintiffs take nothing by reason of their Third-Party Complaint
18 and that judgment be entered thereon in favor of Schleining;

19 2. For costs of suit incurred in this action;

20 3. For his attorney's fees and costs to the extent permitted by law, contract, or equity; and

21 4. For such other and further relief as may be deemed just and proper in the
22 circumstances.

23 **CROSS-CLAIM OF JOHN SCHLEINING AGAINST HALE LANE PEEK DENNISON**

24 **AND HOWARD**

25 Schleining JOHN SCHLEINING, by and through his counsel, alleges as follows.

26 **PARTIES**

27 1. Schleining JOHN SCHLEINING is an individual and resident of the State of
28 Oregon.

2. Schleining is informed and believes and on that basis alleges that Cross-Defendant HALE LANE PEEK DENNISON AND HOWARD ("Hale Lane") is and was at all relevant times a Nevada professional corporation doing business as a firm of lawyers licensed to practice law in the State of Nevada.

3. Schleining is unaware of the true names or capacities of persons or entities sued herein as DOES XXI – XXX, inclusive, and therefore sues said persons or entities by such fictitious names. Schleining is informed and believes and therefore alleges that each of said DOE Cross-Defendants’ wrongful acts or omissions proximately caused the injuries alleged herein by Schleining.

4. Schleining reserves his right to amend his Cross-Claim after the identities of said DOE Cross-Defendants and the nature of their wrongful acts becomes known.

5. Schleining is informed and believes and therefore alleges that at all times relevant herein each of the Cross-Defendants was the agent, partner or employee of each of the other Cross-Defendants and, in committing the acts or omissions hereinafter alleged, was acting within the course and scope of such agency, partnership or employment.

GENERAL ALLEGATIONS

6. Schleining is informed and believes and therefore alleges that on or about August 2005, John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust Agreement, John Iliescu, Jr. and Sonnia Iliescu (collectively "Iliescu") entered into a contract to sell certain real property located in Washoe County commonly known as 219 Court Street, Reno, Nevada, 0 Court Street, Reno, Nevada, and 223 Court Street, Reno, Nevada (collectively "the Property") to Consolidated Pacific Development, Inc. ("CPD"). That contract, as subsequently modified and/or amended, is hereafter referred to as the "Purchase Agreement".

7. Schleining is informed and believes and therefore alleges that on or before September 22, 2005, Iliescu retained Hale Lane to represent them in connection with the Purchase Agreement and the sale of the Property to CPD and that Hale Lane continued to represent Iliescu as their lawyers at all relevant times thereafter.

8. Schleining is informed and believes and therefore alleges that, on or before December 14, 2005, CPD and Calvin Baty retained Hale Lane to represent them and their successors-in-interest in connection with their acquisition of the Property under the Purchase Agreement, and that said representation included but was not limited to obtaining certain entitlements on the Property.

9. CPD assigned its rights in and under the Purchase Agreement to DeCal Custom Homes and Construction (“DeCal”), an entity owned and controlled by Schleining. Thereafter, Calvin Baty, Sam Caniglia, President of CPD, and Schleining formed BSC Financial, LLC (“BSC”). DeCal thereafter assigned its rights in and under the Purchase Agreement to BSC and continued with the task of obtaining the necessary entitlements on the Property as contemplated by the Purchase Agreement.

10. Upon obtaining the assignment of the buyers' rights in and under the Purchase Agreement and prior to December 8, 2006, Schleining, Baty, and BSC retained Hale Lane to represent them as purchasers of the Property and in connection with obtaining the desired entitlements. At all relevant times thereafter, Hale Lane continued to represent Iliescu as sellers of the Property on the one hand and Schleining, Baty, and BSC as buyers of the Property on the other hand.

11. On or about November 7, 2006, Architect Mark Steppan (“Steppan”) recorded a mechanic’s lien on the Property. In that mechanic’s lien, Steppan claimed he was owed in excess of \$1.7 million for work performed for the benefit of the Property.

FIRST CAUSE OF ACTION
(Negligent Misrepresentation)

12. Schleining realleges and incorporates herein as though fully set forth paragraphs 1 through 11 of this Cross-Claim.

13. On or about December 8, 2006, following the recordation of the mechanic's lien by Steppan, Hale Lane, acting on behalf of its Iliescu clients, prepared a document entitled "Indemnity". A true and correct copy of the Indemnity is attached hereto as Exhibit 1 and incorporated herein by reference as though fully set forth.

1 14. The Indemnity provides, in pertinent part, at paragraph 1:

2 "Indemnity. Baty, Schleining and BSC hereby, jointly and severally, agree
3 to indemnify, defend, protect and hold Iliescu harmless against all damages, losses,
4 expenses, costs, liabilities, including, without limitation, payments due or which
may be due to the architect [Steppan]"

5 15. On or about December 8, 2006, Hale Lane presented the Indemnity to
6 Schleining for signature. At that time, Hale Lane was purporting to act as lawyers both for
7 Iliescu as indemnitees and for Schleining, Baty and BSC as indemnitors.

8 16. In order to induce their client Schleining to sign the Indemnity, Hale Lane
9 negligently represented to Schleining and advised him as follows: (1) as a result of their legal
10 research, Hale Lane had concluded that Steppan had no right to record or enforce a lien against the
11 Property because Steppan had failed to serve or record the required pre-lien notices; (2) under no
12 circumstances could Steppan obtain a judgment against Iliescu as owners of the Property and (3)
13 Schleining would have absolutely "no exposure" to Iliescu if he signed the Indemnity. Hale Lane
14 then asked and advised Schleining to sign the Indemnity.

15 17. The representations and legal advice made by Hale Lane to Schleining set forth in
16 paragraph 16 above were false and negligently made. For example and without limitation, as this
17 Court has found, Steppan's mechanic's lien is enforceable notwithstanding Steppan's failure to
18 serve or record pre-lien notices and therefore Schleining may have exposure to Iliescu under the
19 Indemnity.

20 18. At the time Hale Lane made the misrepresentations and rendered the advice set
21 forth in paragraph 16 above, Hale Lane did not have sufficient basis or information on which to
22 make such representations and render such legal advice and Hale Lane failed to exercise
23 reasonable care or competence in so doing.

24 19. Schleining was ignorant of the falsity of Hale Lane's representations. Given the
25 nature of his relationship with Hale Lane, Schleining justifiably relied on Hale Lane's
26 representations and advice. Schleining executed the Indemnity in reliance on Hale Lane's
27 representations and advice.

1 20. As a direct, proximate and consequential result of executing the Indemnity,
2 Schleining has been damaged in an amount in excess of ten thousand dollars (\$10,000).

3 **SECOND CLAIM FOR RELIEF**
4 **(Breach of Fiduciary Duty)**

5 21. Schleining realleges and incorporates herein as though fully set forth paragraphs 1
6 through 20 of this Cross-Claim.

7 22. As a result of its attorney-client relationships with Schleining, Baty and BSC, Hale
8 Lane was a fiduciary of Schleining and owed to Schleining the highest duty of loyalty and fidelity.

9 23. Hale Lane breached its fiduciary obligations to Schleining as follows:

10 a. By failing to advise Schleining that there was an inherent conflict of interest
11 in Hale Lane's joint representation of Schleining, Baty and BSC as indemnitors and Iliescu as
12 indemnitees;

13 b. By failing to advise Schleining of the consequences of its conflict of interest
14 in purporting to represent both the indemnitors and the indemnitees;

15 c. By favoring the interests of its indemnitee clients, Iliescu, over the interests
16 of its indemnitor clients, Schleining, Baty and BSC;

17 d. By advising Schleining to sign and asking Schleining to sign the Indemnity
18 when it was not in Schleining's best interest to do so; and

19 e. By violating Nevada Rule of Professional Conduct 1.7.

20 24. As a direct and proximate result of Hale Lane's breaches of its fiduciary duties as
21 alleged above, Schleining has been damaged in an amount in excess of ten thousand dollars
22 (\$10,000).

23 **THIRD CLAIM FOR RELIEF**
24 **(Legal Malpractice)**

25 25. Schleining realleges and incorporates herein as though fully set forth paragraphs 1
26 through 24 of this Cross-Claim.

27 26. As Schleining's, Baty's and BSC's lawyers, Hale Lane owed Schleining the duty to
28 use such skill, prudence and diligence as lawyers of ordinary skill and capacity possessed in
exercising and performing the tasks which Hale Lane undertook, particularly in this instance the

1 duty to apply that level of diligence and judgment held by reputable licensed lawyers in northern
2 Nevada engaged in the types of business and transactions described above.

3 27. Hale Lane breached its duties to Schleining set forth hereinabove in committing the
4 acts and omissions alleged herein.

5 28. As a direct and proximate result of said breaches, Schleining has been damaged in
6 an amount in excess of ten thousand dollars (\$10,000).

7 WHEREFORE, JOHN SCHLEINING prays for judgment as follows:

8 1. For damages in an amount in excess of ten thousand dollars (\$10,000);

9 2. For reasonable attorney's fees incurred in the prosecution and defense of this action
10 to the extent permitted by law, equity, or contract;

11 3. For costs of suit; and

12 4. For such other and further relief as this Court may deem just and proper.

13 **THIRD-PARTY COMPLAINT OF JOHN SCHLEINING AGAINST HOLLAND & HART,**

14 **LLP AND R. CRAIG HOWARD**

15 Third-Party Plaintiff JOHN SCHLEINING, by and through his counsel, alleges as follows.

16 **PARTIES**

17 1. Third-Party Plaintiff JOHN SCHLEINING ("Schleining") is an individual and
18 resident of the State of Oregon.

19 2. Schleining is informed and believes and on that basis alleges that (a) Cross-
20 Defendant HALE LANE PEEK DENNISON AND HOWARD ("Hale Lane") is and was at all
21 relevant times a Nevada professional corporation doing business as a firm of lawyers licensed to
22 practice law in the State of Nevada; (b) on or about May 2008, Cross-Defendant Hale Lane
23 publicly announced that it had "combined" with Third Party Defendant HOLLAND & HART,
24 LLP, a Colorado limited liability partnership doing business as a law firm in the Western United
25 States; (c) thereafter Cross-Defendant Hale Lane and Third Party Defendant HOLLAND &
26 HART, LLP together represented themselves to the public as a single law firm and single legal
27 entity and (d) on and after May 2008, Third Party Defendant HOLLAND & HART, LLP assumed
28 and continues to assume all of the past, present and future duties, obligations and liabilities of

1 Cross-Defendant Hale Lane.

2 3. Third Party Defendant R. CRAIG HOWARD ("Howard") is an attorney licensed to
3 practice law in the State of Nevada and at all relevant times was and is a principal, partner or
4 shareholder of Cross-Defendant Hale Lane and/or Third Party Defendant HOLLAND & HART,
5 LLP. Cross-Defendant Hale Lane and Third Party Defendants HOLLAND & HART, LLP and
6 Howard are collectively hereinafter referred to as "Attorneys."

7 4. Schleining is unaware of the true names or capacities of persons or entities sued
8 herein as DOES XXXI – XL, inclusive, and therefore sues said persons or entities by such
9 fictitious names. Schleining is informed and believes and therefore alleges that each of said DOE
10 Third Party Defendants' wrongful acts or omissions proximately caused the injuries alleged herein
11 by Schleining. Schleining reserves his right to amend his pleadings after the identities of said
12 DOE Third Party Defendants and the nature of their wrongful acts becomes known.

13 5. Schleining is informed and believes and therefore alleges that at all times relevant
14 herein each of the Third-Party Defendants was the agent, partner or employee of each of the other
15 Third-Party Defendants and, in committing the acts or omissions hereinafter alleged, was acting
16 within the course and scope of such agency, partnership or employment.

17 **GENERAL ALLEGATIONS**

18 6. Schleining is informed and believes and therefore alleges that on or about August
19 2005, John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu Jr. and Sonnia Iliescu
20 1992 Family Trust Agreement, John Iliescu, Jr. and Sonnia Iliescu (hereinafter, collectively,
21 "Iliescu") entered into a contract to sell certain real property located in Washoe County commonly
22 known as 219 Court Street, Reno, Nevada, 0 Court Street, Reno, Nevada, and 223 Court Street,
23 Reno, Nevada (collectively "the Property") to Consolidated Pacific Development, Inc. ("CPD").
24 That contract, as subsequently modified and/or amended, is hereafter referred to as the "Purchase
25 Agreement".

26 7. Schleining is informed and believes and therefore alleges that on or before
27 September 22, 2005, Iliescu retained Attorneys to represent them in connection with the Purchase
28

1 Agreement and the sale of the Property to CPD and that Attorneys continued to represent Iliescu
2 as their lawyers at all relevant times thereafter.

3 8. Schleining is informed and believes and therefore alleges that, on or before
4 December 14, 2005, CPD and Calvin Baty retained Attorneys to represent them and their
5 successors-in-interest in connection with their acquisition of the Property under the Purchase
6 Agreement, and that said representation included but was not limited to obtaining certain
7 entitlements on the Property.

8 9. CPD assigned its rights in and under the Purchase Agreement to DeCal Custom
9 Homes and Construction ("DeCal"), an entity owned and controlled by Schleining. Thereafter,
10 Calvin Baty, Sam Caniglia, President of CPD, and Schleining formed BSC Financial, LLC
11 ("BSC"). DeCal assigned its rights in and under the Purchase Agreement to BSC, which
12 continued with the task of obtaining the necessary entitlements on the Property as contemplated by
13 the Purchase Agreement.

14 10. Upon obtaining the assignment of the buyers' rights in and under the Purchase
15 Agreement and prior to December 8, 2006, Schleining, Baty, and BSC retained Attorneys to
16 represent them as purchasers of the Property and in connection with obtaining the desired
17 entitlements. At all relevant times thereafter, Attorneys continued to represent Iliescu as sellers of
18 the Property on the one hand and Schleining, Baty, and BSC as buyers of the Property on the other
19 hand.

20 11. On or about November 7, 2006, Architect Mark Steppan ("Steppan") recorded a
21 mechanic's lien on the Property. In that mechanic's lien, Steppan claimed he was owed in excess
22 of \$1.7 million for work performed for the benefit of the Property.

23 **FIRST CAUSE OF ACTION**

24 **(Negligent Misrepresentation)**

25 12. Schleining realleges and incorporates herein as though fully set forth paragraphs 1
26 through 11 of this Cross-Claim.

27 13. On or about December 8, 2006, following the recordation of the mechanic's lien by
28 Steppan, Attorneys, acting on behalf of their Iliescu clients, prepared a document entitled

1 "Indemnity". A true and correct copy of the Indemnity is attached hereto as Exhibit 1 and
2 incorporated herein by reference as though fully set forth.

3 14. The Indemnity provides, in pertinent part, at paragraph 1:

4 "Indemnity. Baty, Schleining and BSC hereby, jointly and severally, agree
5 to indemnify, defend, protect and hold Iliescu harmless against all damages, losses,
6 expenses, costs, liabilities, including, without limitation, payments due or which
may be due to the architect [Steppan]"

7 15. On or about December 8, 2006, Attorneys presented the Indemnity to
8 Schleining for signature. At that time, Attorneys were purporting to act as lawyers both for
9 Iliescu as indemnitees and for Schleining, Baty and BSC as indemnitors.

10 16. In order to induce their client Schleining to sign the Indemnity, Attorneys
11 represented to Schleining and advised him as follows: (1) as a result of their legal research,
12 Attorneys had concluded that Steppan had no right to record or enforce a lien against the Property
13 because Steppan had failed to serve or record the required pre-lien notices; (2) under no
14 circumstances could Steppan obtain a judgment against Iliescu as owners of the Property and (3)
15 Schleining would have absolutely "no exposure" to Iliescu if he signed the Indemnity. Attorneys
16 then asked and advised Schleining to sign the Indemnity.

17 17. The representations made and legal advice rendered by Attorneys to Schleining set
18 forth in paragraph 16 above were false and negligently made. For example and without limitation,
19 as this Court has found, Steppan's mechanic's lien is enforceable notwithstanding Steppan's
20 failure to serve or record pre-lien notices and therefore Schleining may have exposure to Iliescu
21 under the Indemnity.

22 18. At the time Attorneys made the misrepresentations and rendered the legal advice
23 set forth in paragraph 16 above, Attorneys did not have sufficient basis or information on which to
24 make such representations and render such legal advice and Attorneys failed to exercise
25 reasonable care or competence in so doing.

26 19. Schleining was ignorant of the falsity of the representations. Given the nature of
27 his relationship with Attorneys, Schleining justifiably relied on Attorneys' representations and
28 advice. Schleining executed the Indemnity in reliance on Attorneys' representations and advice.

1 20. As a direct, proximate and consequential result of executing the Indemnity,
2 Schleining has been damaged in an amount in excess of ten thousand dollars (\$10,000).

3 **SECOND CLAIM FOR RELIEF**

4 **(Breach of Fiduciary Duty)**

5 21. Schleining realleges and incorporates herein as though fully set forth paragraphs 1
6 through 20 of this Cross-Claim.

7 22. As a result of their attorney-client relationships with Schleining, Baty and BSC,
8 Attorneys were fiduciaries of Schleining and owed to Schleining the highest duty of loyalty and
9 fidelity.

10 23. Attorneys breached their fiduciary obligations to Schleining as follows:

11 a. By failing to advise Schleining that there was an inherent conflict of interest
12 in Attorneys' joint representation of Schleining, Baty and BSC as indemnitors and Iliescu as
13 indemnitees;

14 b. By failing to advise Schleining of the consequences of their conflict of
15 interest in purporting to represent both the indemnitors and the indemnitees;

16 c. By favoring the interests of its indemnitee clients, Iliescu, over the interests
17 of its indemnitor clients, Schleining, Baty and BSC;

18 d. By advising Schleining to sign and asking Schleining to sign the Indemnity
19 when it was not in Schleining's best interest to do so; and

20 e. By violating Nevada Rule of Professional Conduct 1.7.

21 24. As a direct and proximate result of Attorneys' breaches of their fiduciary duties as
22 alleged above, Schleining has been damaged in an amount in excess of ten thousand dollars
23 (\$10,000).

24 **THIRD CLAIM FOR RELIEF**

25 **(Legal Malpractice)**

26 25. Schleining realleges and incorporates herein as though fully set forth paragraphs 1
27 through 24 of this Cross-Claim.

28 26. As Schleining's, Baty's and BSC's lawyers, Attorneys owed Schleining the duty to
use such skill, prudence and diligence as lawyers of ordinary skill and capacity possessed in

1 exercising and performing the tasks which Attorneys undertook, particularly in this instance the
2 duty to apply that level of diligence and judgment held by reputable licensed lawyers in northern
3 Nevada engaged in the types of business and transactions described above.

4 27. Attorneys breached their duties to Schleining set forth hereinabove in committing
5 the acts and omissions alleged herein.

6 28. As a direct and proximate result of said breaches, Schleining has been damaged in
7 an amount in excess of ten thousand dollars (\$10,000).

8 WHEREFORE, JOHN SCHLEINING prays for judgment as follows:

- 9 1. For damages in an amount in excess of ten thousand dollars (\$10,000);
10 2. For reasonable attorney's fees incurred in the prosecution and defense of this action
11 to the extent permitted by law, equity, or contract;
12 3. For costs of suit; and
13 4. For such other and further relief as this Court may deem just and proper.

14
15 DATED: September 2, 2009

WILSON & QUINT LLP

16
17 By: 

18 Gregory F. Wilson, Esq.

19 417 West Plumb Lane

Reno, NV 89509

20 Telephone: 775.786.7600

21 Facsimile: 775.786.7764

22 Email: gfwilson@wilsonquint.com

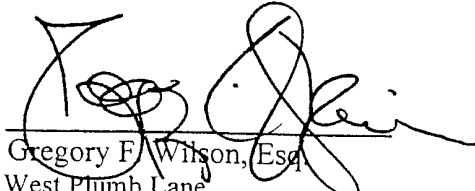
23 Attorneys for JOHN SCHLEINING
24
25
26
27
28

NRS 239B.030 AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: September 2, 2009

WILSON & QUINT LLP

By: 
Gregory F. Wilson, Esq.
417 West Plumb Lane
Reno, NV 89509
Telephone: 775.786.7600
Facsimile: 775.786.7764
Email: gfwilson@wilsonquint.com
Attorneys for JOHN SCHLEINING

CERTIFICATE OF SERVICE

I certify that I am an employee of Wilson & Quint LLP, and that on this date, pursuant to NRCP 5(b), I am serving a true copy of the following:

**JOHN SCHLEINING'S ANSWER TO THIRD-PARTY COMPLAINT, CROSS-CLAIM
AND THIRD-PARTY COMPLAINT**

on the parties set forth below:

Gayle A. Kern, Esq.
Gayle A. Kern, Ltd.
5421 Kietzke Lane, No. 200
Reno, Nevada 89511
Telephone: 775.324.5930
Email: gaylekern@kernltd.com

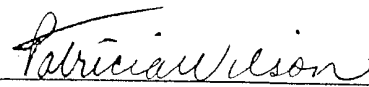
Steven M. Wilker, Esq.
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1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
Telephone: 503.221.1440
Email: steven.wilker@tonkon.com

Stephen C. Mollath, Esq.
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David R. Grundy, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Telephone: 775.786.9716
Email: drg@lge.net

XXX Placing a true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, postage prepaid, following ordinary business practices.

DATED this 2nd day of September 2009.


Patricia Wilson

THIRD-PARTY DEFENDANT'S INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Document</u>	<u>Number of Pages</u>
1	"Indemnity"	2

EXHIBIT 1

EXHIBIT 1

INDEMNITY

THIS INDEMNITY ("Agreement") is executed by BSC FINANCIAL, LLC, a limited liability company ("BSC"), CALVIN BATY, individually ("Baty"), and JOHN SCHLEINING, individually ("Schleining") (collectively, the "Indemnifying Parties"), in favor of JOHN ILIESCU, JR., and SONNIA SANTEE ILIESCU, individually and as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST (collectively, "Iliescu"), and is effective as of the date set forth by the parties' respective signatures.

RECITALS:

A. Consolidated Pacific Development, Inc., a Nevada corporation ("Consolidated"), entered into a Land Purchase Agreement with Iliescu dated July 29, 2005, together with Addendum No. 1 dated August 1, 2005, Addendum No. 2 dated August 2, 2005, Addendum No. 3 dated October 8, 2005, and Addendum No. 4 dated as of September 18, 2006 (collectively, "Purchase Agreement"), concerning certain real property located in the City of Reno, County of Washoe, State of Nevada, identified as APNs 011-112-05, 06, 07 and 12, and more particularly described in the Title Report attached to Addendum No. 3 ("Property"). Sam Caniglia, President of Consolidated, Baty and Schleining formed BSC in order to proceed with the entitlement of the project on the Property.

B. BSC entered into an AIA Architectural Agreement ("AIA Contract") with Mark Steppan, AIA ("Architect"), for architectural services for a mixed-use development including residential, retail, and parking ("Project"). The architectural schematic drawings were necessary to obtain the land use entitlements for the Project. The land use entitlements were approved by the City of Reno.

C. On November 7, 2006, the Architect recorded in Washoe County, Nevada, a Notice and Claim of Lien against the Property in the amount of \$1,783,548.85 for claims of unpaid architectural services ("Mechanic's Lien"). These unpaid amounts are contested by BSC. In addition, the Mechanic's Lien is an improper lien not in compliance with Nevada law because the Architect failed to deliver to Iliescu (i) a Notice of Right to Lien pursuant to NRS 108.245, and (ii) a Notice of Intent to Lien pursuant to NRS 108.226(6).

D. Baty and Schleining are principals of BSC.

E. Baty, Schleining and BSC desire to indemnify Iliescu for any and all claims and costs related to the Architect's recording of the Mechanic's Lien on the Property.

NOW, THEREFORE, for valuable consideration, Baty, Schleining and BSC hereby agree as follows:

1. Indemnity. Baty, Schleining and BSC hereby, jointly and severally, agree to indemnify, defend, protect and hold Iliescu harmless against all damages, losses, expenses, costs, liabilities, including, without limitation, payments due or which may be due to the Architect arising out of services performed pursuant to the AIA Contract or any change order or extras

related thereto, including interest, penalties and attorney fees which may be claimed by Architect to be owed by either BSC or Consolidated.

2. Attorneys' Fees. Baty, Schleining and BSC hereby jointly and severally agree to pay all attorney's fees and costs incurred to contest and discharge the Mechanic's Lien. In the event that a discharge of the Mechanic's Lien does not occur pursuant to a resolution of the dispute with Architect within ten (10) days of the date of this Indemnity, the Indemnifying Parties agree to initiate an action in the Washoe County District Court to contest and to discharge the Mechanic's Lien for (i) failing to comply with Nevada law, and (ii) the excessive amount. The Indemnifying Parties agree to diligently prosecute such action in an expedited manner to eliminate the Mechanic's Lien.

IN WITNESS WHEREOF, the Indemnifying Parties have executed this Indemnity as of the date set forth below.

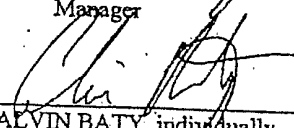
BSC FINANCIAL, LLC, a limited liability company

Dated: December 8, 2006

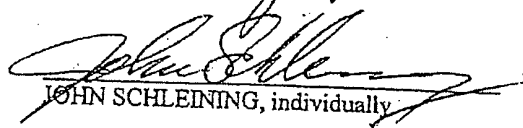
By: 

Calvin Baty
Manager

Dated: December 8, 2006


CALVIN BATY, individually

Dated: December 8, 2006


JOHN SCHLEINING, individually

1 **1155**

2 David R. Grundy, Esq. SBN 864
3 LEMONS, GRUNDY & EISENBERG
4 6005 Plumas Street, Suite 300
5 Reno, Nevada 89519
6 Telephone: (775) 786-6868
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8 Attorneys for Third Party Defendants
9 Hale Lane, Holland & Hart and R. Craig Howard

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12 MARK B. STEPPAN,

13 Plaintiffs,

CONSOLIDATED

14 vs.

Case No.: CV07-00341

15 JOHN ILIESCU JR. and SONNIA ILIESCU, as
16 Trustees of the JOHN ILIESCU, JR. AND SONNIA
17 ILIESCU 1992 FAMILY TRUST AGREEMENT; JOHN
18 ILIESCU, individually; DOES I-V, inclusive; and ROE
19 CORPORATIONS VI-X, inclusive,

Dept. No.: B6

20 Defendants.

21 _____
22 JOHN ILIESCU, JR. and SONNIA ILIESCU,
23 as Trustees of the JOHN ILIESCU, JR. AND
24 SONNIA ILIESCU 1992 FAMILY TRUST
25 AGREEMENT; JOHN ILIESCU, JR.,
26 individually; SONNIA ILIESCU, individually,

27 Third-Party Plaintiffs,

28 vs.

29 CONSOLIDATED PACIFIC DEVELOPMENT,
30 INC., a Nevada Corporation; DECAL
31 OREGON, INC., an Oregon Corporation;
32 CALVIN BATY, individually; JOHN SCHLEINING,
33 individually; HALE LANE PEEK DENNISON
34 AND HOWARD PROFESSIONAL CORPORATION,
35 a Nevada professional corporation, dba HALE
36 LANE; KAREN D. DENNISON; R. CRAIG
37 HOWARD; JERRY M. SNYDER; and DOES I
38 thru X,

Third-Party Defendants.

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& EISENBERG
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THIRD FLOOR
RENO, NV 89519
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1 JOHN SCHLEINING,

2 Cross-Claimant,

3 vs.

4 HALE LANE PEEK DENNISON AND HOWARD
5 PROFESSIONAL CORPORATION, a Nevada
6 Professional corporation, dba HALE LANE
and DOES XXI - XXX, inclusive,

7 Cross-Defendant.
/

8 JOHN SCHLEINING,

9 Third-Party Plaintiff,

10 vs.

11 HOLLAND & HART, LLP, a professional
12 corporation, R. CRAIG HOWARD and DOES
XXXI - XL, inclusive,

13 Third-Party Defendants.
/

14
15 **ANSWER TO CROSS-CLAIM OF JOHN SCHLEINING**

16 Cross-defendant Hale Lane Peek Dennison and Howard Professional Corporation
17 (hereinafter "Hale Lane") and R. Craig Howard (erroneously sued herein as a Third-Party
18 Defendant although he is already a party to this litigation), in answer to the cross-claim filed
19 by John Schleining herein, admit, deny and allege as follows:

20 1. These answering cross-defendants are without information sufficient to form a
21 belief as to the truth or falsity of the allegations contained in paragraphs 1, 3, 4, 6, and 9.

22 2. These answering cross-defendants deny the allegations contained in
23 paragraphs 5, 8 and 10.

24 3. These answering cross-defendants admit the allegations contained in
25 paragraphs 2, 7 and 11.

26 **FIRST CAUSE OF ACTION (sic)**

27 4. In answer to paragraph 12 of the third party complaint, these cross-defendants
28 adopt and incorporate by reference and makes a part hereof all of their- previous answers.

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1 5. In response to paragraph 13 of the third party complaint, these answering
2 cross-defendants admit that on or about December 8, 2006, following the recordation of a
3 mechanic's lien by Steppan, Hale Lane prepared a document entitled "Indemnity," consistent
4 with that attached as Exhibit 1 to the third party complaint. The remaining allegations of
5 Paragraph 13 are denied.

6 6. These answering cross-defendants admit the allegations contained in
7 paragraphs 14.

8 7. These answering cross-defendants deny the allegations contained in
9 paragraphs 15, 16, 17, 18, 19 and 20.

10 **SECOND CLAIM FOR RELIEF**

11 8. In answer to paragraph 21 of the third party complaint, these cross-defendants
12 adopt and incorporate by reference and makes a part hereof all of their previous answers.

13 9. These answering cross-defendants deny the allegations contained in
14 paragraphs 22, 23 and 24.

15 **THIRD CLAIM FOR RELIEF**

16 10. In answer to paragraph 25 of the third party complaint, these cross-defendants
17 adopt and incorporate by reference and makes a part hereof all of its previous answers.

18 11. These answering cross-defendants deny the allegations contained in
19 paragraphs 26, 27 and 28.

20 **AFFIRMATIVE DEFENSES TO CROSS-CLAIM**

21 1. Cross-claimant has failed to state a claim against these cross-defendants upon
22 which relief can be granted.

23 2. Cross-claimant was careless and negligent with respect to the matters alleged
24 in the third party complaint, and said carelessness and negligence proximately caused or
25 contributed to the happening of the incidents complained of and to the damages, loss or
26 damages of which cross-claimant complains, if any there were.

27 3. The damages claimed by cross-claimant were caused solely by the acts or
28 omissions of others not named in this action.

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1 4. The claims asserted against cross-defendants have not yet accrued since the
2 underlying dispute between buyer, seller, developers and developers' lien claimant has not
3 yet been concluded by final judgment. These cross-defendants are thus entitled to a dismissal
4 of these claims, or in the alternative, a stay of proceedings until cross-claimant's damages, if
5 any, are fixed by the court.

6 5. This action is premature since some of the persons responsible for
7 indemnifying defendant Iliescu have claims currently pending in a bankruptcy matter through
8 which all or part of the damages being sought here may be paid or recompensed, entitling
9 these cross-defendants to a stay or dismissal of the pending claims.

10 6. Cross-claimant has, with full knowledge of the material facts, and for his own
11 personal and financial reasons, waived any conflicts of interest in writing.

12 7. Cross-claimant is estopped from asserting a conflict of interest by virtue of his
13 execution of written waivers, upon which these cross-defendants relied in their continued
14 representation of other clients.

15 8. The damages claimed by cross-claimant were caused solely by the acts or
16 omissions of others not named in this cross-complaint.

17 9. These cross-defendants at all times acted in good faith during their
18 engagement as counsel for the various parties who chose to retain these cross- defendants.

19 10. Throughout their engagement as counsel in this matter, cross-defendants
20 disclosed both orally and in writing and in a timely fashion the scope of their attorney/client
21 relationship with other parties and sought and received consent from cross-claimant to
22 represent other parties in light of the fact that cross-claimants' interests would be advanced
23 thereby.

24 11. These cross-defendants at all times acted in good faith at the request of cross-
25 claimant, in an effort to further the interests of their clients, whose interests were aligned and
26 consistent with one another.

27 ///

28 ///

1 12. At all times relevant to the allegations of the cross-complaint, these defendants
2 were not acting as attorney for cross-claimant and no attorney/client relationship existed
3 between cross-claimant and cross-defendants.

4 13. These cross-defendants owed no fiduciary or other duties incident to an
5 attorney/client relationship to cross-claimant.

6 WHEREFORE, cross-defendants pray for judgment as follows:

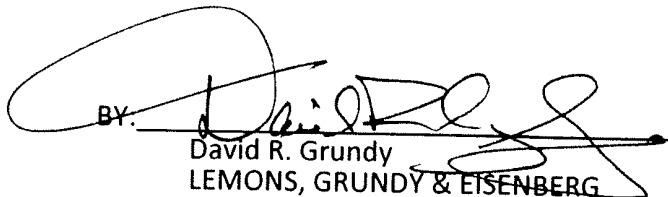
7 1. That cross-claimant take nothing by way of the cross-complaint filed herein and
8 that the same be dismissed with prejudice;

9 2. For costs of suit herein and for a reasonable attorneys' fee incurred in defense
10 hereof; and,

11 3. For such other relief as the court deems proper.

12 The undersigned affirms that this document does not contain the social security
13 number of any person.

14 DATED: October 7, 2009

15
16
17 BY: 

18 David R. Grundy
19 LEMONS, GRUNDY & EISENBERG
20 6005 Plumas Street, Suite 300
21 Reno, Nevada 89519
22 Phone No.: (775) 786-6868
23 Attorneys for Third Party Defendants
24

25 LEMONS, GRUNDY
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27 6005 PLUMAS ST.
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on October 7, 2009 I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **ANSWER TO CROSS-CLAIM OF JOHN SCHLEINING**, addressed to the following:

Gayle A. Kern, Esq.
Gayle A. Kern, Ltd.
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Reno, Nevada 89511

Gregory F. Wilson, Esq.
Matthew F. Quint, Esq.
WILSON & QUINT LLP
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Stephen C. Mollath, Esq.
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Steven M. Wilker, Esq.
Tonkon Torp LLP
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CV07-00341 DC-9900011961-008
JOHN ILIESCU ETAL VS. MARK S. 7 Pages
District Court 10/07/2009 04 54 PM
Washoe County 1165
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HOWARD V. SNYDER

BY *[Signature]*
DEPUTY

Attorneys for Third Party Defendants
Hale Lane, Karen D. Dennison, R. Craig
Howard and Jerry M. Snyder

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiffs,

vs.

JOHN ILIESCU JR. and SONNIA ILIESCU, as
Trustees of the JOHN ILIESCU, JR. AND SONNIA
ILIESCU 1992 FAMILY TRUST AGREEMENT; JOHN
ILIESCU, individually; DOES I-V, inclusive; and ROE
CORPORATIONS VI-X, inclusive,

Defendants.

CONSOLIDATED

Case No.: CV07-00341

Dept. No.: B6

JOHN ILIESCU, JR. and SONNIA ILIESCU,
as Trustees of the JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST
AGREEMENT; JOHN ILIESCU, JR.,
individually; SONNIA ILIESCU, individually,

Third-Party Plaintiffs,

vs.

CONSOLIDATED PACIFIC DEVELOPMENT,
INC., a Nevada Corporation; DECAL
OREGON, INC., an Oregon Corporation;
CALVIN BATY, individually; JOHN SCHLEINING,
individually; HALE LANE PEEK DENNISON
AND HOWARD PROFESSIONAL CORPORATION,
a Nevada professional corporation, dba HALE
LANE; KAREN D. DENNISON; R. CRAIG
HOWARD; JERRY M. SNYDER; and DOES I
thru X,

Third-Party Defendants.

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1 JOHN SCHLEINING,

2 Cross-Claimant,

3 vs.

4 HALE LANE PEEK DENNISON AND HOWARD
5 PROFESSIONAL CORPORATION, a Nevada
6 Professional corporation, dba HALE LANE
and DOES XXI - XXX, inclusive,

7 Cross-Defendant.
/

8 JOHN SCHLEINING,

9 Third-Party Plaintiff,

10 vs.

11 HOLLAND & HART, LLP, a professional
12 corporation, R. CRAIG HOWARD and DOES
XXXI - XL, inclusive,

13 Third-Party Defendants.
/

14
15 **ANSWER TO THIRD PARTY COMPLAINT**

16 Third party defendants Hale Lane Peek Dennison and Howard Professional
17 Corporation, Karen D. Dennison, R. Craig Howard and Jerry M. Snyder (collectively, "Hale
18 Lane"), in answer to the third party complaint of John Iliescu, Jr. and Sonnia Iliescu, as
19 Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement; John Iliescu,
20 Jr., individually and Sonnia Iliescu, individually (collectively, "Iliescu"), on file herein, admit,
21 deny and allege as follows:

22 1. Hale Lane are without information sufficient to form a belief as to the truth or
23 falsity of the allegations contained in paragraphs 1, 4, 5, 6, 7, 10, 12, 13, 14, 15, 16, 17, 21, 23,
24 27, and 35.

25 2. Hale Lane admit the allegations contained in paragraphs 2, 3, 8, 9 19, 25, 29, 34
26 and 36 of the third party complaint.

27 3. Hale Lane deny the allegations contained in paragraphs 11, 20, 22 and 28 of the
28 third party complaint.

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1 4. In response to Paragraph 18, Hale Lane admit that Iliescu retained the Hale
2 Lane law firm to review, "fine tune", clarify and advise Iliescu relative to the Purchase
3 Agreement. The remaining allegations of Paragraph 18 are denied.

4 5. In response to Paragraph 24, Hale Lane admit that on or about November 7,
5 2006 Mark Steppan, AIA recorded a mechanic's lien on the property, and that a copy of that
6 lien is attached as Exhibit "B". The remaining allegations of Paragraph 24 are denied.

7 5. In response to Paragraph 26, Hale Lane admit that the mechanic's lien
8 recorded by Mark Steppan, AIA on November 7, 2006 made reference, at its Paragraph 2, to
9 BSC Financial, LLC, as the entity that employed Mark Steppan, AIA and who furnished the
10 work and services in connection with Iliescu's property. The remaining allegations of
11 Paragraph 26 are denied.

12 6. In response to Paragraph 30, Hale Lane admit that the Hale Lane law firm
13 represented Iliescu in regard to a) the Mechanic's Lien recorded by Mark Steppan, AIA, and b)
14 closing the Land Purchase Agreement. The remaining allegations of Paragraph 30 are denied.

15 8. In response to Paragraph 31, Hale Lane admit that on or about December 8,
16 2006, as a result of the recordation of the Mechanic's Lien by Mark Steppan, AIA, the Hale
17 Lane law firm and R. Craig Howard prepared an Indemnity Agreement for their clients referred
18 to in Paragraph 28 in the third party complaint, a copy of which was attached thereto as
19 Exhibit "C". Said Indemnity Agreement was submitted to Iliescu on December 12, 2006. The
20 remaining allegations of Paragraph 31 are denied.

21 9. In response to Paragraph 32, Hale Lane admit that on or about December 26,
22 2006, the Hale Lane law firm drafted a Conflict of Interest Waiver Agreement and submitted it
23 to Iliescu and BSC Financial, LLC for signature. The Agreement was executed by the parties. A
24 copy of said Agreement was attached to the third party complaint as Exhibit "D". The
25 remaining allegations of Paragraph 32 are denied.

26 10. In response to Paragraph 33, Hale Lane admit that thereafter, the Hale Lane
27 law firm embarked upon a course of advising Iliescu and preparing documents so as to allow
28

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1 the Purchase Agreement to close with BSC Financial, LLC. The remaining allegations of
2 Paragraph 33 are denied.

3 **FIRST CLAIM FOR RELIEF**

4 11. No allegations are made in this First Claim for Relief against Hale Lane and thus
5 no response is required of Hale Lane. In the event that a response is deemed required, each
6 allegation of this First Claim for Relief is denied.

7 **SECOND CLAIM FOR RELIEF**

8 12. No allegations are made in this Second Claim for Relief against Hale Lane and
9 thus no response is required of Hale Lane. In the event that a response is deemed required,
10 each allegation of this Second Claim for Relief is denied.

11 **THIRD CLAIM FOR RELIEF**

12 13. No allegations are made in this Third Claim for Relief against Hale Lane and
13 thus no response is required of Hale Lane. In the event that a response is deemed required,
14 each allegation of this Third Claim for Relief is denied.

15 **FOURTH CLAIM FOR RELIEF**

16 14. No allegations are made in this Fourth Claim for Relief against Hale Lane and
17 thus no response is required of Hale Lane. In the event that a response is deemed required,
18 each allegation of this Fourth Claim for Relief is denied.

19 **FIFTH CLAIM FOR RELIEF**

20 15. In answer to paragraph 55 of the complaint, Hale Lane adopt and incorporate
21 by reference and makes a part hereof all of their previous answers.

22 16. Hale Lane admit the allegations contained in paragraph 56 of the third party
23 complaint.

24 17. Hale Lane deny the allegations contained in paragraph 57 of the third party
25 complaint.

26 **SIXTH CLAIM FOR RELIEF**

27 18. In answer to paragraph 58 of the complaint, Hale Lane adopt and incorporate
28 by reference and makes a part hereof all of their previous answers.

1 19. Hale Lane deny the allegations contained in paragraphs 59, 60 and 61 of the
2 third party complaint.

3 **AFFIRMATIVE DEFENSES**

4 1. Iliescu have failed to state a claim against Hale Lane upon which relief can be
5 granted.

6 2. Iliescu were careless and negligent with respect to the matters alleged in the
7 complaint, and said carelessness and negligence proximately caused or contributed to the
8 happening of the incidents complained of and to the damages, loss or damages of which
9 Iliescu complain, if any there were.

10 3. The damages claimed by Iliescu were caused solely by the acts or omissions of
11 others not named in this action.

12 4. The claims asserted against Hale Lane have not yet accrued since the
13 underlying dispute between buyer, seller, developers and developers' lien claimant has not
14 yet been concluded by final judgment. Hale Lane are thus entitled to a dismissal of these
15 claims, or in the alternative, a stay of proceedings until Iliescu's damages, if any, are fixed by
16 the court.

17 5. This action is premature since some of the persons responsible for
18 indemnifying Iliescu have claims currently pending in a bankruptcy matter through which all
19 or part of the damages being sought here may be paid or recompensed, entitling Hale Lane to
20 a stay or dismissal of the pending claims.

21 6. Iliescu have, with full knowledge of the material facts, and for their own
22 personal and financial reasons, waived any conflicts of interest in writing.

23 7. Iliescu are estopped from asserting a conflict of interest by virtue of their
24 execution of written waivers, which these parties relied upon in their continued
25 representation of other clients.

26 8. The damages claimed by Iliescu were caused solely by the acts or omissions of
27 others not named in this action.

28

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1 9. Hale Lane at all times acted in good faith during their engagement as counsel
2 for the various parties who chose to retain Hale Lane.

3 10. Throughout their engagement as counsel for Iliescu Hale Lane disclosed both
4 orally and in writing and in a timely fashion the scope of their attorney/client relationship with
5 other parties and sought and received consent from Iliescu to represent other parties in light
6 of the fact that Iliescu's interests would be advanced thereby.

7 11. Hale Lane at all times acted in good faith at the request of Iliescu, in an effort
8 to further the interests of their clients, whose interests were aligned and consistent with one
9 another.

10 WHEREFORE, Hale Lane pray as follows:

11 1. That Iliescu take nothing in this action, and that the action be dismissed with
12 prejudice;

13 2. That Hale Lane recover their costs of suit incurred herein and a reasonable
14 attorneys' fee from Iliescu; and,

15 3. For such other and further relief as the court deems proper.

16 The undersigned affirms that this document does not contain the social security
17 number of any person.

18 DATED: October 7, 2009

19
20
21 BY: 

David R. Grundy
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6005 Plumas Street, Suite 300
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Phone No.: (775) 786-6868
Attorneys for Third Party Defendants Hale
Lane, Dennison, Howard and Snyder

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23
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25 LEMONS, GRUNDY
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26 6005 PLUMAS ST.
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27 RENO, NV 89519
(775) 786-6868
28

CERTIFICATE OF MAILING

Pursuant to NRCp 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on October 7, 2009 I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **ANSWER TO THIRD PARTY COMPLAINT**, addressed to the following:

Gayle A. Kern, Esq.
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5421 Kietzke Lane, Suite 200
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Matthew F. Quint, Esq.
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CV07-00341
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JOHN ILIESCU ETAL VS MARK S & PABAS
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Attorneys for Third party defendants

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HOWARD W. SNYDER
BY *C. Paus*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiffs,

vs.

JOHN ILIESCU JR. and SONNIA ILIESCU, as
Trustees of the JOHN ILIESCU, JR. AND SONNIA
ILIESCU 1992 FAMILY TRUST AGREEMENT; JOHN
ILIESCU, individually; DOES I-V, inclusive; and ROE
CORPORATIONS VI-X, inclusive,

Defendants.

CONSOLIDATED

Case No.: CV07-00341

Dept. No.: B6

JOHN ILIESCU, JR. and SONNIA ILIESCU,
as Trustees of the JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST
AGREEMENT; JOHN ILIESCU, JR.,
individually; SONNIA ILIESCU, individually,

Third-Party Plaintiffs,

vs.

CONSOLIDATED PACIFIC DEVELOPMENT,
INC., a Nevada Corporation; DECAL
OREGON, INC., an Oregon Corporation;
CALVIN BATY, individually; JOHN SCHLEINING,
individually; HALE LANE PEEK DENNISON
AND HOWARD PROFESSIONAL CORPORATION,
a Nevada professional corporation, dba HALE
LANE; KAREN D. DENNISON; R. CRAIG
HOWARD; JERRY M. SNYDER; and DOES I
thru X,

Third-Party Defendants.

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1 JOHN SCHLEINING,

2 Third Party Plaintiff,

3 vs.

4 HALE LANE PEEK DENNISON AND HOWARD
5 PROFESSIONAL CORPORATION, a Nevada
6 Professional corporation, dba HALE LANE
and DOES XXI - XXX, inclusive,

7 Cross-Defendant.
8

9 JOHN SCHLEINING,

10 Third-Party Plaintiff,

11 vs.

12 HOLLAND & HART, LLP, a professional
13 corporation, R. CRAIG HOWARD and DOES
XXXI - XL, inclusive,

14 Third-Party Defendants.
15

ANSWER OF HOLLAND & HART LLP TO THIRD-PARTY COMPLAINT OF JOHN SCHLEINING

16 R. Craig Howard, being already a named party to this action, is not a proper third-party
17 defendant, but has instead been treated as a cross-defendant in the Answer to Cross Claims
18 being filed contemporaneously herewith. Third party defendant Holland & Hart, in answer to
19 the third party complaint on file herein, admits, denies and alleges as follows:

20 1. This answering third party defendant is without information sufficient to form a
21 belief as to the truth or falsity of the allegations contained in paragraphs 1, 4, 6 and 9.

22 2. In response to paragraph 2 of the Third Party Complaint, Holland & Hart admits
23 that it combined its business with that of Hale Lane Peek Dennison and Howard Professional
24 Corporation ("Hale Lane"), effective July 1, 2008, that Holland & Hart is a Colorado limited
25 liability partnership doing business in Nevada and that as a result of the combination,
26 acquired certain assets and liabilities of Hale Lane. The remaining allegations of Paragraph 2
27 are denied, including without limitation, any claim that Holland & Hart acquired or otherwise
28

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1 became responsible for the liabilities of Hale Lane for professional errors or omission
2 occurring prior to the effective date of the combination.

3 3. This answering third party defendant admits the allegations contained in
4 paragraphs 3 and 11 of the third party complaint.

5 4. In response to Paragraph 7, Holland & Hart admits that Iliescu retained Hale
6 Lane to represent the sellers of the property in connection with the Purchase and Sale
7 Agreement and the sale to CPD, and that Hale Lane continued to represent the Iliescu sellers
8 thereafter. The remaining allegations of Paragraph 7 are denied.

9 5. This answering third party defendant denies the allegations contained in
10 paragraphs 5 and 8 of the third party complaint.

11 **FIRST CAUSE OF ACTION (sic)**

12 6. In answer to paragraph 12 of the third party complaint, this answering third
13 party defendant adopts and incorporates by reference and makes a part hereof all of its
14 previous answers.

15 7. In response to paragraph 13 of the third party complaint, this answering third-
16 party defendant admits that on or about December 8, 2006, following the recordation of a
17 mechanic's lien by Steppan Attorneys, Craig Howard and Hale Lane prepared a document
18 entitled "Indemnity" as attached as Exhibit 1 to the third party complaint. The remaining
19 allegations of Paragraph 13 are denied.

20 8. This answering third party defendant admits the allegations contained in
21 paragraph 14 of the third party complaint on file herein.

22 9. In response to Paragraph 10, this answering third party defendant admits that
23 on or about December 8, 2006, Attorneys presented the Indemnity to Schleining for signature.
24 The remaining allegations of Paragraph 10 are denied.

25 10. This answering defendant denies the allegations contained in paragraphs 16,
26 17, 18, 19 and 20 of the third party complaint.

27 ///

28 ///

1 **SECOND CLAIM FOR RELIEF**

2 11. In answer to paragraph 21 of the third party complaint, this third party
3 defendant adopts and incorporates by reference and makes a part hereof all of its previous
4 answers.

5 12. This answering defendant denies the allegations contained in paragraphs 22, 23
6 and 24.

7 **THIRD CLAIM FOR RELIEF**

8 13. In answer to paragraph 25 of the third party complaint, this third party
9 defendant adopts and incorporates by reference and makes a part hereof all of its previous
10 answers.

11 14. This answering defendant denies the allegations contained in paragraphs 26, 27
12 and 28.

13 **AFFIRMATIVE DEFENSES TO THIRD PARTY COMPLAINT**

14 1. Third party plaintiff has failed to state a claim against this third party defendant
15 upon which relief can be granted.

16 2. Third party plaintiff was careless and negligent with respect to the matters
17 alleged in the third party complaint, and said carelessness and negligence proximately caused
18 or contributed to the happening of the incidents complained of and to the damages, loss or
19 damages of which third party plaintiff complains, if any there were.

20 3. The damages claimed by third party plaintiff was caused solely by the acts or
21 omissions of others not named in this action.

22 4. The claims asserted against third party defendant have not yet accrued since
23 the underlying dispute between buyer, seller, developers and developers' lien claimant has
24 not yet been concluded by final judgment. Third party defendant is thus entitled to a dismissal
25 of these claims, or in the alternative, a stay of proceedings until third party plaintiff's
26 damages, if any, are fixed by the court.

27 5. This action is premature since some of the persons responsible for
28 indemnifying defendant Iliescu have claims currently pending in a bankruptcy matter through

1 which all or part of the damages being sought here may be paid or recompensed, entitling this
2 third party defendant to a stay or dismissal of the pending claims.

3 6. Third party plaintiff has, with full knowledge of the material facts, and for their
4 own personal and financial reasons, waived any conflicts of interest in writing.

5 7. Third party plaintiff is estopped from asserting a conflict of interest by virtue of
6 their execution of written waivers, which these parties relied upon in their continued
7 representation of other clients.

8 8. The damages claimed by third party plaintiff were caused solely by the acts or
9 omissions of others not named in this third party complaint.

10 9. Third party defendant did not at any time represent any person with an
11 interest in the Purchase and Sale agreement at issue in this matter.

12 10. At all times relevant to the allegations of the Third Party Complaint, third party
13 defendant was not acting as attorney for third party plaintiff and no attorney/client
14 relationship existed between third party plaintiff and third party defendant.

15 13. Third party defendant owed no fiduciary or other duties incident to an
16 attorney/client relationship to Third Party Plaintiff.

17 WHEREFORE, third party defendant prays judgment as follows:

18 1. That third-party plaintiff take nothing in this third party action, and that the
19 action be dismissed with prejudice;

20 2. For costs of suit incurred herein and a reasonable attorney's fee; and

21 3. For such other and further relief as the court deems proper.

22 The undersigned affirms that this document does not contain the social security
23 number of any person.

24 DATED: October 7, 2009

25 BY: 
26

27 David R. Grundy
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
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Attorneys for third party defendant
28

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CERTIFICATE OF MAILING

Pursuant to NRCp 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on October 7, 2009 I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **ANSWER OF HOLLAND & HART LLP TO THIRD-PARTY COMPLAINT OF JOHN SCHLEINING**, addressed to the following:

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District Court
Washoe County
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CASE CHIEF

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Attorneys for Third Party Defendant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

vs.

JOHN ILIESCU JR. and SONNIA ILIESCU, as
Trustees of the JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST
AGREEMENT; JOHN ILIESCU, individually;
DOES I-V, inclusive; and ROE CORPORATIONS
VI-X, inclusive,

Defendants.

AND RELATED CLAIMS

CONSOLIDATED

Case No. CV07-00341

Dept. No.: B6

**THIRD PARTY DEFENDANT HALE LANE'S
MOTION FOR SUMMARY JUDGMENT
REGARDING THIRD-PARTY CLAIMS BY
JOHN ILIESCU**

Third Party Defendant, HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION, KAREN D. DENNISON, R. CRAIG HOWARD, and JERRY M. SNYDER (collectively, "Hale Lane"), by and through their undersigned attorneys, Lemons, Grundy & Eisenberg, hereby move the court for summary judgment on the third party claims asserted against them by JOHN ILIESCU, JR. and SONNIA ILIESCU, individually and as trustees of the ILIESCU 1992 FAMILY TRUST (collectively, "Iliescu"). This motion is based on the following Memorandum of Points and Authorities, the attached exhibits, and upon such other matters as the court may consider.

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RS - 044

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case involves a condominium development gone bad. The landowner, Dr. John
4 Iliescu Jr., had a mechanic's lien asserted against his property related to architectural services
5 he indirectly caused to be incurred. Even though Iliescu significantly benefited from the work
6 performed by the architect, both by improvements to his property and his wallet, he is
7 unwilling to accept any responsibility for the lien or the attorney's fees he has incurred in
8 defending against the architect's lien.

9 An action was brought by the architect to foreclose upon the lien. Iliescu in turn filed
10 third party complaints against the developer, a guarantor, and Hale Lane. As his third party
11 complaint relates to claims against his attorneys, the claims are clearly without merit.
12 Therefore, this motion for summary judgment seeks dismissal of all Iliescu's claims against his
13 attorneys, Hale Lane.

14 **II. STATEMENT OF UNDISPUTED FACTS**

15 **THE WINGFIELD TOWERS PROJECT:**

16 Iliescu owns several large and valuable properties in downtown Reno. (See Iliescu's
17 Third Party Complaint at ¶ 12, attached as **Exhibit 1**.) In August of 2005, Iliescu entered into
18 an agreement to sell one of his prime downtown properties to a group of developers for a
19 high-rise condominium project. (See Parcel Map, attached as **Exhibit 2**). The project was to be
20 called the Wingfield Towers, and was located immediately adjacent to the Truckee River and
21 Wingfield Park. Attached as **Exhibit 3** is a digital drawing of the project. The project was
22 going to be one of the biggest high-rises in the downtown area. Iliescu himself was to receive
23 the choicest 3,750 sq. ft. penthouse built to his specifications.

24 **THE PURCHASE AGREEMENT:**

25 Iliescu through his broker, Dick Johnson, was first contacted about the project in July
26 of 2005 by Sam Caniglia of Consolidated Pacific Development Inc. (the "developer"). (**Ex. 1**, at
27 ¶ 13; see also Mr. Caniglia's proposal, attached as **Exhibit 4**.) A deal was struck and Dick
28 Johnson prepared from his form bank a contract titled Land Purchase Agreement. (**Ex. 1**, at ¶¶

1 14 through 16; see also Land Purchase Agreement and Addendum No. 1, attached as **Exhibit**
2 **5.**) The contract provided that the developers would buy the property from Iliescu for \$7.5
3 million with a \$500,000 non-refundable cash deposit, as well as, deliver to Iliescu a 3,750 sq.
4 ft. penthouse with four parking spaces upon completion. (*Id.*) The sale was contingent
5 however, upon the developers obtaining the necessary entitlements for the property from the
6 City of Reno. (*Id.*, at p. 14.) The contract provided that if the entitlements were not obtained
7 within 270 days, additional time may be requested at a cost of \$50,000 per 30 day extension,
8 otherwise the developer would forfeit its \$500,000 deposit. (*Id.*)

9 Upon executing the Purchase Agreement, the parties realized that the form contract
10 prepared by Dick Johnson was inadequate for the magnitude of this deal. The parties agreed
11 that legal counsel should be hired to "fine tune" the agreement and better reflect the parties'
12 intentions. (**Ex. 1**, at ¶ 16; see also Addendum No. 2 attached as **Exhibit 6.**) Dick Johnson then
13 brought the Purchase Agreement to Karen Dennison of the Hale Lane law firm.

14 Ms. Dennison prepared Addendum No. 3, which sought to clarify the agreement in
15 several respects. (**Ex. 1**, at ¶¶ 18 through 19; see also Addendum No. 3, attached as **Exhibit 7.**)
16 Of particular importance for purposes of this motion, Addendum No. 3 explained that
17 obtaining the necessary entitlements was a "condition precedent." (**Ex. 7**, at no. 7.) It also
18 mandated that the developer "use its best efforts and reasonable diligence to satisfy all
19 Conditions Precedent." (*Id.*) The Addendum also memorialized Iliescu's interest in completing
20 the sale because of his ability to select the penthouse property of his choice with a value of
21 \$2.2 million. (*Id.*, at no. 8.) Addendum No. 3, which was executed by the parties on October 8,
22 2005, therefore expressly imposed upon the developer the obligation to improve Iliescu's
23 property, and identified Iliescu's personal interest in acquiring the entitlements.

24 **THE ENTITLEMENTS AND IMPROVEMENTS:**

25 Once the Purchase Agreement was signed, Sam Caniglia, on behalf of the developer,
26 sought out an architect to help obtain the entitlements. (**Ex. 1**, at ¶ 21.) Plaintiff Mark
27 Steppan and his firm, Fisher Friedman, were retained by Caniglia to design the project,
28 prepare the architectural drawings, and present the plans to the City Council. (*Id.*) Steppan,

1 along with the engineering firm of Wood Rogers, then submitted an application to the City
2 Council. Iliescu signed a conflict waiver so that Hale Lane could assist the developer in
3 obtaining the entitlements. (Ex. 1, at ¶ 20; see also Conflict Waiver, attached as Exhibit 8.)
4 Iliescu also directly participated in the application process by submitting an affidavit to the
5 City authorizing the developer to submit the application on his behalf. (Ex. 1, at ¶ 23; see also
6 Owner Affidavits, attached as Exhibit 9.)

7 The approval process included several presentations before the City Council, as well as
8 public comment from dissenting neighbors and other members of the community, all of which
9 Iliescu attended. Approximately a year later, the parties were ultimately successful in
10 obtaining the entitlements and getting the project approved. (Ex. 1, at ¶ 25; see also Letter of
11 Approval, attached as Exhibit 10.)

12 The entitlements included: "(1) a tentative map for a 499 unit residential condominium
13 complex; (2) special use permits to allow: (a) hillside development, (b) cuts of 20 feet or more,
14 (c) modification to the building envelope for a building within the South Esplanade Frontage,
15 and (d) 100 or more condominium units; and (3) a variance to allow the buildings to cast a
16 shadow on a public park between the hours of 10 a.m. and 2 p.m. on December 21st," as well
17 as, zoning approvals for 19,817 sq. ft. of retail space and 20,603 sq. ft. of office space on the
18 riverfront properties. (Ex. 10.) These entitlements are appurtenant to the land and
19 substantially increased the marketability of Iliescu's property.

20 About 16 months into it, the developers defaulted because they were unable to obtain
21 the necessary financing to conclude the sale. By this time, the entitlements had already been
22 obtained. An eight month extension had also been granted by Iliescu, at a cost of \$376,000 to
23 the developer. (Ex. 1, at ¶ 29; see also Addendum No. 4, attached as Exhibit 11.)

24 **STEPPAN'S MECHANICS LIEN ON ILIESCU'S PROPERTY:**

25 Pursuant to the agreement for architectural services, Mark Steppan and his firm were
26 to be paid on a percentage fee basis of the total construction costs. The project was
27 estimated to cost approximately \$180 million. Steppan and his firm were to receive a fee
28 equaling 5.75% (\$10.35 million) of the completion cost. The architectural agreement was

1 broken down into five phases and each phase was allotted a percentage relative to the whole
2 as follows: Schematic Design (20%); Design Development (22%); Construction Drawings (40%);
3 Bid Negotiation (1%); and Construction Administration (17%). No more than the Schematic
4 Design (20%) portion was ever completed.

5 On November 7, 2006, around the same time the entitlements were obtained,
6 Steppan, on behalf of his firm, asserted a \$1.8 million mechanics lien against Iliescu's
7 property. (Ex. 1, at ¶ 24; see also Mechanics Lien, attached as Exhibit 12.) According to
8 Steppan, the lien amount is calculated as follows: \$180 million (total construction costs) x
9 5.75% (percentage fee) x 20% (percent of project complete) + \$141,418 (expenses and
10 interest) - \$430,870 (amount already paid) = approximately \$1.8 million.

11 **EVENTS AFTER STEPPAN'S LIEN WAS RECORDED:**

12 After the lien had been recorded, Craig Howard, from the Hale Lane law firm was
13 approached by both the developer and Iliescu. (Ex. 1, at ¶ 30.) He was asked to help resolve
14 the lien issue. (*Id.*) The parties executed a second Conflict Waiver. (*Id.*, at ¶ 32; see also
15 Second Conflict Waiver, attached as Exhibit 13.¹) Howard then brokered an Indemnity
16 Agreement between the parties, whereby the developer and its principals, including co-third
17 party defendant, Schleining, would indemnify Iliescu for any harm as a result of the lien. (Ex.
18 1, at ¶ 31; see also Indemnity Agreement, attached as Exhibit 14.) In addition to complete
19 indemnification, the agreement also provided that the developer would attempt to discharge
20 the lien on Iliescu's behalf at no expense to Iliescu. (Ex. 14, at p. 2.)

21 Howard and Jerry Snyder of Hale Lane then filed an application on Iliescu's behalf for
22 the release of Steppan's lien. (Ex. 1, at ¶ 34.) Steppan, in turn, filed a complaint against Iliescu
23 to foreclose the lien. The two actions were consolidated by this court into the present case.
24 Iliescu has asserted a third party complaint asserting legal malpractice claims against the Hale
25 Lane firm and its attorneys, Karen Dennison, Craig Howard, and Jerry Snyder, as well as,
26 indemnity and breach of contract claims against the developer and its principals, Calvin Baty

27
28 ¹ Although the attached Conflict Waiver does not contain Iliescu's signature, Iliescu
acknowledged in ¶ 32 of his Verified Complaint that he executed the Conflict Waiver.

1 and John Schleining. (See Ex. 1.)

2 **III. ARGUMENT**

3 **A. STANDARD FOR GRANTING SUMMARY JUDGMENT**

4 Summary judgment is appropriate when the pleadings, written discovery, depositions,
5 and affidavits, if any, demonstrate that no genuine issue of material fact remains for trial.
6 NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026 (2005). If the
7 nonmoving party bears the burden of persuasion at trial, the moving party has the burden of
8 producing evidence that negates an essential element of the nonmoving party's claim, or
9 pointing out that there is an absence of evidence to support the nonmoving party's case.
10 *Cuzze v. University and Community College System of Nevada*, 123 Nev. 598, 602-03, 172 P.3d
11 131 (2007). Once the moving party meets its burden, the nonmoving party must set forth
12 facts demonstrating the existence of a genuine issue of material fact. In order to defeat
13 summary judgment, "the nonmoving party must transcend the pleadings and, by affidavit or
14 other admissible evidence, introduce specific facts that show a genuine issue of material fact."
15 *Cuzze*, 123 Nev. at 602-03 (citations omitted).

16 A genuine issue of material fact is one where the evidence is such that a reasonable
17 jury could return a verdict for the nonmoving party. *Riley v. OPP IX, L.P.*, 112 Nev. 826, 831,
18 919 P.2d 1071 (1996). Although the pleadings and proof must be construed in the light most
19 favorable to the non-moving party, the non-moving party is required to "do more than simply
20 show that there is some metaphysical doubt" as to the operative facts to avoid summary
21 judgment. *Wood*, 121 Nev. at 732, citing *Matsushita Elect. Indus. Co. v. Zenith Radio*, 475 U.S.
22 574, 586 (1986). Summary judgment must be entered against the non-moving party unless
23 that party sets forth specific facts demonstrating a genuine issue for trial. *Wood*, 121 Nev. at
24 732.

25 While claims for negligence are generally not decided on summary judgment, a court
26 may properly grant summary judgment if any of the essential elements of a claim are missing.
27 See, e.g., *Kusmirek v. MGM Grand Hotel, Inc.*, 73 F.Supp.2d 1222 (D. Nev. 1999) (summary
28 judgment granted where plaintiff failed to satisfy elements of duty and proximate cause). In

1 order to establish entitlement to judgment as a matter of law, a moving defendant must show
2 that one of the elements of the plaintiff's prima facie case is "clearly lacking as a matter of
3 law." *Scialabba v. Brandise Construction Co.*, 112 Nev. 965, 968, 921 P.2d 928 (1996).

4 In this case, Iliescu cannot prove the essential elements of his prima facie case and,
5 therefore, summary judgment is appropriate.

6 **B. SUMMARY JUDGMENT SHOULD BE GRANTED ON ILIESCU'S CLAIM THAT HALE LANE FAILED TO**
7 **RECORD A NOTICE OF NONRESPONSIBILITY BECAUSE THE ELEMENTS OF CAUSATION AND**
8 **DAMAGE ARE LACKING AS A MATTER OF LAW**

9 Iliescu's third party complaint asserts two claims for relief against Hale Lane: (1)
10 Professional Malpractice; and (2) Negligence.² (Ex. 1, at ¶¶ 55 through 61.) In order for Iliescu
11 to prevail at trial, he must establish: (1) the existence of an attorney/client relationship which
12 created a duty of care; (2) a breach of that duty; (3) that Hale Lane's negligence is the
13 proximate cause of his damages; and, (5) the existence of actual loss or damage resulting from
14 the negligence. *Mainor v. Nault*, 120 Nev. 750, 101 P.3d 308 (2004). In this case, causation
15 and damages are lacking.

16 Iliescu's claims against Hale Lane are rooted in the misguided notion that Hale Lane
17 could have protected Iliescu from Steppan's lien by advising Iliescu to record a Notice of
18 Nonresponsibility pursuant to NRS 108.234. According to Iliescu, Hale Lane's failure to record
19 a Notice of Nonresponsibility damaged him in two ways. (Ex. 1, at ¶¶ 59 through 61.) First, he
20 might be liable for the amount of the lien. (*Id.*) And second, he has had to incur attorney's
21 fees in defending against Steppan's claims, and in prosecuting his third party claims against
22 Hale Lane. (*Id.*)

23 As will be demonstrated below, Iliescu's claims fail as a matter of law because, as an
24 "interested owner," Iliescu is not entitled to avoid the costs of valuable improvements to his
25 property by filing a Notice of Nonresponsibility. The failure to file such a notice could not
26 therefore, legally have caused Iliescu's alleged damages. Because the essential elements of

27
28 ² Both of Iliescu's claims are based on the same allegations and require the same legal analysis.

1 causation and damages are clearly lacking as a matter of law, Hale Lane submits that summary
2 judgment should be entered against Iliescu. *See, Kusmirek*, 73 F.Supp.2d at 1226-1227; and
3 *Scialabba*, 112 Nev. at 968.

4 **1. Causation is lacking as a matter of law**

5 According to the third party complaint, the underlying injury Iliescu sustained is the
6 attachment of Steppan's mechanics lien against his property. (Ex. 1, at ¶¶ 59 through 60.)
7 This lien, according to Iliescu, should never have attached to his property had Hale Lane
8 recorded a Notice of Nonresponsibility pursuant to NRS 108.234. (*Id.*) This allegation fails as a
9 matter of law.

10 Pursuant to NRS 108.234(2), a "disinterested owner" can avoid a lien from being
11 asserted against his property if he records a Notice of Nonresponsibility within three days of
12 first learning that improvements are being made to his property. A "disinterested owner"
13 means an owner who: (a) Does not record a notice of waiver as provided in NRS 108.2405;
14 and (b) Does not personally or through an agent or representative, directly or indirectly,
15 contract for or cause a work of improvement, or any portion thereof, to be constructed,
16 altered or repaired upon the property or an improvement of the owner." NRS 108.234(7)
17 [emphasis added].

18 NRS 108.234 was meant to protect "disinterested owners" who played no part
19 whatsoever in causing improvements to his property. By the plain language of the statute, if
20 an owner directly or indirectly caused the improvements, he is not "disinterested" and cannot
21 claim the protection of NRS 108.234.

22 In this case, Iliescu was not a "disinterested owner" and, therefore, the protections of
23 NRS 108.234 do not apply to him. As a general rule, when a contract for the purchase or lease
24 of real property expressly requires improvements by the vendee/lessee, or where the
25 improvements are the gist of the contract, the landowner's interest is subject to lien.
26 *Campbell & Summerhays, Inc. v. Greene*, 381 S.W.2d 531, 532 (Ky. App. 1964); *Tremont Co. v.*
27 *H.A. Paasche*, 81 So.2d 489, 491-92 (Fla. 1955); *Mills v. Union Title Co.*, 419 P.2d 81, 84-85
28 (Ariz. 1966). The landowner cannot escape the lien merely by recording a notice of

1 nonresponsibility. *See, Howard S. Wright Construction Co. v. Superior Court*, 106 Cal.App.4th
2 314, 321 (Cal. App. 2003) (lease compelled improvements to warehouse); *Los Banos Gravel*
3 *Co. v. Freeman*, 58 Cal.App.3d 785, 793 (Cal.App. 1976) (lease compelled construction of
4 service station and restaurant); *Ott Hardware Co. v. Yost*, 69 Cal.App.2d 593, 601-602 (1945)
5 (lease required renovations to a movie theater); *Mills*, 419 P.2d at 84-85 (this same rule
6 applies with equal force to situations involving purchase contracts); *see also Verdi Lumber Co.*
7 *v. Bartlett*, 40 Nev. 317, 161 P. 933, 934-35 (1916).

8 The rationale behind the rule is that where a contract between a vendor and vendee
9 obligates the vendee to make improvements to the property, the vendee becomes the agent
10 of the vendor "by implication of law." *See e.g., Howard*, 106 Cal.App.4th at 325. "The true
11 basis for holding the owner liable is that the improvement is for his benefit." *Greene*, 381
12 S.W.2d at 532. "That being so, he should not be relieved of subjection to a lien merely
13 because he informs [the contractor] that he does not intend to be liable." *Id.*

14 In this case, the developers were obligated to obtain the entitlements as a condition to
15 the effectiveness of the Purchase Agreement. *See, Ott Hardware*, 69 Cal.App.2d at 601. By
16 the very language of the Purchase Agreement and addenda thereto, the sale of the property
17 was contingent upon obtaining the necessary entitlements, and the developer was expressly
18 required to "use its best efforts and reasonable diligence" to obtain the entitlements. (Ex. 7,
19 at No. 7.) The terms of the Purchase Agreement leave no doubt as to the developer's
20 obligation to pursue obtaining the entitlements. *See, Ott Hardware*, 69 Cal.App.2d at 601
21 (when the court is called upon to construe the contract, addenda, and other undisputed
22 writings as to their legal effect, the question becomes one of law and not a question of fact for
23 the jury). The developer's obligations were therefore not optional, but rather expressly
24 required, as well as the very essence of the contract. *See, Tremont Co.*, 81 So.2d at 491.
25 Iliescu furthermore directly participated in the application process when he expressly
26 authorized the developers to obtain the entitlements on his behalf. (Ex. 9).

27 Iliescu also had a real and substantial interest in the completion of the sale which
28 required the entitlements to be obtained. He stood to benefit significantly from the project's

1 completion. As part of the consideration for the sale of the property, Iliescu was to receive a
2 3,750 sq. ft. penthouse with four parking spaces, valued at approximately \$2.2 million. (Ex. 7,
3 at No. 8.) He stood to gain approximately \$10 million dollars if the project was completed
4 (\$7.5 million cash from the sale and a \$2.2 million penthouse). (Exs. 5 and 7.) By definition,
5 Iliescu was not "disinterested."

6 Even though the project was never completed and Iliescu did not receive his
7 penthouse overlooking the river and all of Reno, his land and his checkbook were nonetheless
8 improved by the entitlements Steppan obtained. Before the transaction, the property did not
9 have a tentative map for a residential condominium subdivision, nor did it have the special
10 use permits and variances. After the transaction, it did. (Ex. 10.) These improvements
11 presumably increased the worth and marketability of Iliescu's property. Iliescu also received
12 \$500,000 in cash from the non-refundable deposit, as well as, \$376,000 in cash through the
13 extensions he granted while the entitlements were getting approved by the city. (Exs. 5, 7,
14 and 11.) NRS 108.234 therefore would have afforded Iliescu no protection from Steppan's
15 lien.

16 Because a Notice of Nonresponsibility would have been ineffective to insulate Iliescu
17 from the lien at issue, the failure to record such a notice cannot, as a matter of law, be the
18 actual or proximate cause of any injury to Iliescu. The essential element of causation is
19 therefore lacking as a matter of law and summary judgment must be granted in favor of Hale
20 Lane.

21 **2. Damage is lacking as a matter of law**

22 In his third party complaint, Iliescu alleges that he is entitled to compensation from
23 Hale Lane for reimbursement of any amount he must pay to remove Steppan's lien, as well as
24 the attorney's fees he incurred in this action. (Ex. 1, at ¶¶ 60 through 61.) These allegations
25 likewise fail as a matter of law, because Iliescu has suffered no compensable harm as a result
26 of Hale Lane's actions.

27 As discussed above, Iliescu is liable for Steppan's lien not because of the failure to
28 record a Notice of Nonresponsibility, but because Iliescu was an "interested owner" and

1 received a substantial benefit from the services Steppan performed. The property was
2 burdened with the lien by operation of law. The fees he incurred in defending against
3 Steppan's claims were not the result of any wrongdoing by Hale Lane. Rather, they were the
4 result of the Purchase Agreement Ilescu signed, and the obligation he imposed on the
5 developers to obtain the entitlements for his property.

6 Furthermore, any fees he incurred in prosecuting his third party claims are not
7 recoverable under Nevada law. It is well established in Nevada that "in the absence of a rule,
8 statute, or contract authorizing an award of attorney's fees, such fees may not be allowed."
9 *Lubritz v. Circus Circus Hotels*, 101 Nev. 109, 112, 693 P.2d 1261 (1985). Here, Ilescu cannot
10 identify any rule, statute, or contract which authorizes an award of attorney's fees against
11 Hale Lane. Summary judgment must therefore be entered against Ilescu.

12 Nonetheless, as this court is aware, an enforceable agreement was reached at a
13 mandatory settlement conference on March 18, 2010, whereby Steppan agreed to accept
14 \$100,000 in full satisfaction of his lien. Hale Lane and third party defendant, John Schleining,
15 agreed to pay Steppan that amount in equal shares, conditional upon a mutual release of all
16 claims by all parties. Ilescu, despite the agreement to remove the lien, has refused to release
17 Hale Lane and Schleining. Should the attorney's fee claim be dismissed upon this motion, and
18 the lien satisfied per the prior agreement, Ilescu would have suffered no damage whatsoever.

19 **C. SUMMARY JUDGMENT SHOULD BE GRANTED ON ILIESCU'S CLAIMS RELATED TO A CONFLICT OF**
20 **INTEREST BECAUSE ILIESCU EXECUTED TWO VALID CONFLICT WAIVERS**

21 Ilescu's third party complaint contains reference to alleged conflicts of interest by
22 Hale Lane. (*Ex. 1*, at ¶ 59.) The complaint however fails to identify how any conflict of interest
23 caused Ilescu any harm, or what harm he sustained. Although Hale Lane does not anticipate
24 Ilescu will address these allegations in his opposition, any claim related to a conflict of
25 interest fails because Ilescu has suffered no compensable harm therefrom, and he knowingly
26 waived in writing the very conflicts to which he refers.

27 The only two items of damage Ilescu alleges he has sustained are liability for
28 Steppan's lien and the attorney's fees he has incurred as a result of this litigation. (*Id.*, at ¶¶

1 60 through 61.) As discussed above, neither of these liabilities is the result of any wrongdoing
2 by Hale Lane. Nor are these liabilities related to Hale Lane's representation of the developers
3 during the entitlement application process or in attempting to remove Steppan's lien.
4 Instead, Iliescu is liable for these amounts as a result of his own actions.

5 Furthermore, Iliescu's knowing waiver of any conflict related to Hale Lane's
6 representation of the developers acts as a complete bar to his claims. Pursuant to NRPC
7 1.7(b), a client may validly waive a conflict of interest by giving informed consent, confirmed
8 in writing. Here, Iliescu executed two written conflict waivers: the first on December 15,
9 2005, and the second on December 26, 2006. (See Ex. 1, at ¶¶ 20 and 32; see also Exs. 8 and
10 13.) Iliescu has thus waived any claim he may have related to Hale Lane's representation of
11 the developers. NRPC 1.7(b). Even if Hale Lane was deemed to violate a rule of professional
12 conduct, such violation, without more, cannot serve as a basis for civil liability. *Mainor v.*
13 *Nault*, 120 Nev. 750, 769, 101 P.3d 308 (2004) ("a violation of a rule of professional conduct
14 alone could not serve as a basis for civil liability.").

15 Summary judgment must therefore also be granted against Iliescu on these claims.

16 **IV. CONCLUSION**

17 For the foregoing reasons, third party defendant Hale Lane respectfully requests that
18 summary judgment be entered dismissing all of Iliescu's third party claims against Hale Lane.

19 **The undersigned does hereby affirm that the preceding document does not contain**
20 **the social security number of any person.**

21 DATED: March 30, 2011.

22 Lemons, Grundy & Eisenberg
23 6005 Plumas Street, Third Floor
24 Reno, Nevada 89519
25 (775) 786-6868

26 By: 

27 David R. Grundy, Esq.
28 Christopher Rusby, Esq.
Attorneys for Third Party Defendant
Hale Lane Peek Dennison and Howard

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
SUITE 300
RENO, NV 89519
(775) 786-6868

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg
3 and that on March 30, 2011, I deposited for mailing in the United States Mail, postage
4 prepaid, a true and correct copy of the within **THIRD PARTY DEFENDANT HALE LANE'S**
5 **MOTION FOR SUMMARY JUDGMENT REGARDING THIRD-PARTY CLAIMS BY JOHN ILIESCU**,
6 addressed to the following:

7
8 John Iliescu, Jr.
9 Sonia Iliescu
10 200 Court Street
11 Reno, Nevada 89501
(Individually and as trustees of the
JOHN ILIESCU, JR. AND SONIA ILIESCU
1992 FAMILY TRUST AGREEMENT)

12 Gayle Kern, Esq.
13 5421 Kietzke Lane, Suite 200
Reno, Nevada 89511

14 Gregory Wilson, Esq.
15 417 West Plumb Lane
Reno, Nevada 89509

16
17 Ronnie Mann
18
19
20
21
22
23
24
25
26
27

INDEX OF EXHIBITS

<u>Exhibit No.:</u>	<u>Description of Exhibit:</u>	<u>No. of Pages:</u>
1.	Third Party Complaint	17
2.	Parcel Map	1
3.	Digital Drawing of Project	1
4.	Sam Canigli Proposal	2
5.	Land Purchase Agreement and Addendum No. 1	51
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14.	Indemnity Agreement	2

1 **2200**

2 David R. Grundy, Esq., NSB #864
3 Christopher Rusby, Esq., NSB #11452
4 Lemons, Grundy & Eisenberg
5 6005 Plumas Street, Third Floor
6 Reno, Nevada 89519
7 (775) 786-6868

8 Attorneys for Third Party Defendant

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF WASHOE**

11 MARK B. STEPPAN,

12 Plaintiff,

13 vs.

14 JOHN ILIESCU JR. and SONNIA ILIESCU, as
15 Trustees of the JOHN ILIESCU, JR. AND
16 SONNIA ILIESCU 1992 FAMILY TRUST
17 AGREEMENT; JOHN ILIESCU, individually;
18 DOES I-V, inclusive; and ROE CORPORATIONS
19 VI-X, inclusive,

20 Defendants.

21 AND RELATED CLAIMS

CONSOLIDATED

Case No. CV07-00341

Dept. No.: B6

THIRD PARTY DEFENDANT HALE LANE'S
MOTION FOR SUMMARY JUDGMENT
REGARDING THIRD-PARTY CLAIMS BY
JOHN ILIESCU

22 Third Party Defendant, HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL
23 CORPORATION, KAREN D. DENNISON, R. CRAIG HOWARD, and JERRY M. SNYDER (collectively,
24 "Hale Lane"), by and through their undersigned attorneys, Lemons, Grundy & Eisenberg,
25 hereby move the court for summary judgment on the third party claims asserted against them
26 by JOHN ILIESCU, JR. and SONNIA ILIESCU, individually and as trustees of the ILIESCU 1992
27 FAMILY TRUST (collectively, "Iliescu"). This motion is based on the following Memorandum of
28 Points and Authorities, the attached exhibits, and upon such other matters as the court may
consider.

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
SUITE 300
RENO, NV 89519
(775) 786-6868

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case involves a condominium development gone bad. The landowner, Dr. John
4 Iliescu Jr., had a mechanic's lien asserted against his property related to architectural services
5 he indirectly caused to be incurred. Even though Iliescu significantly benefited from the work
6 performed by the architect, both by improvements to his property and his wallet, he is
7 unwilling to accept any responsibility for the lien or the attorney's fees he has incurred in
8 defending against the architect's lien.

9 An action was brought by the architect to foreclose upon the lien. Iliescu in turn filed
10 third party complaints against the developer, a guarantor, and Hale Lane. As his third party
11 complaint relates to claims against his attorneys, the claims are clearly without merit.
12 Therefore, this motion for summary judgment seeks dismissal of all Iliescu's claims against his
13 attorneys, Hale Lane.

14 **II. STATEMENT OF UNDISPUTED FACTS**

15 **THE WINGFIELD TOWERS PROJECT:**

16 Iliescu owns several large and valuable properties in downtown Reno. (See Iliescu's
17 Third Party Complaint at ¶ 12, attached as **Exhibit 1**.) In August of 2005, Iliescu entered into
18 an agreement to sell one of his prime downtown properties to a group of developers for a
19 high-rise condominium project. (See Parcel Map, attached as **Exhibit 2**). The project was to be
20 called the Wingfield Towers, and was located immediately adjacent to the Truckee River and
21 Wingfield Park. Attached as **Exhibit 3** is a digital drawing of the project. The project was
22 going to be one of the biggest high-rises in the downtown area. Iliescu himself was to receive
23 the choicest 3,750 sq. ft. penthouse built to his specifications.

24 **THE PURCHASE AGREEMENT:**

25 Iliescu through his broker, Dick Johnson, was first contacted about the project in July
26 of 2005 by Sam Caniglia of Consolidated Pacific Development Inc. (the "developer"). (**Ex. 1**, at
27 ¶ 13; see also Mr. Canigli's proposal, attached as **Exhibit 4**.) A deal was struck and Dick
28 Johnson prepared from his form bank a contract titled Land Purchase Agreement. (**Ex. 1**, at ¶¶

1 14 through 16; see also Land Purchase Agreement and Addendum No. 1, attached as **Exhibit**
2 **5.**) The contract provided that the developers would buy the property from Iliescu for \$7.5
3 million with a \$500,000 non-refundable cash deposit, as well as, deliver to Iliescu a 3,750 sq.
4 ft. penthouse with four parking spaces upon completion. (*Id.*) The sale was contingent
5 however, upon the developers obtaining the necessary entitlements for the property from the
6 City of Reno. (*Id.*, at p. 14.) The contract provided that if the entitlements were not obtained
7 within 270 days, additional time may be requested at a cost of \$50,000 per 30 day extension,
8 otherwise the developer would forfeit its \$500,000 deposit. (*Id.*)

9 Upon executing the Purchase Agreement, the parties realized that the form contract
10 prepared by Dick Johnson was inadequate for the magnitude of this deal. The parties agreed
11 that legal counsel should be hired to "fine tune" the agreement and better reflect the parties'
12 intentions. (**Ex. 1**, at ¶ 16; see also Addendum No. 2 attached as **Exhibit 6.**) Dick Johnson then
13 brought the Purchase Agreement to Karen Dennison of the Hale Lane law firm.

14 Ms. Dennison prepared Addendum No. 3, which sought to clarify the agreement in
15 several respects. (**Ex. 1**, at ¶¶ 18 through 19; see also Addendum No. 3, attached as **Exhibit 7.**)
16 Of particular importance for purposes of this motion, Addendum No. 3 explained that
17 obtaining the necessary entitlements was a "condition precedent." (**Ex. 7**, at no. 7.) It also
18 mandated that the developer "use its best efforts and reasonable diligence to satisfy all
19 Conditions Precedent." (*Id.*) The Addendum also memorialized Iliescu's interest in completing
20 the sale because of his ability to select the penthouse property of his choice with a value of
21 \$2.2 million. (*Id.*, at no. 8.) Addendum No. 3, which was executed by the parties on October 8,
22 2005, therefore expressly imposed upon the developer the obligation to improve Iliescu's
23 property, and identified Iliescu's personal interest in acquiring the entitlements.

24 **THE ENTITLEMENTS AND IMPROVEMENTS:**

25 Once the Purchase Agreement was signed, Sam Caniglia, on behalf of the developer,
26 sought out an architect to help obtain the entitlements. (**Ex. 1**, at ¶ 21.) Plaintiff Mark
27 Steppan and his firm, Fisher Friedman, were retained by Caniglia to design the project,
28 prepare the architectural drawings, and present the plans to the City Council. (*Id.*) Steppan,

1 along with the engineering firm of Wood Rogers, then submitted an application to the City
2 Council. Iliescu signed a conflict waiver so that Hale Lane could assist the developer in
3 obtaining the entitlements. (Ex. 1, at ¶ 20; see also Conflict Waiver, attached as Exhibit 8.)
4 Iliescu also directly participated in the application process by submitting an affidavit to the
5 City authorizing the developer to submit the application on his behalf. (Ex. 1, at ¶ 23; see also
6 Owner Affidavits, attached as Exhibit 9.)

7 The approval process included several presentations before the City Council, as well as
8 public comment from dissenting neighbors and other members of the community, all of which
9 Iliescu attended. Approximately a year later, the parties were ultimately successful in
10 obtaining the entitlements and getting the project approved. (Ex. 1, at ¶ 25; see also Letter of
11 Approval, attached as Exhibit 10.)

12 The entitlements included: "(1) a tentative map for a 499 unit residential condominium
13 complex; (2) special use permits to allow: (a) hillside development, (b) cuts of 20 feet or more,
14 (c) modification to the building envelope for a building within the South Esplanade Frontage,
15 and (d) 100 or more condominium units; and (3) a variance to allow the buildings to cast a
16 shadow on a public park between the hours of 10 a.m. and 2 p.m. on December 21st," as well
17 as, zoning approvals for 19,817 sq. ft. of retail space and 20,603 sq. ft. of office space on the
18 riverfront properties. (Ex. 10.) These entitlements are appurtenant to the land and
19 substantially increased the marketability of Iliescu's property.

20 About 16 months into it, the developers defaulted because they were unable to obtain
21 the necessary financing to conclude the sale. By this time, the entitlements had already been
22 obtained. An eight month extension had also been granted by Iliescu, at a cost of \$376,000 to
23 the developer. (Ex. 1, at ¶ 29; see also Addendum No. 4, attached as Exhibit 11.)

24 **STEPPAN'S MECHANICS LIEN ON ILIESCU'S PROPERTY:**

25 Pursuant to the agreement for architectural services, Mark Stepan and his firm were
26 to be paid on a percentage fee basis of the total construction costs. The project was
27 estimated to cost approximately \$180 million. Stepan and his firm were to receive a fee
28 equaling 5.75% (\$10.35 million) of the completion cost. The architectural agreement was

1 broken down into five phases and each phase was allotted a percentage relative to the whole
2 as follows: Schematic Design (20%); Design Development (22%); Construction Drawings (40%);
3 Bid Negotiation (1%); and Construction Administration (17%). No more than the Schematic
4 Design (20%) portion was ever completed.

5 On November 7, 2006, around the same time the entitlements were obtained,
6 Steppan, on behalf of his firm, asserted a \$1.8 million mechanics lien against Iliescu's
7 property. (Ex. 1, at ¶ 24; see also Mechanics Lien, attached as Exhibit 12.) According to
8 Steppan, the lien amount is calculated as follows: \$180 million (total construction costs) x
9 5.75% (percentage fee) x 20% (percent of project complete) + \$141,418 (expenses and
10 interest) - \$430,870 (amount already paid) = approximately \$1.8 million.

11 **EVENTS AFTER STEPPAN'S LIEN WAS RECORDED:**

12 After the lien had been recorded, Craig Howard, from the Hale Lane law firm was
13 approached by both the developer and Iliescu. (Ex. 1, at ¶ 30.) He was asked to help resolve
14 the lien issue. (*Id.*) The parties executed a second Conflict Waiver. (*Id.*, at ¶ 32; see also
15 Second Conflict Waiver, attached as Exhibit 13.¹) Howard then brokered an Indemnity
16 Agreement between the parties, whereby the developer and its principals, including co-third
17 party defendant, Schleining, would indemnify Iliescu for any harm as a result of the lien. (Ex.
18 1, at ¶ 31; see also Indemnity Agreement, attached as Exhibit 14.) In addition to complete
19 indemnification, the agreement also provided that the developer would attempt to discharge
20 the lien on Iliescu's behalf at no expense to Iliescu. (Ex. 14, at p. 2.)

21 Howard and Jerry Snyder of Hale Lane then filed an application on Iliescu's behalf for
22 the release of Steppan's lien. (Ex. 1, at ¶ 34.) Steppan, in turn, filed a complaint against Iliescu
23 to foreclose the lien. The two actions were consolidated by this court into the present case.
24 Iliescu has asserted a third party complaint asserting legal malpractice claims against the Hale
25 Lane firm and its attorneys, Karen Dennison, Craig Howard, and Jerry Snyder, as well as,
26 indemnity and breach of contract claims against the developer and its principals, Calvin Baty

27
28 ¹ Although the attached Conflict Waiver does not contain Iliescu's signature, Iliescu
acknowledged in ¶ 32 of his Verified Complaint that he executed the Conflict Waiver.

1 and John Schleining. (See Ex. 1.)

2 **III. ARGUMENT**

3 **A. STANDARD FOR GRANTING SUMMARY JUDGMENT**

4 Summary judgment is appropriate when the pleadings, written discovery, depositions,
5 and affidavits, if any, demonstrate that no genuine issue of material fact remains for trial.
6 NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026 (2005). If the
7 nonmoving party bears the burden of persuasion at trial, the moving party has the burden of
8 producing evidence that negates an essential element of the nonmoving party's claim, or
9 pointing out that there is an absence of evidence to support the nonmoving party's case.
10 *Cuzze v. University and Community College System of Nevada*, 123 Nev. 598, 602-03, 172 P.3d
11 131 (2007). Once the moving party meets its burden, the nonmoving party must set forth
12 facts demonstrating the existence of a genuine issue of material fact. In order to defeat
13 summary judgment, "the nonmoving party must transcend the pleadings and, by affidavit or
14 other admissible evidence, introduce specific facts that show a genuine issue of material fact."
15 *Cuzze*, 123 Nev. at 602-03 (citations omitted).

16 A genuine issue of material fact is one where the evidence is such that a reasonable
17 jury could return a verdict for the nonmoving party. *Riley v. OPP IX, L.P.*, 112 Nev. 826, 831,
18 919 P.2d 1071 (1996). Although the pleadings and proof must be construed in the light most
19 favorable to the non-moving party, the non-moving party is required to "do more than simply
20 show that there is some metaphysical doubt" as to the operative facts to avoid summary
21 judgment. *Wood*, 121 Nev. at 732, citing *Matsushita Elect. Indus. Co. v. Zenith Radio*, 475 U.S.
22 574, 586 (1986). Summary judgment must be entered against the non-moving party unless
23 that party sets forth specific facts demonstrating a genuine issue for trial. *Wood*, 121 Nev. at
24 732.

25 While claims for negligence are generally not decided on summary judgment, a court
26 may properly grant summary judgment if any of the essential elements of a claim are missing.
27 See, e.g., *Kusmirek v. MGM Grand Hotel, Inc.*, 73 F.Supp.2d 1222 (D. Nev. 1999) (summary
28 judgment granted where plaintiff failed to satisfy elements of duty and proximate cause). In

1 order to establish entitlement to judgment as a matter of law, a moving defendant must show
2 that one of the elements of the plaintiff's prima facie case is "clearly lacking as a matter of
3 law." *Scialabba v. Brandise Construction Co.*, 112 Nev. 965, 968, 921 P.2d 928 (1996).

4 In this case, Iliescu cannot prove the essential elements of his prima facie case and,
5 therefore, summary judgment is appropriate.

6 **B. SUMMARY JUDGMENT SHOULD BE GRANTED ON ILIESCU'S CLAIM THAT HALE LANE FAILED TO**
7 **RECORD A NOTICE OF NONRESPONSIBILITY BECAUSE THE ELEMENTS OF CAUSATION AND**
8 **DAMAGE ARE LACKING AS A MATTER OF LAW**

9 Iliescu's third party complaint asserts two claims for relief against Hale Lane: (1)
10 Professional Malpractice; and (2) Negligence.² (Ex. 1, at ¶¶ 55 through 61.) In order for Iliescu
11 to prevail at trial, he must establish: (1) the existence of an attorney/client relationship which
12 created a duty of care; (2) a breach of that duty; (3) that Hale Lane's negligence is the
13 proximate cause of his damages; and, (5) the existence of actual loss or damage resulting from
14 the negligence. *Mainor v. Nault*, 120 Nev. 750, 101 P.3d 308 (2004). In this case, causation
15 and damages are lacking.

16 Iliescu's claims against Hale Lane are rooted in the misguided notion that Hale Lane
17 could have protected Iliescu from Steppan's lien by advising Iliescu to record a Notice of
18 Nonresponsibility pursuant to NRS 108.234. According to Iliescu, Hale Lane's failure to record
19 a Notice of Nonresponsibility damaged him in two ways. (Ex. 1, at ¶¶ 59 through 61.) First, he
20 might be liable for the amount of the lien. (*Id.*) And second, he has had to incur attorney's
21 fees in defending against Steppan's claims, and in prosecuting his third party claims against
22 Hale Lane. (*Id.*)

23 As will be demonstrated below, Iliescu's claims fail as a matter of law because, as an
24 "interested owner," Iliescu is not entitled to avoid the costs of valuable improvements to his
25 property by filing a Notice of Nonresponsibility. The failure to file such a notice could not
26 therefore, legally have caused Iliescu's alleged damages. Because the essential elements of
27

28 ² Both of Iliescu's claims are based on the same allegations and require the same legal analysis.

1 causation and damages are clearly lacking as a matter of law, Hale Lane submits that summary
2 judgment should be entered against Iliescu. *See, Kusmirek*, 73 F.Supp.2d at 1226-1227; and
3 *Scialabba*, 112 Nev. at 968.

4 **1. Causation is lacking as a matter of law**

5 According to the third party complaint, the underlying injury Iliescu sustained is the
6 attachment of Steppan's mechanics lien against his property. (Ex. 1, at ¶¶ 59 through 60.)
7 This lien, according to Iliescu, should never have attached to his property had Hale Lane
8 recorded a Notice of Nonresponsibility pursuant to NRS 108.234. (*Id.*) This allegation fails as a
9 matter of law.

10 Pursuant to NRS 108.234(2), a "disinterested owner" can avoid a lien from being
11 asserted against his property if he records a Notice of Nonresponsibility within three days of
12 first learning that improvements are being made to his property. A "'disinterested owner'
13 means an owner who: (a) Does not record a notice of waiver as provided in NRS 108.2405;
14 and (b) Does not personally or through an agent or representative, directly or indirectly,
15 contract for or cause a work of improvement, or any portion thereof, to be constructed,
16 altered or repaired upon the property or an improvement of the owner." NRS 108.234(7)
17 [emphasis added].

18 NRS 108.234 was meant to protect "disinterested owners" who played no part
19 whatsoever in causing improvements to his property. By the plain language of the statute, if
20 an owner directly or indirectly caused the improvements, he is not "disinterested" and cannot
21 claim the protection of NRS 108.234.

22 In this case, Iliescu was not a "disinterested owner" and, therefore, the protections of
23 NRS 108.234 do not apply to him. As a general rule, when a contract for the purchase or lease
24 of real property expressly requires improvements by the vendee/lessee, or where the
25 improvements are the gist of the contract, the landowner's interest is subject to lien.
26 *Campbell & Summerhays, Inc. v. Greene*, 381 S.W.2d 531, 532 (Ky. App. 1964); *Tremont Co. v.*
27 *H.A. Paasche*, 81 So.2d 489, 491-92 (Fla. 1955); *Mills v. Union Title Co.*, 419 P.2d 81, 84-85
28 (Ariz. 1966). The landowner cannot escape the lien merely by recording a notice of

1 nonresponsibility. *See, Howard S. Wright Construction Co. v. Superior Court*, 106 Cal.App.4th
2 314, 321 (Cal. App. 2003) (lease compelled improvements to warehouse); *Los Banos Gravel*
3 *Co. v. Freeman*, 58 Cal.App.3d 785, 793 (Cal.App. 1976) (lease compelled construction of
4 service station and restaurant); *Ott Hardware Co. v. Yost*, 69 Cal.App.2d 593, 601-602 (1945)
5 (lease required renovations to a movie theater); *Mills*, 419 P.2d at 84-85 (this same rule
6 applies with equal force to situations involving purchase contracts); *see also Verdi Lumber Co.*
7 *v. Bartlett*, 40 Nev. 317, 161 P. 933, 934-35 (1916).

8 The rationale behind the rule is that where a contract between a vendor and vendee
9 obligates the vendee to make improvements to the property, the vendee becomes the agent
10 of the vendor "by implication of law." *See e.g., Howard*, 106 Cal.App.4th at 325. "The true
11 basis for holding the owner liable is that the improvement is for his benefit." *Greene*, 381
12 S.W.2d at 532. "That being so, he should not be relieved of subjection to a lien merely
13 because he informs [the contractor] that he does not intend to be liable." *Id.*

14 In this case, the developers were obligated to obtain the entitlements as a condition to
15 the effectiveness of the Purchase Agreement. *See, Ott Hardware*, 69 Cal.App.2d at 601. By
16 the very language of the Purchase Agreement and addenda thereto, the sale of the property
17 was contingent upon obtaining the necessary entitlements, and the developer was expressly
18 required to "use its best efforts and reasonable diligence" to obtain the entitlements. (Ex. 7,
19 at No. 7.) The terms of the Purchase Agreement leave no doubt as to the developer's
20 obligation to pursue obtaining the entitlements. *See, Ott Hardware*, 69 Cal.App.2d at 601
21 (when the court is called upon to construe the contract, addenda, and other undisputed
22 writings as to their legal effect, the question becomes one of law and not a question of fact for
23 the jury). The developer's obligations were therefore not optional, but rather expressly
24 required, as well as the very essence of the contract. *See, Tremont Co.*, 81 So.2d at 491.
25 Iliescu furthermore directly participated in the application process when he expressly
26 authorized the developers to obtain the entitlements on his behalf. (Ex. 9).

27 Iliescu also had a real and substantial interest in the completion of the sale which
28 required the entitlements to be obtained. He stood to benefit significantly from the project's

1 completion. As part of the consideration for the sale of the property, Iliescu was to receive a
2 3,750 sq. ft. penthouse with four parking spaces, valued at approximately \$2.2 million. (Ex. 7,
3 at No. 8.) He stood to gain approximately \$10 million dollars if the project was completed
4 (\$7.5 million cash from the sale and a \$2.2 million penthouse). (Exs. 5 and 7.) By definition,
5 Iliescu was not "disinterested."

6 Even though the project was never completed and Iliescu did not receive his
7 penthouse overlooking the river and all of Reno, his land and his checkbook were nonetheless
8 improved by the entitlements Steppan obtained. Before the transaction, the property did not
9 have a tentative map for a residential condominium subdivision, nor did it have the special
10 use permits and variances. After the transaction, it did. (Ex. 10.) These improvements
11 presumably increased the worth and marketability of Iliescu's property. Iliescu also received
12 \$500,000 in cash from the non-refundable deposit, as well as, \$376,000 in cash through the
13 extensions he granted while the entitlements were getting approved by the city. (Exs. 5, 7,
14 and 11.) NRS 108.234 therefore would have afforded Iliescu no protection from Steppan's
15 lien.

16 Because a Notice of Nonresponsibility would have been ineffective to insulate Iliescu
17 from the lien at issue, the failure to record such a notice cannot, as a matter of law, be the
18 actual or proximate cause of any injury to Iliescu. The essential element of causation is
19 therefore lacking as a matter of law and summary judgment must be granted in favor of Hale
20 Lane.

21 **2. Damage is lacking as a matter of law**

22 In his third party complaint, Iliescu alleges that he is entitled to compensation from
23 Hale Lane for reimbursement of any amount he must pay to remove Steppan's lien, as well as
24 the attorney's fees he incurred in this action. (Ex. 1, at ¶¶ 60 through 61.) These allegations
25 likewise fail as a matter of law, because Iliescu has suffered no compensable harm as a result
26 of Hale Lane's actions.

27 As discussed above, Iliescu is liable for Steppan's lien not because of the failure to
28 record a Notice of Nonresponsibility, but because Iliescu was an "interested owner" and

1 received a substantial benefit from the services Steppan performed. The property was
2 burdened with the lien by operation of law. The fees he incurred in defending against
3 Steppan's claims were not the result of any wrongdoing by Hale Lane. Rather, they were the
4 result of the Purchase Agreement Iliescu signed, and the obligation he imposed on the
5 developers to obtain the entitlements for his property.

6 Furthermore, any fees he incurred in prosecuting his third party claims are not
7 recoverable under Nevada law. It is well established in Nevada that "in the absence of a rule,
8 statute, or contract authorizing an award of attorney's fees, such fees may not be allowed."
9 *Lubritz v. Circus Circus Hotels*, 101 Nev. 109, 112, 693 P.2d 1261 (1985). Here, Iliescu cannot
10 identify any rule, statute, or contract which authorizes an award of attorney's fees against
11 Hale Lane. Summary judgment must therefore be entered against Iliescu.

12 Nonetheless, as this court is aware, an enforceable agreement was reached at a
13 mandatory settlement conference on March 18, 2010, whereby Steppan agreed to accept
14 \$100,000 in full satisfaction of his lien. Hale Lane and third party defendant, John Schleining,
15 agreed to pay Steppan that amount in equal shares, conditional upon a mutual release of all
16 claims by all parties. Iliescu, despite the agreement to remove the lien, has refused to release
17 Hale Lane and Schleining. Should the attorney's fee claim be dismissed upon this motion, and
18 the lien satisfied per the prior agreement, Iliescu would have suffered no damage whatsoever.

19 **C. SUMMARY JUDGMENT SHOULD BE GRANTED ON ILIESCU'S CLAIMS RELATED TO A CONFLICT OF**
20 **INTEREST BECAUSE ILIESCU EXECUTED TWO VALID CONFLICT WAIVERS**

21 Iliescu's third party complaint contains reference to alleged conflicts of interest by
22 Hale Lane. (Ex. 1, at ¶ 59.) The complaint however fails to identify how any conflict of interest
23 caused Iliescu any harm, or what harm he sustained. Although Hale Lane does not anticipate
24 Iliescu will address these allegations in his opposition, any claim related to a conflict of
25 interest fails because Iliescu has suffered no compensable harm therefrom, and he knowingly
26 waived in writing the very conflicts to which he refers.

27 The only two items of damage Iliescu alleges he has sustained are liability for
28 Steppan's lien and the attorney's fees he has incurred as a result of this litigation. (*Id.*, at ¶¶

60 through 61.) As discussed above, neither of these liabilities is the result of any wrongdoing by Hale Lane. Nor are these liabilities related to Hale Lane's representation of the developers during the entitlement application process or in attempting to remove Stepan's lien. Instead, Iliescu is liable for these amounts as a result of his own actions.

Furthermore, Iliescu's knowing waiver of any conflict related to Hale Lane's representation of the developers acts as a complete bar to his claims. Pursuant to NRPC 1.7(b), a client may validly waive a conflict of interest by giving informed consent, confirmed in writing. Here, Iliescu executed two written conflict waivers: the first on December 15, 2005, and the second on December 26, 2006. (See **Ex. 1**, at ¶¶ 20 and 32; see also **Exs. 8** and **13**.) Iliescu has thus waived any claim he may have related to Hale Lane's representation of the developers. NRPC 1.7(b). Even if Hale Lane was deemed to violate a rule of professional conduct, such violation, without more, cannot serve as a basis for civil liability. *Mainor v. Nault*, 120 Nev. 750, 769, 101 P.3d 308 (2004) ("a violation of a rule of professional conduct alone could not serve as a basis for civil liability.").

Summary judgment must therefore also be granted against Iliescu on these claims.

IV. CONCLUSION

For the foregoing reasons, third party defendant Hale Lane respectfully requests that summary judgment be entered dismissing all of Iliescu's third party claims against Hale Lane.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: March 30, 2011.

Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
(775) 786-6868

By: 

David R. Grundy, Esq.
Christopher Rusby, Esq.
Attorneys for Third Party Defendant
Hale Lane Peek Dennison and Howard

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg
3 and that on March 30, 2011, I deposited for mailing in the United States Mail, postage
4 prepaid, a true and correct copy of the within **THIRD PARTY DEFENDANT HALE LANE'S**
5 **MOTION FOR SUMMARY JUDGMENT REGARDING THIRD-PARTY CLAIMS BY JOHN ILIESCU,**
6 addressed to the following:

7
8 John Iliescu, Jr.
9 Sonia Iliescu
10 200 Court Street
11 Reno, Nevada 89501
(Individually and as trustees of the
12 JOHN ILIESCU, JR. AND SONIA ILIESCU
13 1992 FAMILY TRUST AGREEMENT)

14 Gayle Kern, Esq.
15 5421 Kietzke Lane, Suite 200
16 Reno, Nevada 89511

17 Gregory Wilson, Esq.
18 417 West Plumb Lane
19 Reno, Nevada 89509
20
21
22
23
24
25
26
27

28 *Ronnie Maun*

INDEX OF EXHIBITS

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1.	Third Party Complaint	17
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EXHIBIT 1

EXHIBIT 1

ORIGINAL

FILED

2007 SEP 27 PM 3:59

RONALD A. LINDEN, JR.

BY

CV07-00341
DC-9903001761-020
JOHN ILIESCU ET AL VS MARK 34 Pages
District Court 09/27/2007 03:59 PM
Washoe County
JBERCHEM
JOC

CODE \$1130
CODE 4180
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Attorneys for John Iliescu, Jr. and Sonnia Iliescu and The
John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

v.

JOHN ILIESCU JR. and SONIA ILIESCU,
as Trustees of the JOHN ILIESCU, JR.
AND SONNIA ILIESCU 1992 FAMILY
TRUST AGREEMENT; JOHN ILIESCU,
individually; DOES I-V, inclusive; and
ROE CORPORATIONS VI-X, inclusive.

Defendants.

JOHN ILIESCU, JR. and SONIA
ILIESCU, as Trustees of the JOHN
ILIESCU, JR. AND SONNIA ILIESCU
1992 FAMILY TRUST AGREEMENT;
JOHN ILIESCU, JR., individually;
SONNIA ILIESCU, individually,

Third-Party Plaintiffs,

v.

CONSOLIDATED PACIFIC
DEVELOPMENT, INC., a Nevada

Case No. ~~CV07-01021~~

Department No. B6

Consolidated with:

Case No. CV07-00341

Department No. B6

1 Corporation; DECAL OREGON, INC., an
2 Oregon Corporation; CALVIN BATY,
3 individually; JOHN SCHLEINING,
4 individually; HALE LANE PEEK
5 DENNISON AND HOWARD
6 PROFESSIONAL CORPORATION, a
7 Nevada professional corporation, dba
8 HALE LANE; KAREN D. DENNISON;
9 R. CRAIG HOWARD; JERRY M.
10 SNYDER; and DOES I thru X,

11 Third-Party Defendants.

12 **ANSWER AND THIRD PARTY COMPLAINT**

13 **ANSWER TO COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND
14 FOR DAMAGES**

15 Defendants John Iliescu, Jr. and Sonnia Iliescu as Trustees of the John Iliescu, Jr. and
16 Sonnia Iliescu 1992 Family Trust Agreement, and John Iliescu individually, by and through their
17 attorneys Prezant & Mollath and Downey Brand LLP, hereby answer the COMPLAINT TO
18 FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES ("Complaint")¹, filed by Plaintiff
19 Mark Steppan, on May 4, 2007, and in support thereof, states as follows:

20 **GENERAL ALLEGATIONS**

- 21 1. Defendants are without knowledge or information sufficient to form a belief as to
22 the truth of the allegations of Paragraph 1 of the Complaint, and they are therefore denied.
23 2. Admitted.
24 3. The allegations of Paragraph 3 are legal conclusions to which no response is
25 required and/or Defendants are without knowledge or information sufficient to form a belief as to
26 the truth of the allegations of Paragraph 3 of the Complaint, and they are therefore denied.
27 4. The allegations of Paragraph 4 are legal conclusions to which no response is
28 required and/or Defendants are without knowledge or information sufficient to form a belief as to
the truth of the allegations of Paragraph 4 of the Complaint, and they are therefore denied.

¹ Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Complaint.

FIRST CLAIM FOR RELIEF
(FORECLOSURE OF MECHANIC'S LIEN)

5. Defendants restate their responses to Paragraphs 1 - 4 above as though fully set forth herein.

6. The allegations of Paragraph 6 are legal conclusions to which no response is required. To the extent a response is required, Defendants admit that they currently hold legal title to the Real Property.

7. Answering paragraph 7, Defendants admit that the referenced Land Purchase Agreement and associated documents contain certain terms that speak for themselves. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in said paragraph relating to characterization of the agreement, and thus, specifically and generally deny said allegations at this time.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint, and they are therefore denied.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint, and they are therefore denied.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint, and they are therefore denied.

11. Denied.

12. Answering paragraph 12, Defendants admit that the referenced documents contain terms that speak for themselves, and may have been recorded or served by Plaintiff. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in said paragraph relating to characterization of the documents and who recorded or served them, and thus, specifically and generally deny said allegations at this time.

13. Denied.

AFFIRMATIVE DEFENSES

(Each of the separate and distinct affirmative defenses hereinafter set forth has a descriptive heading. Such descriptive heading is for convenience only and it is not intended to

1 limit the legal basis upon which any affirmative defense to the allegations of the Complaint is
2 asserted.)

3 **FIRST AFFIRMATIVE DEFENSE**

4 (Failure to State Any Claim For Relief)

5 As an affirmative defense to each and every claim for relief, Defendants are informed and
6 believe and on that basis allege that the claim for relief fails to constitute any claim for relief.

7 **SECOND AFFIRMATIVE DEFENSE**

8 (Lack of Standing)

9 As an affirmative defense to each and every claim for relief, Defendants are informed and
10 believe and on that basis allege that the Plaintiff lacks standing, because he failed to comply with
11 the provisions of NRS 108.221 et seq.

12 **THIRD AFFIRMATIVE DEFENSE**

13 (Statute of Limitations and Statutory Requirements)

14 As an affirmative defense to each and every claim for relief, Defendants are informed and
15 believe and on that basis allege that each and every claim for relief is barred by the statute of
16 limitations in that Plaintiff failed to follow statutory requirements in connection with his
17 mechanic's lien.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 (Laches)

20 As an affirmative defense to each and every claim for relief, Defendants are informed and
21 believes and on that basis allege that each and every claim for relief is barred, in whole or in part,
22 by the equitable doctrine of laches.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 (Privilege)

25 As an affirmative defense to each and every claim for relief, Defendants are informed and
26 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
27 in part, by the doctrines of privilege.

28 **SIXTH AFFIRMATIVE DEFENSE**

(Justification)

As an affirmative defense to each and every claim for relief, Defendants are informed and

1 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
2 in part, by the doctrines of justification.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 (Equity)

5 As an affirmative defense to each and every claim for relief, Defendants are informed and
6 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
7 in part, by principles of equity and fairness.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 (Unclean Hands)

10 As an affirmative defense to each and every claim for relief, Defendants are informed and
11 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
12 in part, by the doctrine of unclean hands.

13 **NINTH AFFIRMATIVE DEFENSE**

14 (Consent)

15 As an affirmative defense to each and every claim for relief, Defendants are informed and
16 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
17 in part, by the doctrine of consent and/or acquiescence.

18 **TENTH AFFIRMATIVE DEFENSE**

19 (Estoppel)

20 As an affirmative defense to each and every claim for relief, Defendants are informed and
21 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
22 in part, by the doctrine of estoppel.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 (Failure to Mitigate)

25 As an affirmative defense to each and every claim for relief, and while denying that
26 Plaintiff has incurred any damages, Defendants are informed and believe and thereon allege that
27 Plaintiff has failed to act reasonably to mitigate, minimize or avoid damages, if any there be. As
28 a result, Plaintiff's recovery, if any, should be barred or reduced.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 (Failure to Join Indispensable Parties)

3 As an affirmative defense to each and every claim for relief, Defendants are informed and
4 believe and on that basis allege that Plaintiff has failed to join indispensable parties.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 (Waiver)

7 As an affirmative defense to each and every claim for relief, Defendants allege that each
8 and every claim for relief thereof is barred, in whole or in part, by waiver.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 (Uncertainty)

11 As an affirmative defense to each and every claim for relief thereof, Defendants allege
12 that each and every claim for relief thereof is barred, in whole or in part, as the allegations of the
13 Complaint are uncertain to include the amount claimed as Plaintiff's lien.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 (Intentional Acts)

16 As an affirmative defense to each and every claim for relief, Defendants are informed and
17 believe and on that basis allege that each and every claim for relief is barred, in whole or in part,
18 by the intentional acts, omissions, commissions and/or intentional conduct of the Plaintiff, and/or
19 his respective agents, representatives, attorneys and employees, if any.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 (Failure To Do Equity)

22 As an affirmative defense to each and every claim for relief, Defendants are informed and
23 believe and on that basis allege that each and every claim for relief is barred, in whole or in part,
24 by reason of the Plaintiff's failure to do equity.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 (Attorneys' Fees and Costs)

27 As an affirmative defense to each and every claim for relief, Defendants are informed and
28 believe and on that basis allege that Plaintiff is not entitled to any attorney fees or costs of suit.

CONCLUDING PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. Plaintiff takes nothing by way of his Complaint;
2. Plaintiff's Complaint be dismissed in its entirety with prejudice;
3. Defendants be awarded his costs of this suit;
4. Defendants be awarded attorneys' fees; and
5. For such other and further relief as the Court deems just and proper.

THIRD PARTY COMPLAINT

Third Party Plaintiffs, by and through counsel, Prezant & Mollath and Downey Brand, LLP, allege:

The Parties

1. Third Party Plaintiffs John Iliescu, Jr. and Sonnia Iliescu (hereinafter referred to as Iliescu or Third Party Plaintiffs) are residents of Washoe County, Nevada, and are the Trustees of the John Iliescu, Jr., and Sonnia Iliescu 1992 Family Trust Agreement.
2. Third Party Plaintiff John Iliescu, Jr. is an individual and a resident of Washoe County, Nevada.
3. Third Party Plaintiff Sonnia Iliescu is an individual and a resident of Washoe County, Nevada.
4. Third Party Defendant Consolidated Pacific Development, Inc. is a Nevada corporation.
5. Third Party Defendant DeCal Oregon, Inc. is an Oregon corporation and the successor, by name, to DeCal Custom Homes and Construction, Inc.
6. Third Party Defendant Indemnitor Calvin Baty is an individual and a resident of Oregon.
7. Third Party Defendant Indemnitor John Schleining is an individual and a resident of Oregon.
8. Third Party Defendant Hale Lane Peek Dennison and Howard, a Nevada professional corporation, dba Hale Lane, are attorneys licensed to practice law in the State of Nevada (hereinafter referred to as the "Hale Lane law firm").

1 9. Third Party Defendants Karen D. Dennison, R. Craig Howard and Jerry M. Snyder
2 are attorneys licensed to practice law in the State of Nevada and are partners and associates of
3 Hale Lane (hereafter referred to individually as "Dennison", "Howard" and "Snyder").

4 10. Third Party Defendants, Does I through X, are persons or entities who participated
5 in the acts alleged herein, or received the proceeds of the acts alleged herein, whose names or
6 identities are not yet known to Third Party Plaintiffs. Third Party Plaintiffs reserve the right to
7 amend this complaint after the identities and nature of their involvement becomes known.

8 11. Third Party Plaintiffs are informed and believe, and based thereon allege, that at all
9 times relevant herein, all Third Party Defendants, including Does I through X (collectively "
10 Third Party Defendants"), were and are the agent, employee and partner of each of the remaining
11 Third Party Defendants, and were, in performing the acts complained of herein, acting within the
12 scope of such agency, employment, or partnership authority.

13 **General Allegations**

14 12. Third Party Plaintiffs are the owners of the real property assigned Washoe County
15 Assessors Parcel Numbers 011-112-03, 011-112-06, 011-112-07, and 011-112-12, also
16 commonly known as 219 Court Street, Reno, Nevada, 0 Court Street, Reno, Nevada and 223
17 Court Street, Reno, Nevada (all collectively, the "Property").

18 13. On or about July 14, 2005, Richard K. Johnson of the Metzker Johnson Group,
19 real estate brokers for Iliescu (hereinafter referred to as Johnson) was contacted by Consolidated
20 Pacific Development, Inc. ("CPD"), and its President Sam Caniglia, with an offer to purchase the
21 Property ("Offer"), for \$7,500,000.00.

22 14. On or about July 21, 2005, Johnson prepared a "Land Purchase Agreement that
23 was subsequently executed by Mr. Caniglia for CPD on July 25, 2005.

24 15. On or about July 29, 2005, the Johnson Defendants prepared a revised "Land
25 Purchase Agreement" ("Purchase Agreement") that was submitted to and executed by Iliescu on
26 August 3, 2005.

27 16. The Purchase Agreement also incorporated an Addendum No. 1 dated August 1,
28 2005, and executed by Iliescu on August 3, 2005, and an Addendum No. 2 dated August 2, 2005,

1 and executed by Iliescu on August 3, 2005. Addendum No. 2 specifically provided, and the
2 parties contemplated, that the Purchase Agreement would be reviewed, "fine tuned" and clarified
3 by legal counsel retained by Iliescu before finalization.

4 17. On or about August 11, 2005, unbeknownst to Iliescu, CPD had unilaterally
5 purported to assign and transfer all of its interests in the Purchase Agreement to an entity known
6 as DeCal Custom Homes and Construction ("DeCal").

7 18. On or before September 22, 2005, pursuant to Addendum No. 3, Iliescu retained
8 the Hale Lane law firm to review, "fine tune", clarify and, in all respects, advise Iliescu relative to
9 the Purchase Agreement.

10 19. An Addendum No. 3 to the Purchase Agreement was thereafter prepared by Karen
11 D. Dennison of the Hale Lane law firm. Addendum No. 3 was executed by Iliescu and CPD on
12 or about October 8, 2005 and provided that, in certain circumstances, CPD could assign its
13 interests in the Purchase Agreement to another entity. The assignment referred to in Paragraph 17
14 above, however, was not addressed, disclosed or contained in Addendum No. 3.

15 20. On or before December 14, 2005, the Hale Lane law firm undertook to represent
16 both Iliescu and Purchasers Calvin Baty and Consolidated Pacific Development, Inc. in relation to
17 obtaining the necessary entitlements on the property as contemplated by the Purchase Agreement.
18 A copy of the December 14, 2005 Waiver of Conflict letter is attached hereto and marked Exhibit
19 "A". A major component of the entitlement was the work and drawings of an architect.

20 21. The Hale Lane law firm never discussed with or advised Iliescu at any time to
21 record a Notice of Non-Responsibility with the Washoe County Recorder to ensure the Property
22 would not be encumbered by mechanics or architect's liens recorded by individuals hired by CPD
23 as contemplated by the Purchase Agreement. On October 31, 2005, unbeknownst to Iliescu, an
24 architect, Mark Steppan, AIA, entered into a contract with BSC Financial, LLC in relation to the
25 property subject to the Purchase Agreement.

26 22. Despite being aware and/or involved in the purported assignment to DeCal and
27 representing the purchaser in connection with the entitlement process, the Hale Lane law firm
28 never advised or discussed with Iliescu the assignment, whether DeCal was an appropriate

1 assignee and purchaser of the Property, whether it had the means and financial viability to close
2 the sale, whether or how the purported assignment to DeCal affected Iliescu's interests under the
3 Purchase Agreement and the existence of BSC Financial, LLC as it may relate to the property and
4 Purchase Agreement and the October 31, 2005 contract with Mark Steppan, AIA..

5 23. Iliescu first became aware of the DeCal assignment on or about October 2, 2006 in
6 connection with a TMWA consent form related to the development application for the property
7 with the City of Reno (Case No. LDC06-00321, Wingfield Towers). The original Owner's
8 Affidavit of Iliescu that accompanied the City of Reno application made reference to only CPD
9 and Sam Caniglia.

10 24. On November 7, 2006, Mark Steppan, AIA recorded a mechanic's lien on the
11 property in the sum of \$1,783,548.00. A copy of said Notice and Claim of Lien is attached hereto
12 and marked Exhibit "B". The Hale Lane law firm never informed Iliescu that there was a dispute
13 with the project architect over non-payment for his services.

14 25. On November 28, 2006, the Wingfield Towers project (Case No. LDC06-00321)
15 was approved by the Reno City Council. The Clerk's Letter of Approval was issued November
16 30, 2006.

17 26. The Mechanic's Lien recorded by Mark Steppan, AIA on November 7, 2006 made
18 reference, at its Paragraph 2, to BSC Financial, LLC, as the entity that employed Mark Steppan,
19 AIA and who furnished the work and services in connection with Iliescu's property. Prior to said
20 date, Iliescu had no knowledge of the existence of or involvement of BSC Financial, LLC relative
21 to the property.

22 27. At some point subsequent to August 10, 2005, without the knowledge and/or
23 consent of Iliescu, Consolidated Pacific Development, Inc. and DeCal Custom Homes &
24 Construction transferred or assigned their interest in the Land Purchase Agreement to BSC
25 Financial, LLC. The Hale Lane law firm never informed Iliescu of any such assignment or even
26 the existence of BSC Financial, LLC.

27 28. As of December 14, 2005, and at all times thereafter, BSC Financial, LLC,
28 Consolidated Pacific Development, Inc., DeCal Custom Homes & Construction, Calvin Baty and

1 John Schleining (all related entities or persons) were represented in connection with the property
2 and project referred to in this litigation by the Hale Lane law firm. At the same time, the Hale
3 Lane law firm represented Iliescu.

4 29. An Addendum No. 4 to the Purchase Agreement was prepared by the Hale Lane
5 law firm on or about September 18, 2006, and executed by Iliescu and CPD on or about
6 September 19, 2006. Again, in said Addendum, there was no disclosure of or reference to DeCal
7 or BSC Financial, LLC.

8 30. The Hale Lane law firm also represented Iliescu in regard to a) the Mechanic's
9 Lien recorded by Mark Steppan, AIA, and b) closing the Land Purchase Agreement. During said
10 time, the Hale Lane law firm did not advise Iliescu of the nature and extent of the problems that
11 existed relative to the transaction, the Purchase Agreements, the Mechanic's Lien filed by Mark
12 Steppan, AIA, the inherent conflicts that now existed between Iliescu, the inter-related Buyers as
13 referred to above, and the complications of the transaction.

14 31. On or about December 8, 2006, as a result of the recordation of the Mechanic's
15 Lien by Mark Steppan, AIA, the Hale Lane law firm and R. Craig Howard prepared an Indemnity
16 Agreement for their clients referred to in Paragraph 28 above. A copy of said Indemnity
17 Agreement is attached hereto and marked Exhibit "C". Said Indemnity Agreement was submitted
18 to Iliescu on December 12, 2006. Again, the Hale Lane law firm did not advise Iliescu of the
19 problems that existed as set forth in the above paragraphs.

20 32. On or about December 26, 2006, the Hale Lane law firm drafted a Conflict of
21 Interest Waiver Agreement and submitted it to Iliescu and BSC Financial, LLC for signature.
22 The Agreement was executed by the parties. A copy of said Agreement is attached hereto and
23 marked Exhibit "D". The Hale Lane law firm never advised Iliescu that the conflict of interest
24 that existed might not be waivable, nor did it advise Iliescu of the problems that now existed as
25 set forth in the above paragraphs.

26 33. Thereafter, the Hale Lane law firm embarked upon a course of advising Iliescu and
27 preparing documents so as to allow the Purchase Agreement to close with BSC Financial, LLC.
28 Such conduct included dealing with the Mechanic's Lien of Mark Steppan, AIA, recommending

1 to and obtaining Iliescu's consent to the assignment of the Land Purchase Agreement to BSC
2 Financial, LLC. Such consent was not in the best legal interests of Iliescu, given the existence of
3 the Mechanic's Lien and other problems as set forth in the above paragraphs.

4 34. On February 14, 2007, Jerry M. Snyder and the Hale Lane law firm, on behalf of
5 Iliescu, filed an Application for Release of the Mark Steppan, AIA Mechanic's Lien in Case No.
6 CV07-00341. Said Application is still pending. On May 4, 2007, Mark Steppan, AIA filed a
7 Complaint to Foreclose Mechanic's Lien and Damages in Case No. CV07-01021.

8 35. BSC Financial, LLC filed for Chapter 11 bankruptcy protection on April 25, 2007.

9 36. The Architect's Lien remains a cloud on Iliescu's title, Steppan has filed suit for
10 foreclosure of the Architect's Lien and seeks judicial foreclosure of his purported Architect's Lien
11 upon Iliescu's real property.

12 **FIRST CLAIM FOR RELIEF**

13 (Declaratory Relief—Against the Indemnitors Baty and Schleining)

14 37. Iliescu realleges and incorporates by reference Paragraphs 1 through 36 of this
15 Complaint, as if fully set forth herein.

16 38. A dispute and actual controversy has arisen and now exists between Iliescu and
17 Defendants regarding the rights, duties, and obligations of the parties.

18 39. Specifically, Iliescu is informed and believes, and based thereon allege, that the
19 Indemnitors, both pursuant to the Indemnity Agreement and an implied indemnity, owe Iliescu a
20 duty to defend this action and make Iliescu whole for any and all costs, damages, claims, or losses
21 suffered as a result of the Architect's Lien and the BSC Financial, LLC contract or agreement
22 with Steppan and its bankruptcy filing.

23 40. Iliescu is informed and believes, and based thereon allege, that the Indemnitors
24 dispute Iliescu's interpretation and assertion of rights.

25 41. In view of the actual conflict and controversy between the parties, Iliescu desires a
26 judicial determination of the respective rights, duties, and obligations of Iliescu, and the
27 Indemnitors.

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51. Iliescu realleges and incorporates by reference Paragraphs 1 through 50 of this Complaint, as if fully set forth herein.

52. The Purchase Contract is a valid and binding contract, and is binding on both CPD and DeCal.

53. CPD and DeCal have failed to satisfy their obligations under the Purchase Agreement.

54. Iliescu is entitled to a decree of specific performance from the Court, requiring CPD and DeCal to perform as required under the terms of the Purchase Agreement, by (1) tendering the remainder of the purchase price due to Iliescu and (2) indemnifying Iliescu for any damages, costs, or attorneys fees arising out of the contract with Steppan and the Architect's Lien.

(Against the Hale Lane law firm, Dennison, Howard and Snyder – Professional Malpractice)

55. Iliescu realleges and incorporates by reference Paragraphs 1 through 54 of this Complaint, as if fully set forth herein.

56. The Hale Lane law firm, Dennison, Howard and Snyder, as licensed attorneys and counselors at law, owe Iliescu a duty to have a degree of learning and skill ordinarily possessed by reputable licensed attorneys engaged in the type of transaction addressed herein, and owe Iliescu a duty to use reasonable diligence and their best judgment in the exercise of skill and the application of learning held by reputable licensed attorneys in Northern Nevada engaged in the type of business and transactions described herein.

57. The Hale Lane law firm breached the duties enumerated above, and failed to perform these duties, as addressed herein.

(Against the Hale Lane law firm – Negligence)

58. Iliescu realleges and incorporates by reference Paragraphs 1 through 57 of this Complaint, as if fully set forth herein.

1 59. The Hale Lane law firm, Dennison, Howard and Snyder were negligent because,
2 among other things, they failed to advise Iliescu to record a Notice of Non-Responsibility, failed
3 to properly advise Iliescu of the consequence of their conflict of interest in representing Iliescu in
4 the transaction addressed herein, and continued to represent Iliescu in the face of a non-waivable
5 conflict of interest.

6 60. The Hale Lane law firm's negligence has damaged Iliescu, has caused them to
7 incur attorneys fees, and has resulted in the Mechanic's Lien and potential loss of the Property
8 through foreclosure.

9 61. The Hale Lane law firm owed a duty to Iliescu to exercise reasonable care in how
10 they handled the sale transaction, the Purchase Agreement, and their advice to Iliescu regarding
11 the Property, and breached that duty by way of the breaches and omissions set forth above.

12 WHEREFORE, Iliescu prays for judgment as follows:

13 1. For damages in an amount in excess of \$10,000.00 to compensate for the losses,
14 damages, and expenses incurred by Iliescu;

15 2. For a declaration that the Indemnitors are fully responsible for any and all costs or
16 damages suffered by Iliescu arising out of the Architect's Lien and/or the BSC Financial, LLC
17 contract or agreement with Steppan;

18 3. For a decree of specific performance requiring CPD and DeCal to perform as
19 required under the terms of the Purchase Agreement, to include damages and indemnification
20 from the Steppan Mechanic's Lien.

21 5. For attorneys' fees incurred in the prosecution of this action;

22 ///

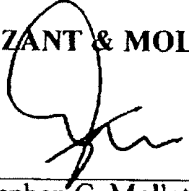
23 ///

1 6. For costs of suit; and,

2 7. For such other and further relief as the court deems proper.

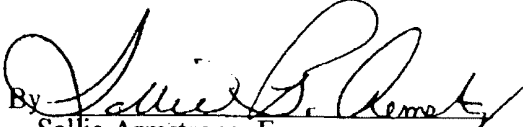
3
4 DATED this 27th day of September, 2007.

5 **PREZANT & MOLLATH**

6
7 By 
 Stephen C. Mollath, Esq.

8 and

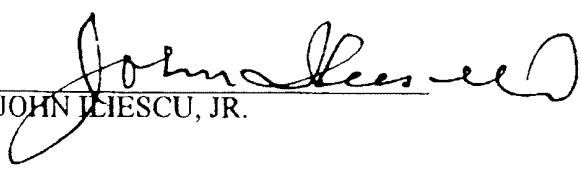
9 **DOWNEY BRAND LLP**

10
11 
12 By Sallie Armstrong, Esq.
13 Attorneys for John Iliescu, Jr. and Sonnia Iliescu
14 and The John Iliescu, Jr. and Sonnia Iliescu
 1992 Family Trust

1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.
3)

4 JOHN ILIESCU, JR., being duly sworn, deposes and says:

5 That he is a Third Party Plaintiff herein; that he has read the foregoing Third Party
6 Complaint and knows the contents thereof, and that the same is true of his own knowledge,
7 except as to the matters therein stated to be alleged upon information and belief, and as to those
8 matters, he believes it to be true.

9 
JOHN ILIESCU, JR.

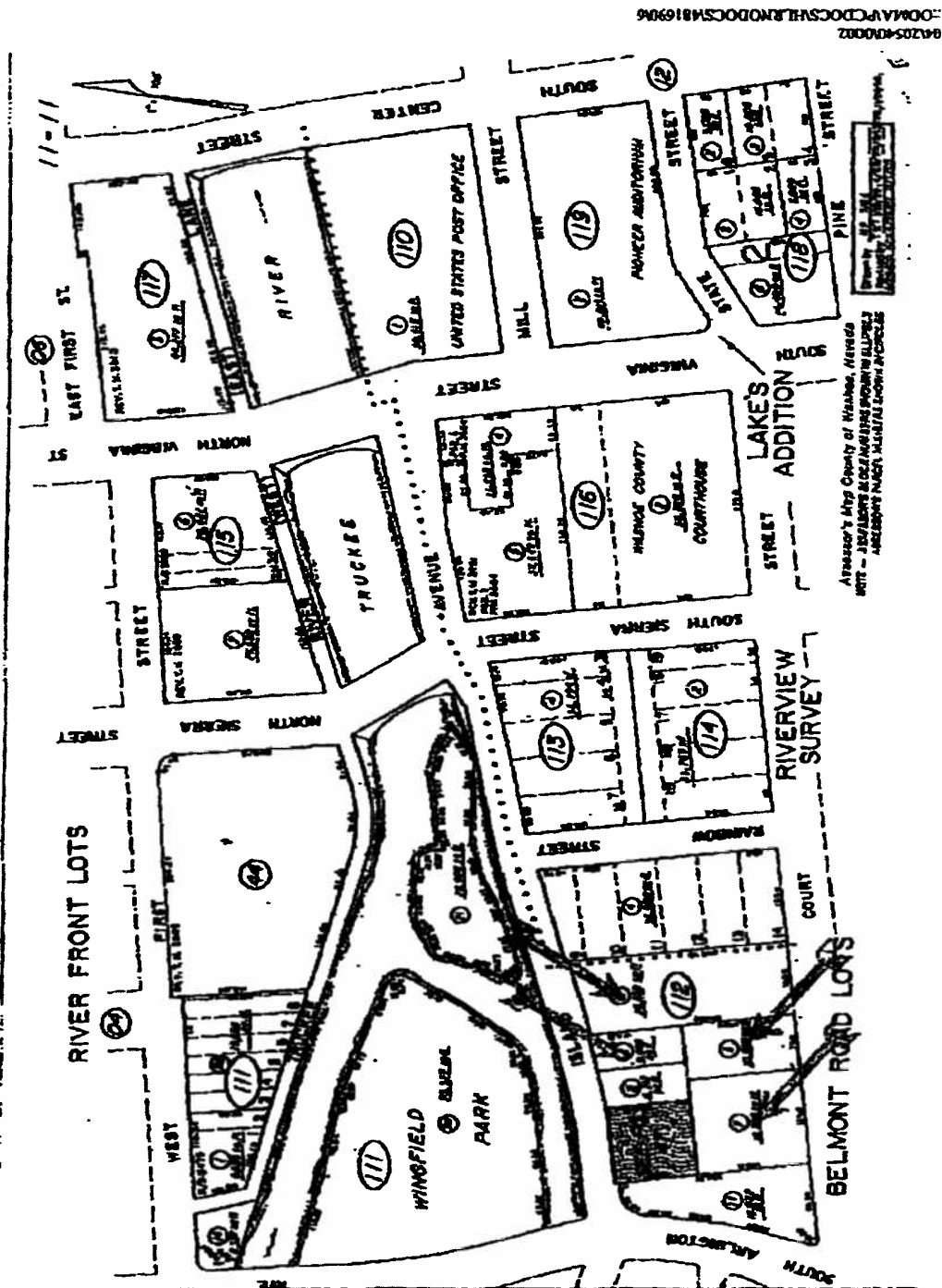
10 SUBSCRIBED AND SWORN to before me,
11 this 27th day of September, 2007.

12
13 
14 NOTARY PUBLIC



EXHIBIT 2

EXHIBIT 2

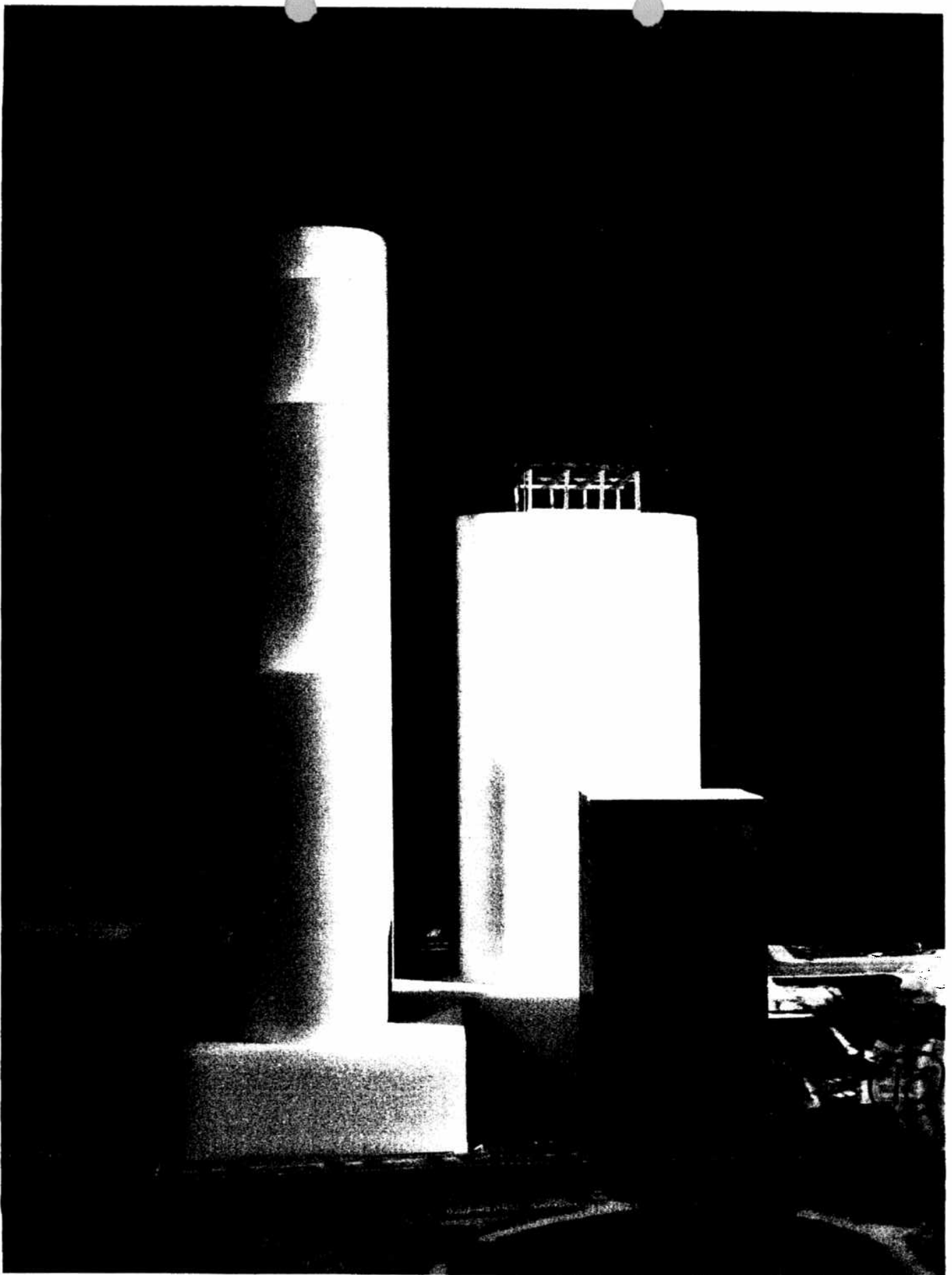


22 All
10/9/05
All
10/18/05



EXHIBIT 3

EXHIBIT 3



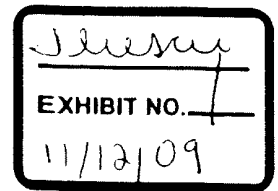
STEPPAN 0381

RS - 093

EXHIBIT 4

EXHIBIT 4

Consolidated Pacific Development Inc.
932 Parker Street, Berkeley, CA 94710
(SIO) 548-6093 (FAX) 548-6164



VIA FACSIMILE 775 823-8848

July 14, 2005

Mr. Dick Johnson
Metzger Johnson Group
6490 McCarran Blvd. Suite 10
Reno, NV 89509

Dear Dick:

In keeping with our telephone conversation of this date I am prepared to make an offer on Johns parcel of land between the River Walk and Court St. As you are aware, by my many phone calls, my interest in the project has never weakened.

The following is my proposal:

1. I will need a 30 day period to contact the City and make certain that they are supportive of the project. I cannot imagine they would not be, but with this amount of money involved I have to be certain.
2. At the end of 30 days One Hundred Thousand Dollars (\$100,000.00) would be tendered to John and becomes non-refundable. In all instances the non-refundable monies are credited to the purchase price.
3. Every 60 days an additional One Hundred Thousand Dollars (\$100,000.00) will be tendered to John with the same conditions spelled out in Item 2 above. This will continue until the City approves the project. It is anticipated it will take 7 to 9 months for approval.
4. The sales price is to be Six Million Five Hundred Thousand Dollars (\$6,500,000.00) plus one penthouse.

These are the advantages with our company and its partner:

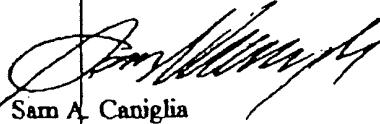
1. Financing has already been tentatively arranged and will be in place well before the project is approved.
2. Project to be built by an experienced developer/builder team with a proven record.

2. Project to be built by an experienced developer/builder team with a proven record.
3. Architect and Engineers in place ready to start work.
4. Upon tentative map approval site work can commence using the fast track method.
5. Building will be ready for occupancy in 30 months, plus or minus, from today depending on the approval time. We have assumed the longer period of 9 months.

Dick, I have told you on repeated occasions I would not come to the table unless I was prepared to move forward. Now is the time. Please advise at your earliest convenience, as my group with bankers, architects and engineers are scheduled to visit the site next Wednesday July 20, 2005.

Should you have any questions, please contact me immediately.

Sincerely,



Sam A. Caniglia

SAC/pb



EXHIBIT 5

EXHIBIT 5

Consolidated Pacific Development Inc.

932 Parker Street, Berkeley, CA 94710

(510) 548-6093 (FAX) 548-6164

TELECOPIER COVER SHEET

Please deliver enclosed pages to:

NAME: DICK JOHNSONCOMPANY: METZGER JOHNSON GROUPFAX No.: 75 823 8848 Phone No.: 775 823-8877FROM: SAM CANNON

MESSAGE/COMMENTS:

Dick

HERE IS THE EXECUTED COPY
FOR JOHNS LAND —No. of Pages 23
(including this sheet)Date 7/25/05

ADDRESS: Iliescu Land at Court Street Island Street

METZKER JOHNSON GROUP
 COMMERCIAL * RESIDENTIAL * INVESTMENT * REALTY
 6490 S. McCarran Blvd., RENO, NEVADA 89509 PHONE: (775) 823-8877 FAX: (775) 823-8848

LAND PURCHASE AGREEMENT

Date Prepared First Amendment: July 21, 2005Property Address: APN: 011-112-06, 011-112-07, 011-112-12, 011-112-02, 011-112-03

RECEIVED from CONSOLIDATED PACIFIC DEVELOPMENT INC., a Nevada Corporation and/or assignees (hereinafter designated as "BUYER"), the sum of \$25,000.00 (Twenty Five Thousand and no/100 Dollars) evidenced by ☐ Cash, ☒ Check, ☐ Other, n/a on account of the PURCHASE PRICE of \$6,800,000.00 (Six Million Eight Hundred Thousand and no/100 Dollars) for that certain land, improvements, and personal property, if any, (hereinafter collectively referred to as the "Property") situated in the City of Reno, County of Washoe, State of Nevada, and more particularly described as follows: (the "Property") 219 Court Street (APN 011-112-12 John Jr. and Sonnia Iliescu Trust, Seller), 0 Court Street (APN 011-112-07 John Jr. and Sonnia Iliescu Trust, Seller), and 223 Court Street (APN 011-112-06 John Iliescu, Seller) (APN 011-112-03 John Jr. and Sonnia Iliescu Trust, Seller) 260 Island Ave. (APN 011-112-02 John Jr. and Sonnia Iliescu Trust, Seller) consisting of approximately 64,641 square feet of land, water rights defined in Paragraph 39(F) below, and that certain vacant building of approximately square feet, upon the following TERMS and CONDITIONS:

1. FINANCE TERMS:

1.1 DEPOSIT:

\$25,000.00.

To be deposited within Three (3) working days of acceptance with Escrow Holder. The initial deposit shall be held by Metzker Johnson Group, subject to applicable statutes and regulations.

1.2 ADDITIONAL CASH DEPOSIT:

\$475,000.00.

The deposit shall be increased in the form of cash or cashiers check to be deposited with escrow holder for immediate disbursement to the Seller and Seller's agent proportionately. Deposits are non-refundable and credited to the purchase price. The additional deposit shall be paid as follows.

- ☒ an additional \$ 75,000.00 within 30 days from acceptance,
- ☒ an additional \$ 100,000.00 within 90 days from acceptance,
- ☒ an additional \$ 100,000.00 within 150 days from acceptance,
- ☒ an additional \$ 100,000.00 within 210 days from acceptance,
- ☒ an additional \$ 100,000.00 within 270 days from acceptance,
- ☒ if, through no fault of the Buyer, additional time is required for

governmental approvals of the project, Seller agrees to extend the close of escrow, as needed to obtain approvals. Buyer to pay an additional

1

Buyer [Signature]**METZKER JOHNSON GROUP**Seller [Signature]

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ILIESCU0000020

RS - 099

ADDRESS Theresa Land at Court St and Island Street

\$ 50,000.00 deposit within each 30 days extension from the 270 day payment due date. All extension deposits shall be credited to the purchase price upon close of escrow. Buyers shall have a 15 day grace period to make any of the aforesaid deposits.

1.3 BALANCE OF CASH PAYMENT: \$ 6,300,000.00
To be paid at Close of Escrow, as needed to close but not including closing costs.

1.4 EXISTING FINANCING: \$ n/a
Per Terms and Conditions as specified below.

1.5 OWNER FINANCING: \$ n/a
Per Terms and Conditions as specified below

1.6 NEW LOAN: \$ n/a
Contingent upon the Terms and Conditions as specified below

1.7 TOTAL PURCHASE PRICE: \$ 6,800,000.00
(Not including closing costs)

☐ N/A 1.8 IF "EXISTING FINANCING", TERMS AND CONDITIONS TO BE ASSUMED SHALL INCLUDE:
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)

☐ N/A 1.9 IF "OWNER FINANCING", TERMS AND CONDITIONS SHALL INCLUDE:
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)

☐ N/A 1.10 IF "NEW FINANCING" CONTINGENCY:
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)

2. SUBORDINATION AND PARTIAL RECONVEYANCE:

2.1 SUBORDINATION CLAUSE: N/A

2.2 PARTIAL RECONVEYANCE:

Buyer does intend to subdivide the property and improve the property in stages over a period of time.

DEFINITIONS

2

Buyer [Signature]

METZKER JOHNSON GROUP

Seller /

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ADDRESS Nieson Land at Court St and Island Street

(Unless stated otherwise in this document)

BROKER OR AGENT includes cooperating brokers, brokers, all sales persons and agents. **DAYS** means calendar days unless otherwise specified. If the (a) stated Closing date or (b) last day for the performance of an act falls upon a day during which normal business is not performed then the Closing date or such last day, as the case may be, will be the next following regular business day. **DATE OF ACCEPTANCE (EFFECTIVE DATE)** means the date the Seller accepts the offer or counter offer is accepted by both parties. **DELIVERED** means personally delivered to Principals or respective licensees, transmitted by the facsimile machine, or mailed by registered carrier, next business day delivery with receipt requested. In the event of fax transmission, delivery shall be deemed to be complete at the time noted on the sender's fax confirmation sheet. **DATE OF CLOSING** means the date title is transferred. The **SINGULAR** includes the plural and the **MASCULINE** includes the feminine. **TERMINATING THE AGREEMENT** means that both parties are relieved of their obligations and all deposits will be returned to the Buyer less expenses incurred by or on account of the Buyer to the date of termination. **PROPERTY**, unless the context indicates otherwise, means all easements and rights appurtenant thereto and all improvements thereon, including all building thereon and any rights appurtenant thereto, all other improvements, all personal property owned by Seller and used in the operation or maintenance and management of the real property, and all contract or lease rights, agreements, water rights, mineral rights, utility contracts or other rights relating to the ownership, use and operation of the real property. **DATE PREPARED** is for reference only.

3. ADDENDUM:

Addendum(s) and Exhibit (s), identified as:

- ☒ Duties Owed by a Nevada Real Estate Licensee,
☐ Consent to Act,
☒ Plot map-Exhibit A ,
☒ Legal Description -Exhibit B , to be supplied to Buyer within 15 days of the execution of this agreement.
☒ Form 110.61, HAZARDOUS MATERIALS DISCLOSURE to Buyer within 15 days of the execution of this agreement.
☐ Other: n/a

signed by all parties, is attached and shall be a part of this agreement.

4. CLOSING AND ESCROW:

Within 270 (Two Hundred Seventy) days of acceptance, as may be extended pursuant to Paragraph 1.2 above both parties shall deposit with an authorized Escrow Holder, to be selected by ☐ Buyer, ☒ Seller, all funds and instruments necessary to complete the sale in accordance with the terms hereof. Promptly after mutual execution of this contract, Buyer and Seller shall open an escrow with (Escrow Holder) First Centennial Title Company (Escrow Officer) Mary Ann Infantino. Escrow fee paid by 50% by Seller and 50% by Buyer. Documentary Transfer Tax, if any, to be paid by ☐ Buyer, ☒ Seller, , ☐ Other n/a. All remaining closing costs shall be paid in customary manner and/or as required by law, ordinance and/or regulation. Possession of the Property shall be given to Buyer

3

Buyer [Signature]**METZKER JOHNSON GROUP**Seller /

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RS - 101

ADDRESS: Iliescu Land at Court St and Island Street

at close of escrow. Title shall be conveyed to Buyer by properly executed and duly recorded Grant Deed.
~~Buyer shall have the right to close escrow anytime prior to the Closing designated in this agreement.~~

5. EVIDENCE OF TITLE:

On the date of closing, Escrow Holder shall issue commercial title insurance, in the form of ☐ CLTA or ☒ ALTA Policy of Title Insurance to be paid by ☒ Buyer ☐ Seller, insuring Buyer's title to the Property in an amount equal to the full purchase price. Said title policy shall insure that Buyer has good and marketable title to the Property subject only to the exceptions authorized.

Note: Buyer should discuss the choice of policy with the title company of his choice at the time escrow is opened.

Buyer is aware that additional coverage policies are available. All cost associated with additional coverage policy to be paid by ☒ Buyer, ☐ Seller, ☐ n/a % by buyer and n/a % by Seller.

4.1 As soon as reasonably possible following opening of escrow, but not to exceed ☒ fifteen (15) days from acceptance, ☐ Buyer, ☒ Seller, ☐ n/a % by buyer and n/a % by Seller shall pay and furnish to Buyer a Preliminary Title Report on the Property (the "Report"), together with full legible copies of all exceptions in the Report. Buyer shall have ☒ thirty (30) days of date of acceptance to notify Seller and Escrow Holder in writing of Buyer's reasonable disapproval of any such exceptions. Failure of Buyer to disapprove in writing any exceptions within the aforementioned time limit shall be deemed to be an approval of the Report.

In the event Buyer disapproves any exception in the Report, Seller shall use due diligence to remove such exceptions at his own expense.

Seller shall have ☒ ten (10) or ☐ n/a (n/a) days from notification to remove the exceptions. But if such exceptions cannot be removed, or Seller refuses to remove or correct said conditions, by this date, all rights and obligations herein may, at the election of the Buyer, terminate and the deposit shall be returned to Buyer, unless he elects to purchase the property subject to such exceptions.

4.2 The manner of taking title may have significant legal and tax consequences. Buyer should obtain advice from his legal or tax counsel regarding this matter. Title shall vest as designated in Escrow Instructions.

6. BONDS:

The amount of any bond or assessment which is a lien shall be: ☒ paid by the Seller, ☐ assumed by Buyer.

7. EXPIRATION:

This offer shall expire, and be rendered null and void, unless a copy with Seller's written acceptance (facsimile copy acceptable) is delivered to the Buyer or the Buyer's agent on or before 1:00 o'clock, ☐ AM, ☒ PM, Pacific Standard Time, on (Day) July 29 (Year) 2005.

8. PROVISIONS AS FURTHER DEFINED:

The Provisions marked X below, and further defined in this document, are included in this agreement.

BUYER

BUYER

4

Buyer

Alb

METZKER JOHNSON GROUP

Seller

/

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ILIESCU000023

ADDRESS Iliescu Land at Court St and Island Street

INCLUDED: WAIVED:

☒ ☐ N/A 8-A. SOIL TESTS:Soil Tests, within 30 days of acceptance, paid by ☒ Buyer ☐ Seller.

Upon acceptance of this agreement Buyer shall have the right, if he chooses, to go upon the property to conduct soil tests, including percolation tests, to ascertain whether the property is suitable for the improvements which Buyer proposes to make. All expenses of such test shall be borne by the person indicated above, and Buyer shall be responsible for the repair and restoration of any damage to the property which may be caused by such tests. If in the reasonable opinion of the soil engineer, employed by Buyer, the property is not suitable for the proposed development, this agreement at the option of the Buyer, may be terminated and all deposits shall be refunded. Buyer shall be deemed to have waived this condition unless written notice to the contrary is delivered to Seller or his agent within the number of days of acceptance specified above.

Note: Seller shall provide to Buyer within Five(5) days of acceptance copies of any existing soils reports/tests available to the Seller (IF ANY).

BUYER BUYER

INCLUDED: WAIVED:

☒ ☐ N/A 8-B. SURVEY: Survey, paid by ☒ Buyer ☐ Seller.

Upon acceptance of this offer, the property ☐ shall, ☒ may, be surveyed by a licensed surveyor at the expense of the party specified above. The surveyor shall set and flag all property pins, to be approved in writing by Buyer prior to thirty (30) days prior to Close of Escrow. The purchase price is based upon the price specified above and shall not be adjusted in accordance with the area set forth in such a survey, if applicable. In the event the survey completed at the request of the Buyer discloses an encroachment of any kind or nature affecting the boundary or a set back requirement of the property, this agreement at the option of the Buyer, may be terminated and all deposits shall be refunded. Buyer shall be deemed to have waived this conditions unless written notice to the contrary is delivered to Seller or his agent with the number of days of acceptance specified above.

BUYER BUYER

INCLUDED: WAIVED:

☒ ☐ N/A 8-C. FLOOD HAZARD ZONE:

Buyer has been advised that the property is located in an area which the Secretary of HUD has found to have special flood hazards and that it may be necessary to purchase flood insurance in order to obtain any loan secured by the property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the U.S. Government. The purpose of the program is to provide flood insurance at reasonable cost. For further information consult your lender or insurance carrier.

BUYER BUYER

INCLUDED: WAIVED:

☐ N/A ☒ 8-D. BROKER REPRESENTING BOTH PARTIES:

Buyer and Seller acknowledge that the broker in this transaction represents both parties and Buyer and Seller consent hereto.

BUYER BUYER

5

Buyer [Signature]

METZKER JOHNSON GROUP

Seller /

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ILIESCU000024

RS - 103

ADDRESSES 11500 Land at Coast Street Island Street

INCLUDED: ☒ WAIVED: ☐ N/A 8-E. SINGLE AGENCY

Notwithstanding agreements with respect to payment of commissions, or rights granted under Multiple Listing agreements, the parties agree that the Seller's Broker named herein is the agent of the Seller and is not the agent of the Buyer, and that the Buyer's Broker named herein is the agent of the Buyer and is not the agent of the Seller or a sub-agent of Seller's Broker.

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒ 8-F. CONTINGENCY RELEASE CLAUSE:

Offer is contingent upon the sale of (address) N/A

BUYER INCLUDED: ☒ BUYER WAIVED: ☐ N/A 8-G. TAX DEFERRED EXCHANGE (INVESTMENT PROPERTY):

In the event that Seller wishes to enter in a tax deferred exchange for the real property described herein, or if Buyer wishes to enter into tax deferred exchange with respect to property owned by him in connection with this transaction, each of the parties agrees to cooperate with the other party in connection with such exchange, including the execution of such documents as may be reasonably necessary to effectuate the same. Provided that: (a) The other party shall not be obligated to delay the closing, (b) All additional costs in connection with the exchange should be borne by the party requesting the exchange, and (c) The other party shall not be obligated to execute any note, contract, deed or other document providing for any personal liability which would survive the exchange, nor shall the other party be obligated to take title to any property other than the property described in this agreement. The other party shall be indemnified and held harmless against any liability which arises or is claimed to have arisen on account of the acquisition of the exchange property.

 Buyer may elect to do a 1031 Tax Deferred Exchange

 Seller ☒ does ☐ does not intend to do a 1031 Tax Deferred Exchange

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒ 8.G OWNER'S ASSOCIATION DISCLOSURE:

At time of acceptance, Seller shall deliver to Buyer an Addendum to Purchase Agreement for Common Ownership Interest Properties, which by this reference shall be incorporated into this Agreement. Association transfer fees of \$ N/A, to be paid by ☐ Buyer ☐ Seller ☐ Other N/A. The amount of any delinquent assessments including penalties, attorney's fees, and other charges provided for in the management documents shall be paid current by the Seller at close of escrow. Seller represents that there

6

Buyer [Signature]

METZKER JOHNSON GROUP

Seller /

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ADDRESS: Higson Land at Court St and Island Street

are no Common Ownership Associations or Agreements related to the Property.

BUYER INCLUDED: BUYER WAIVED:

☒ N/A ☐ N/A 6.21 ADDITIONAL INSPECTIONS:

Unless stated otherwise in this agreement, the Buyer shall at ☒ Buyer's ☐ Seller's expense, have the right to order any and all inspections that Buyer deems necessary by experts, including, but not limited to, engineers, geologists, architects, contractors, surveyors, and structural pest control operators to inspect the property for any structural and non-structural conditions, including matters concerning, but not limited to, roofing, electrical, plumbing, heating, cooling, appliances, pool, boundaries, structural inspection report, roof inspection, Phase I Environmental Report on Hazardous Wastes and Materials, A.D.A. (Americans Disabilities Act) Report, Asbestos testing report, lead based paint report, radon report, mold inspection, wood stove inspection, seismology report and/or earth quake fault information, electromagnetic field report, water quality / quantify report, septic systems inspection, shall be ordered and must exercise that right within thirty (30) days of acceptance of this Agreement. Reports shall be approved, rejected, or waived by Buyer within ☒ THIRTY (30) days ☐ N/A (N/A) days of receipt by Buyer of such report.

Buyer shall furnish Seller, at no cost to Seller, copies of inspections and reports obtained, along with list(s) itemizing all repairs requested by Buyer as indicated by said inspections and reports within ☒ ten (10) days ☐ N/A (N/A) days of receipt of same. Seller agrees to pay an amount NOT to exceed the total sum of \$ N/A for all repair conditions indicated, per the above contingency reports and/or any defect discovered or defect which has become worse than was originally indicated.

Any needed repairs, remediation, or corrective action identified by said reports in excess of the above stated dollar amount shall be at Buyers expense. However, if repair expenses are considered excessive by Buyer, then Buyer may terminate this agreement at Buyers discretion unless Seller agrees to repair at Seller's expense by written addendum.

If not completed by close of escrow, funds shall be held in escrow, if not disallowed by Lender, and disbursed by escrow holder upon receipt of a statement by a licensed structure pest control operator, certifying that the property is free of evidence of active infestation or infection.

As soon as the same are available, copies of the report, and any certification or other proof of completion of the work shall be delivered to the Agent of Buyer and Seller who are authorized to receive the same on behalf of their principals.

Buyer acknowledges that he has not relied upon any representations by the Agent with respect to the condition of the Property.

9. CHANGES DURING TRANSACTION:

During the pendency of this transaction, Seller agrees that no changes in the existing leases or rental agreements shall be made, nor new leases or rental agreements entered into, nor shall any substantial alterations or repairs be made or undertaken without the written consent of the Buyer.

10. PRORATIONS:

10.1 TAXES: Real property taxes payable by the owner of the Property shall be prorated through Escrow as of the date of the recordation of the deed, based upon the latest tax bill available. Buyer shall pay supplemental tax bill levied by the transfer of the Property to the Buyer Payment shall be

7

Buyer [Signature]

METZKER JOHNSON GROUP

Seller [Signature]

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ADDRESS: Illeson Land at Court St and Island Street

made promptly in cash upon receipt of a copy of any such supplemental bill of the amount necessary to accomplish such pro-rata. Seller shall pay and discharge in full, at or before the Closing, the unpaid balance of any special assessment bonds.

10.2 INSURANCE: If Buyer elects to take an assignment of the existing casualty and/or liability insurance that is maintained by Seller, the current premium therefore shall be prorated through Escrow as of the date of Closing.

10.3 RENTALS, INTEREST AND EXPENSES: Expenses, such as, but not limited to, utilities, and operating expenses shall be prorated as of the date of Closing. Such items shall be supplied by Seller within ☒ two (2) days or ☐ N/A (N/A) days prior to close of escrow. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

10.4 SECURITY DEPOSIT AND LEASE CREDITS: Security Deposits held by Seller and considerations involving lease credits shall be given to Buyer by a credit to the cash required of Buyer at the Closing. Such items shall be supplied by Seller within ☒ two (2) days or ☐ N/A (N/A) days prior to close of escrow.

10.6 POST CLOSING MATTERS: Any item to be prorated that is not determined or determinable at the Closing shall be adjusted by the parties as soon as possible following close of escrow.

12. ENCUMBRANCES:

In addition to any encumbrances referred to herein, Buyer shall take title to the property subject to: (1) Real Estate Taxes not yet due and (2) Covenants, Conditions, Restrictions, Rights of Way, and Easements of record, if any, which do not materially affect the value or intended use of the property. Such encumbrances shall be deemed approved unless written notice to the contrary is delivered to Seller or his agent within THIRTY (30) days of acceptance.

13. NOTICES:

By acceptance hereof Seller warrants that he has no notice of violations or of any claims relating to the property from City, County, State, or Federal agencies, or any other person or person.

Pursuant to Nevada revised statutes, the Buyer(s) of real property, for or under, development is hereby informed that such property may be subject to impact fees which have been or will be imposed by governmental agencies.

14. DEFAULT:

In the event that Buyer shall default in the performance of this agreement Seller may subject to any rights of the Broker herein, retain Buyer's deposit on account of damages sustained all as more fully provided in paragraph 42 below, and Buyer shall have the right to take such action as he deems appropriate to recover such portion of the deposit as may be allowed by law.

15. PHYSICAL POSSESSION:

Physical possession shall be delivered to Buyer upon recordation of the deed

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Buyer [Signature]

METZKER JOHNSON GROUP

Seller /

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ADDRESS: Iliescu Land at Court Street Island Street

16. TIME:

Time is of the essence as to each and every provision of this agreement. If after a good faith effort, any condition stated in this contract has not been eliminated or satisfied within the time limits and pursuant to the provisions of this contract, then this contract may be deemed null and void, the deposit shall be returned to Purchaser, and the escrow shall be canceled. Either party may resort to such remedies as it may have in law or equity, subject to the liquidated damages provision set forth in Paragraph 42 below.

17. HAZARDOUS MATERIALS:

Seller represents and warrants that, to the best of Seller's knowledge, the Property is not contaminated with any hazardous materials, including, but not limited to, asbestos, processed petroleum derivatives, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks. Seller agrees to disclose to Agent(s), to Buyer, and to all prospective buyers any and all information which Seller has or may acquire regarding the presence and location of any hazardous materials on or about the Property.

Both Buyers and Sellers should seek the advice of independent experts regarding the potential presence and/or effect of toxic or hazardous substances on real property and any improvements to be sold or purchased.

18. AGENT(S) DISCLAIMER:

Buyer and Seller acknowledges that except as otherwise expressly stated herein, Agent(s) has not made any warranty or representation with respect to any of the following: (a) the legality of the present or any possible future use of the Property under any federal, state or local law; (b) pending or possible future action by any governmental entity or agency which may affect the Property; (c) the physical condition of the Property, including but not limited to soil conditions. Buyer/Seller agree that investigation and analysis of all matters related to the Property is their sole responsibility and that Buyer/Seller shall not hold the agent(s) responsible relating in any way to the foregoing matters.

19. CORRESPONDENCE:

All notices required or permitted hereunder shall be made and given to parties in writing with a copy thereof to Agent(s). Any such writing may be sent to the parties and Agent(s) by mail, air express (government or private carrier), or facsimile machine.

Unless otherwise specifically provided in this Agreement all notices, demands or other communications given hereunder shall be in writing and will be deemed to have been duly delivered upon personal delivery, as of the next day after deposit with a commonly accepted courier for over-night delivery, or as of the third business day after mailing by United States certified mail, return receipt requested, postage prepaid and addressed as follows:

If to Seller, to: JOHN ILIESCU
200 COURT STREET
RENO, NEVADA 89501

If to Buyer, to: SAM CANIGLIA
932 PARKER STREET
BERKELEY, CALIFORNIA

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Buyer

METZKER JOHNSON GROUP

Seller

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ADDRESS: Iliescu Land at Court St and Island Street

Copies to: **Richard K. Johnson** Fax: 775-823-8848
6490 S. McCarran Blvd. Phone: 775-823-8877
Reno, Nevada 89509

Signed documents received via facsimile shall be binding and shall be used for the preliminary negotiations, and will be followed up with original written and executed documents.

20. SEVERABILITY:

If for any reason, any provision of this Agreement shall be held to be unenforceable, it shall not affect the validity or enforceability of any other provision of the Agreement.

Waiver by one party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant, condition or promise hereunder.

21. GOVERNING LAW:

This Agreement shall be governed by the laws of the State of Nevada.

22. NO ONE DEEMED DRAFTER:

Buyer and Seller hereby agree that neither Buyer, Seller nor Agent(s) shall be deemed to be the drafter of this Agreement and that in the event this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against either Buyer, Seller or Agent(s) as the drafter hereof. Buyer and Seller hereby waive any and all rights to claims against the other party and Agent(s) relating in any way to the foregoing matter.

23. COUNTERPARTS:

The parties may execute this Agreement, any and all addenda attached hereto, and any and all future modifications of this Agreement in two or more counterparts which shall, in the aggregate, be signed by all the parties; each counterpart shall be deemed an original instrument as against any party who has signed it; all of which together will constitute but one instrument.

24. EFFECTIVE DATE OF THIS AGREEMENT:

The earliest date by which both Buyer and Seller have fully executed this Agreement shall be the "Effective Date of this Agreement". At the top of this Agreement is the "Written Date" which is used for reference purposes only.

25. AUTHORITY OF INDIVIDUALS SIGNING ON BEHALF OF ENTITY:

Each person signing this Agreement on behalf of an entity constituting either party warrants that (a) he or she is duly authorized to sign and deliver this Agreement on behalf of the entity, in accordance with a duly adopted resolution of the board of directors or the bylaws of the corporation in the case of a corporation, in accordance with the Agreement of Partnership or resolution pursuant thereto in the case of a partnership, or in accordance with the trust agreement in the case of a trust, and (b) this Agreement is binding upon the corporation, partnership or trust in accordance with its terms. Such entity shall be duly and properly

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Buyer 

MEITZER JOHNSON GROUP

Seller 

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ADDRESS: Nissan Land at Court Street Island Street

organized to transact business in the State of Nevada. This Agreement shall continue and be binding on the heirs, successors, and assigns of the parties hereto.

26. EXHIBITS AND ADDENDUM:

All attached exhibits and addendum referred to in this Agreement are a part of this Agreement.

27. BUSINESS DAYS:

If the (a) stated Closing date or (b) last day for performance of an act falls upon a day during which normal business is not performed, then the Closing date or such last day, as the case may be, will be the next following regular business day.

28. LAND USE RESTRICTIONS:

Buyer shall satisfy himself through sources of information, other than the principals or real estate brokers or salespersons in this transaction, whether any public or private in the form of a vote, initiative, referendum, local ordinance, law, or other measure presently in force or contemplated by a governing or other body may halt entirely or otherwise restrict Buyer's use of the subject property for improvement or other use, and Buyer acknowledges that he has not relied on any advice or representations by the principals or real estate representatives in this transaction for such independent information to any extent.

29. VERIFICATION OF INFORMATION:

Any square footage, land or improvements, is approximate and neither Seller nor Broker guarantee its accuracy. Any oral or written representations by Seller or Broker regarding age of improvements, size, and square footage of parcel or building, or location of property lines, may not be accurate. Apparent boundary line indicators such as fences, hedges, walls, or other barriers may not represent the true boundary lines. Broker/agent does not necessarily investigate the status of permits, zoning, or code compliance. Buyer is to satisfy himself concerning this information if any of these issues are important or a critical element of the purchase decision. Buyer acknowledges that he has not received or relied upon any representations by either the Broker or the Seller with respect to the condition of the property which are not contained in this agreement or in any attachments. Although deemed accurate, the information contained in the Multiple Listing Service book, computer or advertisements, and feature sheets pertaining to this property are not warranted or guaranteed by the listing or selling office. Errors and/or omissions in inputting information, while uncommon, are possible. Buyer shall be responsible for verifying the accuracy of pertinent information, deposit of all funds necessary to close into escrow shall be deemed as final acceptance of the property. Seller agrees to hold all Brokers and Licensees in the transaction harmless and to defend and indemnify them from any claim, demand, action or proceedings resulting from any omission or alleged omission by Seller in his statements.

30. ATTORNEYS FEES:

If this Agreement gives rise to any litigation, arbitration, or other legal proceeding between any of the parties hereto, including Agent(s), the prevailing party shall be entitled to recover its actual costs and expenses, including court costs, costs of arbitration, and reasonable attorneys' fees, in addition to any other relief to which such party may be entitled. The undersigned parties agree to hold Broker, Metzker Johnson Group, and Broker's Agent, Richard K. Johnson harmless from and against any and all damages, costs and expenses, including attorneys' fees, arising from any disputes between Buyer and/or Seller and/or Agent

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Buyer [Signature]

METZKER JOHNSON GROUP

Seller /

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under this Agreement, unless Agent is determined by a court of competent jurisdiction to be fraudulent in connection with any such claim or claims

31. ACCESS TO PROPERTY:

Seller agrees to provide access to the property to Buyer, inspectors, appraisers, and all other professionals representing Buyer. Buyer shall indemnify, defend and hold Seller harmless from any lien, loss, claim, liability, or expense, including (without limitation) reasonable attorneys' fees and costs, arising out of or in connection with its activities (including, without limitation, Buyer's agents and employees, and independent contractors retained by or acting on behalf of Buyer (collectively, "Buyer's Agents") on the Property. Buyer shall have no liability to Seller for any lien, loss claim, diminution in value, liability or expense incurred by Seller arising out of discovery by Buyer or Buyer's Agents of any hazardous materials or toxic substances as defined in applicable state or federal law, on or about the Property, so long as the activities of Buyer and Buyer's Agents on the Property are performed with due diligence in accordance with the industry standards for such activities and further providing that neither Buyer or Buyer's Agents' is actively negligent in the performance of such activities.

32. PREPAYMENT:

Seller will pay any prepayment charge imposed on any existing loan paid off at close of escrow.

33. DUE ON SALE CLAUSE:

If the note and deed of trust or mortgage for any existing loan contains an acceleration or DUE ON SALE CLAUSE, the lender may demand full payment of the entire loan balance as a result of this transaction. Both parties acknowledge that they are not relying on any representation by the other party or the Broker with respect to the enforceability of such a provision in existing notes and deeds of trust or mortgages, or deeds of trust or mortgages to be executed in accordance with this Agreement. Both parties have been advised by the Broker to seek independent legal advice with respect to these matters.

34. REAL ESTATE BROKERS AND FEES:

Per the terms and conditions as itemized under Acceptance below. Buyer and Seller herein agree that Seller shall pay the commission(s) through Close of Escrow, to Metzker Johnson Group, Broker (Richard K. Johnson, Agent) of the Seller; and NONE, Broker (NONE, Agent) of the Buyer.

It is agreed by Buyer, Seller and Escrow Holder that Broker(s) is/are a third party beneficiary of this Agreement insofar as the Broker's fee is concerned, and that no change shall be made by Buyer, Seller or Escrow Holder with respect to the time of payment, amount of payment, or the conditions to payment of the Broker's fee specified in this Agreement, without the written consent of Broker(s).

Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm, broker or finder in connection with the negotiations of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Broker(s) named herein, and no broker or other person, firm or entity, other than said Broker(s) is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or similar party, other than said named Broker(s) by

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Buyer [Signature] **METZKER JOHNSON GROUP** Seller /

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reason of any dealings or act of the indemnifying Party.

35. VESTED TITLE: The Seller warrants and represents that they have title to the Property and the right and authority to transfer the same to the Buyer. The manner of taking title may have significant legal and tax consequences. Buyer should obtain advice from his legal or tax counsel regarding this matter. Title shall vest as designated in Escrow Instructions.

36. IMPACT FEES:

Pursuant to Nevada Revised Statutes, the Buyer(s) of real property, for or under, development is hereby informed that such property may be subject to impact fees which have been or will be imposed by governmental agencies. Existing impact fees shall be ☒ Paid by Seller, ☐ Assumed by Buyer.

37. DEFERRED AGRICULTURAL TAX:

In the event of any Deferred Agriculture Tax, Seller shall pay said taxed through close of escrow.

38. EXISTING CONDITION:

Buyer hereby acknowledge that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property that Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the Occupational Safety and Health Act, hazardous substance laws or any other act, ordinance of law, have been made by either Party or Broker, or relied upon by either Party hereto.

39. ADDITIONAL TERMS AND CONDITIONS:

- A. Subject to the Terms and Conditions of this agreement, the Seller hereby grants to Buyer, an irrevocable, exclusive right to purchase the Property consisting of the parcel(s) of land along with all buildings and structures (IF ANY), easements and rights appurtenant (including, without limitations, all development rights, all mineral, oil, gas, and other hydrocarbon substances on or under the land, air rights, water, and water rights (if any). Seller shall not solicit or accept any other offers during the term of this Agreement.
- B. To the best of Seller's knowledge the property is not in violation of any federal, state, or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on under or about the property including, but not limited to, soil and groundwater condition.
- C. All covenants, representations and warrants made by Seller and Buyer to and for the benefit of each other and only those related to close of escrow shall survive the close of escrow under this Agreement.
- D. Purchaser has and will inspect the Property and be thoroughly acquainted with its condition. Except as expressly stated herein, Purchaser agrees to purchase the Premises "AS-IS, WHERE IS, IN CURRENT CONDITION WITH ALL FAULTS".

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Buyer Alto **METZKER JOHNSON GROUP** Seller _____

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ADDRESS: Huesca Land at Court Street and Island Street

- E. Buyer shall have a due diligence period of thirty (30) days from date of acceptance of this agreement by both Buyer and Seller, within which to at Buyer's expense, do any and all inspections and reports Buyer deems necessary such as but not limited to: availability and suitability of utilities, geological reports, well reports, zoning, flood zones, master plans, fees and costs of offsite and onsite improvements, building requirements, conditions and requirements affecting the development of said property for Buyer's intended use, inspect the site inclusive of surveys and soil tests, analyze information pertaining to roadways. Buyer shall indemnify seller for all such work performed. If upon examination and investigation of the matters above, Buyer determines that the property is unsuitable for Buyer's proposed use and/or future use of the property, Buyer may at any time within the due diligence period elect to terminate this agreement by giving Seller written notice of intention to do so, and receive full refund of unused deposits not already dispersed, and the escrow company shall release said deposit without any further approval or instruction from Seller. Seller shall furnish to Buyer copies of all tests, investigations, surveys, studies, and other reports it has or has access to in reference to said lot. Buyer will be responsible for the repair/restoration or any damage to the property that may be caused by subject inspections and/or tests.

This agreement is conditioned upon Buyer's completion of investigation(s), investigation(s), and/or test(s) and Buyer's approval of items as checked below within the above stated period:

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Zoning | <input checked="" type="checkbox"/> Future land use designation(s) | <input checked="" type="checkbox"/> Availability of Utilities |
| <input checked="" type="checkbox"/> Legal Access | <input checked="" type="checkbox"/> Easements | <input checked="" type="checkbox"/> Subject Property Buildable |
| <input checked="" type="checkbox"/> Environmental | <input type="checkbox"/> Mineral Right | <input type="checkbox"/> Road Maintenance Agreement |
| X Phase I Environmental | | |
| <input type="checkbox"/> Corners Marked, or | <input checked="" type="checkbox"/> Survey paid by <input type="checkbox"/> Seller, <input checked="" type="checkbox"/> Buyer | |
| <input type="checkbox"/> Perculation Test paid by | <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer | |
| <input type="checkbox"/> Well Test, Quality, paid by | <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer | |
| <input type="checkbox"/> Well Test, Quantity, paid by | <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer | |
| <input type="checkbox"/> X Water Rights | <input type="checkbox"/> X Yes | <input type="checkbox"/> No, in the amount of _____ acre feet of ground water under |

claim no. _____

☐ Yes ☐ No, in the amount of _____ acre feet of surface water

In the event the Buyer should fail to complete any inspection, investigation, and/or test within the time provided, and/or escrow shall have closed without any of those having occurred, the Buyer shall be deemed to have waived the Seller's and broker's liability for the results that such could have reasonably provided had they been conducted, except where provided by law.

- F. This offer is conditioned upon Buyer, at ☒ Buyer's ☐ Seller's expense, obtaining the following governmental approvals within 270 days of acceptance of this agreement, as may be extended pursuant to Paragraph 1.2 above:
- | | | |
|---|---|-------------------------------------|
| <input checked="" type="checkbox"/> Variance | <input checked="" type="checkbox"/> Special Use Permits | <input type="checkbox"/> Parcel Map |
| <input checked="" type="checkbox"/> Tentative Map | <input checked="" type="checkbox"/> Zone Change & Land Use Designations | |
| <input type="checkbox"/> X Other: <u>architectural and design review and approval</u> | | |

- G. The purchase price is based upon \$no ☐ per acre, ☐ per square foot and ☒ will not, ☐ will be adjusted in accordance with the area set forth in the survey.

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Buyer [Signature]

METZKER JOHNSON GROUP

Seller [Signature]

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H. It is agreed to and understood that as part of the purchase price of this property, the Buyer shall deliver to Seller one of the penthouses in the new condominium project, subject to the following terms and conditions. Buyer shall provide Seller with detailed floor plans of each penthouse, and the listing price for each penthouse, at which time Seller shall have thirty (30) days to choose the penthouse to be transferred to Seller. Seller shall receive credit in the amount of Two Million, Two Hundred Thousand Dollars ("Penthouse Credit") toward the listing price of the penthouse so chosen. In the event the listing price of the penthouse so chosen more than the is Penthouse Credit, Seller shall pay the difference in cash at the time of the transfer. In the event the penthouse so chosen is less than the Penthouse Credit, Buyer shall reimburse Seller the difference at the time of transfer. Buyer and Seller shall also agree, on or before the close of escrow and as a condition thereof, upon specific language and form of legal documentation of the right to receive such condominium unit, which shall be free of all liens and encumbrances except taxes paid current, assessments and C,C & R's uniformly applicable to such building and unit.

I. The Seller warrants that there are no leases or other contractual use agreements on said property.

J. Seller authorizes Buyer and Seller's agent to place signage on said properties promoting identification of the Buyer, Seller's agent, and/or future use of said property.

K.

L. All deposits, upon receipt, shall become immediately non-refundable and fully disbursed.

40. **MEDIATION OF DISPUTES:** If a dispute arises out of or relates to this Agreement, or its breach, by initialing in the spaces below,

☒ (____)(____) Buyer agrees ☐ (n/a)(n/a) Buyer does not agree

☒ (____)(____) Seller agrees ☐ (n/a)(n/a) Seller does not agree

to first try in good faith to settle the dispute by non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to court action or binding arbitration, unless the dispute is a matter excluded under the ARBITRATION clause, if any, in this document.

(Both parties must initial "agrees" for meditation to be part of this agreement.)

41. ARBITRATION OF DISPUTES:

Any dispute or claim in law or equity arising out of this Agreement will be decided by neutral binding arbitration in accordance with prevailing law and applicable court rules. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The parties will have the right to discovery.

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Buyer [Signature] **METZKER JOHNSON GROUP** Seller /

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ADDRESS: Hansen Land at Court St and Island Street

The parties agree that the following procedure will govern the making of the award by the arbitrator: (a) a Tentative Award will be made by the arbitrator within 30 days following submission of the matter to the arbitrator; (b) the Tentative Award will explain the factual and legal basis for the arbitrator's decision as to each of the principal controverted issues; (c) the Tentative Award will be in writing unless the parties agree otherwise; provided, however, that if the hearing is concluded within one day, the Tentative Award may be made orally at the hearing in the presence of the parties. Within 15 days after the Tentative Award has been served or announced, any party may serve objections to the Tentative Award. Upon objections being timely served, the arbitrator may call for additional evidence, oral or written argument, or both. If no objections are filed, the Tentative Award will become final without further action by the parties or arbitrator. Within 30 days after the filing of objections, the arbitrator will either make the Tentative Award final or modify or correct the Tentative Award, which will then become final as modified or corrected.

The following matters are excluded from arbitration: (a) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust or mortgage; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court, or small claims court; or (e) an action for bodily injury or wrongful death. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, will not constitute a waiver of the right to arbitrate under this provision.

NOTICE: By initialing in the "agree" space below you are agreeing to have any dispute arising out of the matters included in this "Arbitration of Disputes" provision decided by neutral arbitration, and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. By initialing in the "agree" space below you are giving up your judicial rights to appeal. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under state law. Your agreement to this arbitration provision is voluntary.

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in this "Arbitration of Disputes" provision to neutral arbitration.

☐ (n/a) ☒ (X) Buyer agrees ☒ (X) Buyer does not agree

☐ (n/a) ☒ (X) Seller agrees ☒ (X) Seller does not agree

(Both parties must initial "agrees" for Arbitration to be part of this agreement.)

42. LIQUIDATED DAMAGES:

IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED BY THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELEASED FROM HIS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH A DEFAULT BY BUYER AND AGREE THAT THE ☒ AMOUNT OF DEPOSIT(S), ☐ \$ _____ MADE BY BUYER IS A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT THE BUYER DEFAULTS IN THE PERFORMANCE OF THIS AGREEMENT, THE ABOVE STATED AMOUNT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER AND SHALL BE FORFEITED BY

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Buyer

[Signature]

METZKER JOHNSON GROUP

Seller /

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BUYER TO SELLER SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST THE BUYER WHICH SELLER MIGHT OTHERWISE HAVE IN LAW OR EQUITY BY REASON OF SUCH DEFAULT BY BUYER.

☒ (X) Buyer agrees

☐ (n/a X n/a) Buyer does not agree

☒ (X) Seller agrees

☐ (n/a X n/a) Seller does not agree

(Both parties must initial for Liquidated Damages to be part of this agreement.)

43. HOLD HARMLESS:

Metzker Johnson Group and its agents accept no responsibility for items such as but not limited to repairs, renovation, restoration, replacement, maintenance work, or inspections performed to or upon the property, regardless of whether or not the Contractor/Inspector performing the work was hired by Buyer or Seller at the suggestion of the Agent or any other representative of Metzker Johnson Group. By the execution of this agreement, Buyer/Seller hereby release and agree to hold Metzker Johnson Group and its agents harmless from any loss or liability which Buyer/Seller may incur as a result of any action of the Contractor/Inspector on or about the property, or the failure of the Contractor/Inspector to perform items such as but not limited to, the repair, renovation, replacement, maintenance work, or inspection in a good and workmanlike fashion. Buyer/Seller is encouraged to consult with a Contractor/Inspector of their own choosing regarding the satisfactory completion of any repair, renovation, replacement, maintenance work, or inspection performed to or upon the property.

44. CODE OF ETHICS:

Not all real estate licensees are REALTORS. A REALTOR is a member of the National Association of REALTORS and therefore subscribes to a higher ethical standard in the industry, the REALTOR Code of Ethics. To receive a copy of the REALTOR Code of Ethics, ask your real estate professional, the Reno/Sparks Association of REALTORS, or go to www.rsar.net.

45. CONSULT YOUR ADVISORS:

This document has been prepared for your advisors review and for your approval. Agent makes no representation or recommendation as to the legal sufficiency or tax consequences of this document or the transaction to which it relates. These are questions for your attorney and financial advisor. In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, industrial hygienist, or other person with experience in evaluating the condition of said Property.

46. BROKER(S) AND AGENT(S) DISCLAIMER:

Buyer and Seller acknowledges that except as otherwise expressly stated herein, Broker(s) and Agent(s) have not made any warranty or representation with respect to any of the following: (a) the legality of the present or any possible future use of the Property under any federal, state or local law; (b) pending or possible future action by any governmental entity or agency which may affect the Property; (c) the physical condition of the Property. Buyer/Seller agrees that investigation and analysis of all matters related to the Property is their sole responsibility and that Buyer/Seller shall not hold the Agent responsible relating in any way to the foregoing matters.

47. FAX TRANSMISSION: The facsimile transmission of a signed copy hereof or any counter offer/amendment to the other party or their licensee shall constitute delivery of said signed document. Facsimile signature may be accepted as original.

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Buyer [Signature]

METZKER JOHNSON GROUP

Seller /

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CONSULT YOUR ADVISORS: This document has been prepared for your advisors review and for your approval. Broker makes no representation or recommendation as to the legal sufficiency or tax consequences of this document or the transaction to which it relates. These are questions for your attorney and financial advisor. In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, industrial hygienist, or other person with experience in evaluating the condition of said Property. The parties are advised to consult with appropriate professionals concerning land use regulation, boundaries and setbacks, square footage, physical condition, legal, tax and other consequences of the transaction.

AGENCY RELATIONSHIP CONFIRMATION. The following is the agency relationship for the Buyer.

SELLING OFFICE: NONE

REPRESENTED BY: NONE

Is the licensee acting for (check one): N/A

The State of Nevada form titled, "DUTIES OWED BY A NEVADA LICENSEE"
is hereby incorporated as an addendum to this agreement.

The undersigned Buyer has read this agreement and all addendum/attachments/exhibits and hereby acknowledges receipt of a copy hereof. Buyers signature hereon constitutes an offer to Seller to purchase the Property on the terms and conditions set forth herein. Buyer acknowledges further that he has not relied upon statements or representations by the undersigned Agent which are not herein expressed.

Buyers Broker: NONE Dated: _____

By: None

Buyer

Authorized Signee,

Sam Coniglia

Dated: 7/25/05 Time: 12:15 PM

Print Name: Sam Coniglia for Consolidated Pacific Development Inc.

ACCEPTANCE

Seller accepts the foregoing offer and agrees to sell the herein described property for the price and on the terms and conditions herein specified.

COMMISSION:

Seller agrees to pay in cash the following real estate commission for services rendered, which commission Seller hereby irrevocably assigns from escrow:

Listing Broker's commission shall be 6 % of the accepted purchase price, and n/a % of the accepted price, or \$ n/a, to n/a, the Selling Broker, irrespective of the agency relationship. Escrow instruction with respect to commissions may not be amended or revoked without the written consent of the Broker herein. Commissions shall

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Buyer

Metzker Johnson Group

METZKER JOHNSON GROUP

Seller 1

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ADDRESS Theresa Land at Court St and Island Street

also be payable upon any default by Seller, or the mutual rescission (not covered by this agreement) by Buyer and Seller which prevents the completion of the Sale. If earnest money or similar deposits made by Buyer are forfeited, in addition to any other rights of Broker, Broker shall be entitled to the commission stated thereof. Sale proceeds sufficient to pay the commission are hereby assigned Broker, and Escrow Holder is hereby instructed to pay said commission to Broker out of Seller's proceeds at the Close of Escrow. If this sale shall not be consummated due to the default of Seller, the Seller shall be liable to and shall pay to Broker the commission that Broker would have received had the sale been consummated. Buyer shall have no responsibility or liability to Broker or for any commission on broker or any agent of broker.

F.I.R.P.T.A. (TAX WITHHOLDING)

(Foreign Investment and Real Property Tax Act).

Unless the property is acquired for use as a primary residence and is sold for no more than \$300,000, Seller agrees to provide Buyer with (a) **NON-FOREIGN SELLER AFFIDAVIT (PAA Form 101-V)**, OR (b) **WITHHOLDING CERTIFICATE FORM** from the Internal Revenue Service stating that withholding is not required. In the event none of the foregoing is applicable Buyer must withhold 10% of the Gross Sales Price under the **FOREIGN INVESTMENT AND REAL PROPERTY TAX ACT (IRC SECTION 1445)**.

A real estate broker is not qualified to give advice on withholding requirements, Buyer should inquire of the taxing authorities as to his responsibility.

By signing below the Seller is warranting that he/she/they is not a foreign person, foreign corporation or partnership, or nonresidential alien.

AGENCY RELATIONSHIP CONFIRMATION. The following is the agency relationship for the Seller.

SELLING OFFICE: Metzker Johnson Group

REPRESENTED BY: Richard K. Johnson

Is the licensee acting for (check one):

☐ the Buyer exclusively ☒ the Seller exclusively ☐ both the Buyer and Seller (Consent to Act)

The State of Nevada form titled, "DUTIES OWED BY A NEVADA LICENSEE"

is hereby incorporated as an addendum to this agreement.

Seller acknowledges that he/she has thoroughly read the provisions of this agreement and agrees to sell the herein described property for the price and on the terms and conditions specified. In the event that Seller is in disagreement with any item or part of this Agreement, Seller should make a counter offer to clarify or change.

Seller acknowledges receipt of a copy of this agreement. Authorization is hereby given the Broker(s) in this transaction to deliver a signed copy hereof to Buyer and to disclose the terms of sale to members of a Multiple Listing Service or Board of REALTORS at closing.

Sellers Broker Metzker Johnson Group

Dated: _____

By (agent) Richard K. Johnson

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Buyer [Signature]

METZKER JOHNSON GROUP

Seller [Signature]

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SELLER'S ACCEPTANCE, COUNTER OFFER OR REJECTION OF AGREEMENT.
 Seller MUST **check one** of the following options and date, time and sign this agreement.

<input checked="" type="checkbox"/>	ACCEPTANCE: The undersigned Seller accepts this offer to purchase, agrees and has the authority to sell above described property on the terms and conditions as stated herein.
Seller: _____	Dated: _____ Time: _____
<i>Authorized Signee, John Iliescu Jr.</i>	
Seller: _____	Dated: _____ Time: _____
<i>Authorized Signee, Sonnia Iliescu</i>	

OR

<input type="checkbox"/>	COUNTER OFFER:
Seller accepts this offer subject to the Counter Offer Dated: _____	
Seller: _____	Dated: _____ Time: _____
Seller: _____	Dated: _____ Time: _____

OR

<input type="checkbox"/>	REJECTION: By his signature below, Seller rejects the foregoing offer.
Seller: _____	Dated: _____ Time: _____
Seller: _____	Dated: _____ Time: _____

20

Buyer *[Signature]*

METZKER JOHNSON GROUP

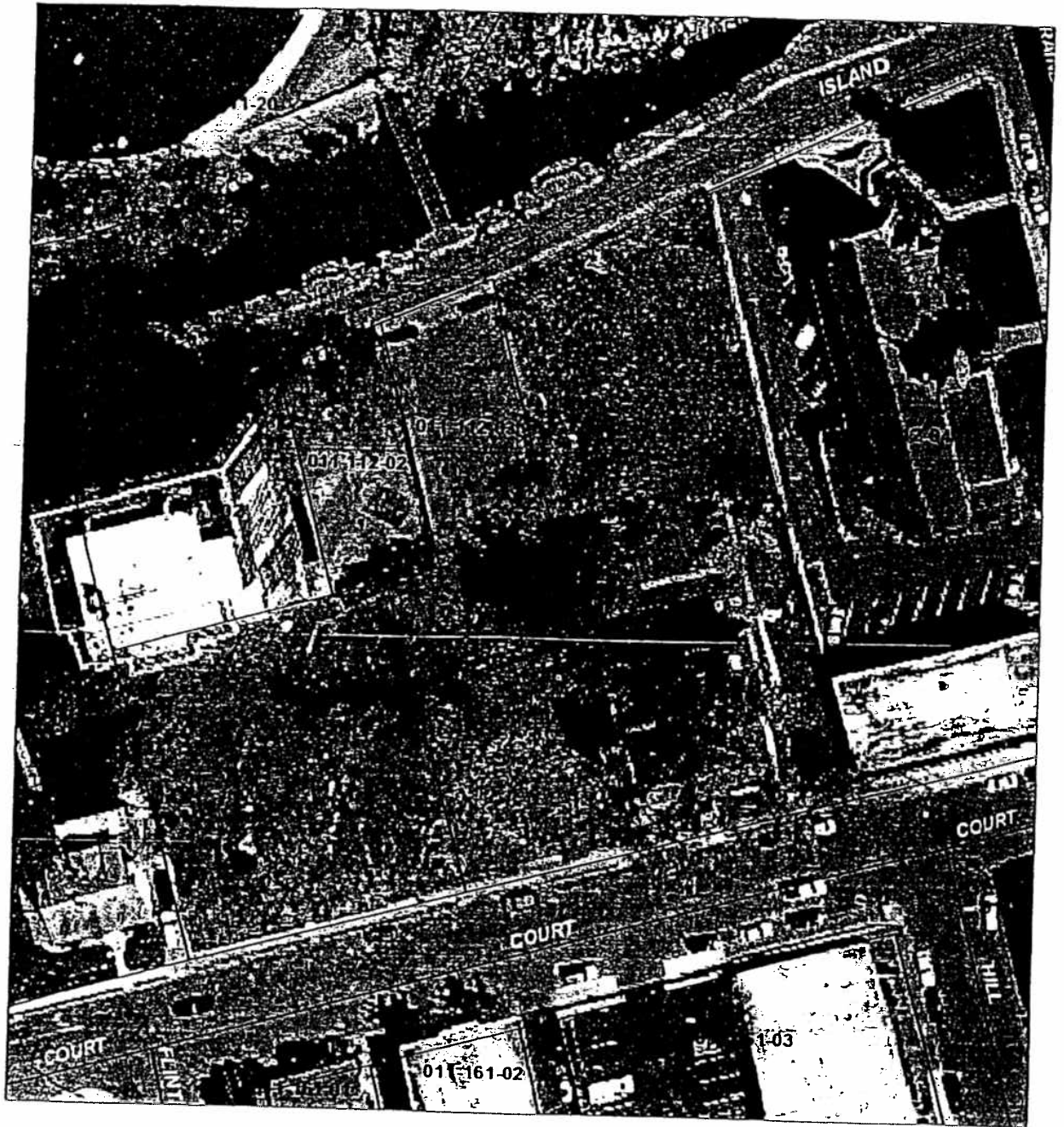
Seller *[Signature]*

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RS - 118

ADDRESS Brescu Land at Court St and Island Street



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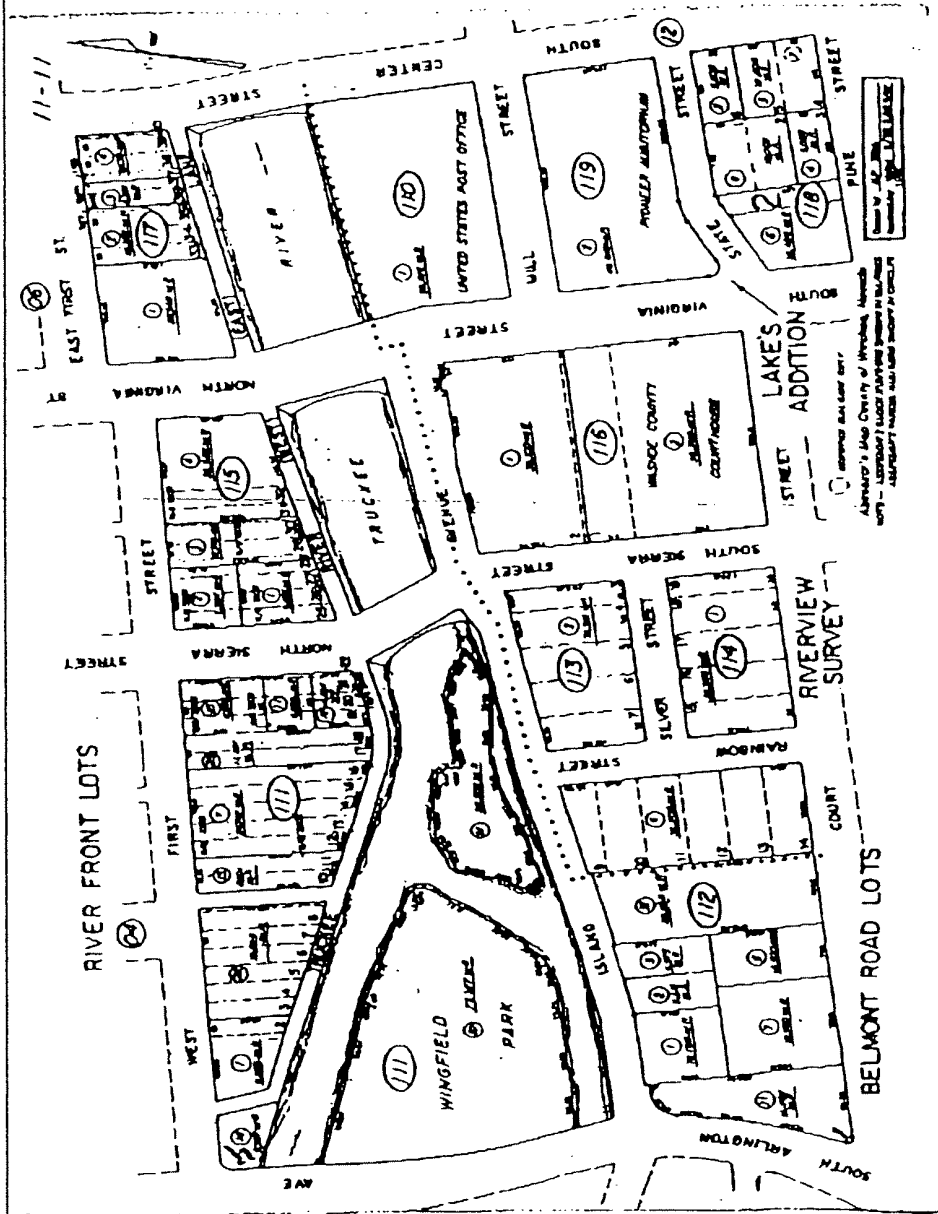
Buyer _____ **METZKER JOHNSON GROUP** Seller _____

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RS - 119

ADDRESS: Iliescu Land at Court St and Island Street



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Buyer [Signature] **METZKER JOHNSON GROUP** Seller

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M. Johnson

775-823-8848

P.2

JOHNSON Highway 99 and School Street

MEITZKER JOHNSON GROUP
 COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY
 6190 S. McCarran Blvd., SUITE 200, LAS VEGAS, NEVADA 89149 PHONE: (775) 823-8848 FAX: (775) 823-8848

LAND PURCHASE AGREEMENT

Date Prepared: July 22, 2003

Property Address: APN: 011-112-04, 011-112-07, 011-112-12, 011-112-03

RECEIVED from CONSOLIDATED PACIFIC DEVELOPMENT INC., a Nevada Corporation, and/or assignees (hereinafter designated as "BUYER"), the sum of \$25,000.00 (Twenty Five Thousand and no/100 Dollars) evidenced by ☐ Cash ☒ Check ☐ Other in on account of the PURCHASE PRICE of \$7,500,000 (Seven Million Five Hundred Thousand and no/100 Dollars) for that certain land, improvements, and personal property, if any, (hereinafter collectively referred to as the "Property") situated in the City of Reno, County of Washoe, State of Nevada, and more particularly described as follows: (the "Property") 212 Court Street (APN 011-112-12 John Jr. and Sonnie Blaine Trust Seller), 9 Court Street (APN 011-112-07 John Jr. and Sonnie Blaine Trust Seller), and 222 Court Street (APN 011-112-06 John Blaine Seller) (APN 011-112-03 John Jr. and Sonnie Blaine Trust Seller), consisting of approximately 59,414 square feet of land, where rights defined in Paragraph 39(P) herein upon the following TERMS and CONDITIONS:

1. FINANCE TERMS:

1.1 DEPOSIT:

\$ 25,000.00

To be deposited within Three (3) working days of acceptance with Escrow Holder. The initial deposit shall be held by Metzker Johnson Group, subject to applicable statutes and regulations.

1.2 ADDITIONAL CASH DEPOSIT:

\$ 475,000.00

The deposit shall be increased in the form of cash or cashier's check to be deposited with escrow holder for immediate disbursement to the Seller per Seller's agent proportionately. Deposits are non-refundable and credited to the purchase price. The additional deposit shall be paid as follows:

- ☒ an additional \$ 75,000.00 within 30 days from acceptance,
- ☒ an additional \$ 100,000.00 within 90 days from acceptance,
- ☒ an additional \$ 100,000.00 within 150 days from acceptance,
- ☒ an additional \$ 100,000.00 within 210 days from acceptance,
- ☒ an additional \$ 100,000.00 within 270 days from acceptance,
- ☒ if, through no fault of the Buyer, additional time is required for

conventional approvals of the protocol. Seller agrees to extend the close of escrow, as needed to obtain approvals. Buyer to pay an additional \$ 25,000.00 deposit within each 30 days commencing from the 270 day payment due date. All extension deposits shall be credited to the purchase price upon close of escrow. Buyers shall have a 15 day grace period to make pay of the aforesaid deposits.

1

Buyer

MEITZKER JOHNSON GROUP

Seller

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ATTENTION: Please Contact Union St and Island Street

1.3 BALANCE OF CASH PAYMENT: \$7,000,000.00
To be paid at Close of Escrow, as needed to close but not including closing costs.

1.4 EXISTING FINANCING: \$ N/A
For Terms and Conditions as specified below.

1.5 OWNER FINANCING: \$ N/A
For Terms and Conditions as specified below.

1.6 NEW LOAN: \$ N/A
Contingent upon the Terms and Conditions as specified below.

1.7 TOTAL PURCHASE PRICE: \$7,500,000.00
(Not including closing costs).

☐ N/A 1.8 IF "EXISTING FINANCING" TERMS AND CONDITIONS TO BE ASSUMED SHALL INCLUDE:
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)

☐ N/A 1.9 IF "OWNER FINANCING" TERMS AND CONDITIONS SHALL INCLUDE:
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)

☐ N/A 1.10 IF "NEW FINANCING" CONTINGENCY:
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)

2. SUBORDINATION AND PARTIAL RECONVEYANCE:

2.1 SUBORDINATION CLAUSE: N/A

2.2 PARTIAL RECONVEYANCE:

Seller does not agree to partial reconveyance. Buyer does intend to subdivide the property and improve the property in stages over a period of time after close of escrow.

DEFINITIONS

(Unless stated otherwise in this document)

BROKER OR AGENT includes cooperating brokers, brokers, all sales persons and agents. DAYS means calendar days; unless otherwise specified. If the (a) stated Closing date or (b) last day for the performance of an act falls upon a day during which normal business is not performed then the

2

Buyer _____

MEITZER JOHNSON GROUP

Seller [Signature]

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Closing date on such last day, as the case may be, will be the next following regular business day. **DATE OF ACCEPTANCE (EFFECTIVE DATE)** means the date the Seller accepts the offer or counter offer is accepted by both parties. **DELIVERED** means personally delivered to Principal or respective Attorney, transmitted by the facsimile machine, or mailed by registered carrier, next business day delivery with receipt requested. In the event of fax transmission, delivery shall be deemed to be complete at the time noted on the sender's fax confirmation sheet. **DATE OF CLOSING** means the date title is transferred. The **SINGULAR** includes the plural and the **MASCULINE** includes the feminine. **TERMINATING THE AGREEMENT** means that both parties are relieved of their obligations and all deposits will be returned to the Buyer less expenses incurred by or on account of the Buyer to the date of termination. **PROPERTY**, unless the context indicates otherwise, means all easements and rights appurtenant thereto and all improvements thereon, including all building thereon and any rights appurtenant thereto, all other improvements, all personal property owned by Seller and used in the operation or maintenance and management of the real property, and all content or lease rights, agreements, water rights, mineral rights, utility contracts or other rights relating to the ownership, use and operation of the real property. **DATE PREPARED** is for reference only.

3. ADDENDUM:

Addendum(s) and Exhibit (s), identified as

- ☒ Duties Owed by a Nevada Real Estate Licensee.

- ☐ Criminal to Act

- Plot map-Exhibit A.

- ☒ Plot map - Exhibit A
- ☒ Legal Description - Exhibit B, to be supplied to Buyer within 15 days of the execution of this agreement

- ☒ Form 110.6), HAZARDOUS MATERIALS DISCLOSURE, to Buyer within 15 days of the execution of this agreement.

- ☐
- Other:
- nlp

- signed by all parties, is attached and shall be a part of this agreement.

A CLOSING AND ESCROW:

A. CLOSING AND ESCROW:
 Within 170 (Two Hundred Seventy) days of acceptance, as may be extended pursuant to Paragraph 1.2 above both parties shall deposit with an authorized Escrow Holder, to be selected by ☐ Buyer, ☒ Seller, all funds and instruments necessary to complete the sale in accordance with the terms hereof. Promptly after mutual recognition of this contract, Buyer and Seller shall open an escrow with (Escrow Holder) First Commercial Title Company (Escrow Office) Mary Ann Johnson. Escrow fees paid by 50% by Seller and 50% by Buyer. Documentary Transfer Tax, if any, to be paid by ☒ Buyer, ☐ Seller, 60% by Seller and 40% by Buyer, ☐ Other s/a. All remaining closing costs shall be paid in customary manner and/or as required by law, ordinance and/or regulation. Possession of the Property shall be given to Buyer at close of escrow. Title shall be conveyed to Buyer by property deed and shall carry recordable Grant Deed.

Buyer shall have the right to close escrow anytime prior to the Closing designated in this agreement.

Buyer

METZKER JOHNSON GROUP

Seller 1/1

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R.C. K. Johnson

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APPENDIX - Escrow Instructions and Related Notes

5. EVIDENCE OF TITLE

On the date of closing, Escrow Holder shall issue commercial title insurance, in the form of ☐ CLTA or ☒ ALTA Policy of Title Insurance to be paid by ☒ Buyer ☐ Seller, insuring Buyer's title to the Property in an amount equal to the full purchase price. Said title policy shall insure that Buyer has good and marketable title to the Property subject only to the exceptions authorized.

NOTE: Buyer should discuss the choice of policy with the title company of his choice at the time escrow is opened.

Buyer is aware that additional coverage policies are available. All costs associated with additional coverage policy to be paid by ☒ Buyer, ☐ Seller, ☐ n/a % by buyer and ☐ n/a % by Seller.

4.1 As soon as reasonably possible following opening of escrow, but not to exceed ☒ fifteen (15) days from acceptance, ☐ Buyer, ☒ Seller, ☐ n/a % by buyer and ☐ n/a % by Seller shall pay and furnish to Buyer a Preliminary Title Report on the Property (the "Report"), together with full legible copies of all exceptions in the Report. Buyer shall have ☒ thirty (30) days of time of acceptance to notify Seller and Escrow Holder in writing of Buyer's reasonable disapproval of any such exception. Failure of Buyer to disapprove in writing any exceptions within the aforementioned time limit shall be deemed to be an approval of the Report.

In the event Buyer disapproves any exception in the Report, Seller shall use due diligence to remove such exceptions at his own expense.

Seller shall have ☒ ten (10) or ☐ n/a (n/a) days from notification to remove the exceptions. But if each exception cannot be removed or Seller refuses to remove or correct said conditions, by this date, all rights and obligations herein may, at the election of the Buyer, terminate and the deposit shall be returned to Buyer, unless he elects to purchase the property subject to such exceptions.

4.2 The success of taking title may have significant legal and tax consequences. Buyer should obtain advice from his legal or tax counsel regarding this matter. Title shall vest as designated in Escrow Instructions.

6. BONDS:

The amount of any bond or assessment which is a lien shall be: ☒ paid by the Seller, ☐ assumed by Buyer.

7. EXPIRATION:

This offer shall expire, and be rendered null and void, unless a copy with Seller's written acceptance (Duplicate copy acceptable) is delivered to the Buyer or the Buyer's agent on or before 1:00 o'clock ☐ AM, ☒ PM, Pacific Standard Time, on (Day) August 2 (Term) 2005.

8. PROVISIONS AS FURTHER DEFINED:

The Provisions tracked ☒ below, and further defined in this document, are included in this agreement.

BUYER INCLUDED BUYER WAIVED

☒ ☐ N/A 8-A. SOIL TESTS:

Soil Tests within 30 days of acceptance, paid by ☒ Buyer ☐ Seller.

Upon acceptance of this agreement Buyer shall have the right, if he chooses, to go upon the property to conduct soil tests, including percolation tests, to determine whether the property is suitable for

Buyer 1

METZGER JOHNSON GROUP

Seller 2/1/05

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K. Johnson

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ADDRESS: Office, Land at Court Street, Island Street

the improvements which Buyer proposes to make. All expense of such test shall be borne by the person indicated above, and Buyer shall be responsible for the repair and restoration of any damage to the property which may be caused by such tests. If in the reasonable opinion of the soil engineer, employed by Buyer, the property is not suitable for the proposed development, this agreement at the option of the Buyer, may be terminated and all deposits shall be refunded. Buyer shall be deemed to have waived this condition unless written notice to the contrary is delivered to Seller or his agent within the number of days of acceptance specified above.

Note: Seller shall provide to Buyer within Five(5) days of acceptance copies of any existing soils reports/tests available to the Seller (IF ANY).

BUYER INCLUDED: ☐ N/A
BUYER WAIVED: ☐ N/A

☒ ☐ N/A **B-B. SURVEY:** Survey, paid by ☒ Buyer ☐ Seller.

Upon acceptance of this offer, the property ☐ shall, ☒ may, be surveyed by a licensed surveyor at the expense of the party specified above. The surveyor shall set and flag all property pins, to be approved in writing by Buyer prior to thirty (30) days prior to Close of Escrow. The purchase price is based upon the price specified above and shall not be adjusted in accordance with the area set forth in such a survey, if applicable. In the event the survey completed at the request of the Buyer discloses an encroachment of any kind or nature affecting the boundary or a set back requirement of the property, this agreement at the option of the Buyer, may be terminated and all deposits shall be refunded. Buyer shall be deemed to have waived this condition unless written notice to the contrary is delivered to Seller or his agent within the number of days of acceptance specified above.

BUYER INCLUDED: ☐ N/A
BUYER WAIVED: ☐ N/A

☒ ☐ N/A **B-C. FLOOD HAZARD ZONE:**

Buyer has been advised that the property is located in an area which the Secretary of HUD has found to have special flood hazards and that it may be necessary to purchase flood insurance in order to obtain any loan secured by the property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the U.S. Government. The purpose of the program is to provide flood insurance at reasonable cost. For further information consult your lender or insurance carrier.

BUYER INCLUDED: ☐ N/A
BUYER WAIVED: ☐ N/A

☒ ☐ N/A **B-D. BROKER REPRESENTING BOTH PARTIES:**

Buyer and Seller acknowledge that the broker in this transaction represents both parties and Buyer and Seller exempt hereto.

BUYER INCLUDED: ☐ N/A
BUYER WAIVED: ☐ N/A

☒ ☐ N/A **B-E. SINGLE AGENCY**

Notwithstanding agreements with respect to payment of commissions, or rights granted under Multiple Listing agreements, the parties agree that the Seller's Broker named herein is the agent of the Seller and is not the agent of the Buyer, and that the Buyer's Broker named herein is the agent of the Buyer.

Buyer

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Seller

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UNWARRANTED, EXCEPT AS SHOWN ON THE TITLE CURATIVE

and is not the agent of the Seller or a sub-agent of Seller's Broker.

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒ N.Y. CONTINGENCY RELEASE CLAUSE:

Offer is contingent upon the sale of (address) n/a

BUYER INCLUDED: ☒ N/A BUYER WAIVED: ☐ N/A 8-G. TAX DEFERRED EXCHANGE (INVESTMENT PROPERTY):

In the event that Seller wishes to enter in a tax deferred exchange for the real property described herein, or if Buyer wishes to enter into tax deferred exchange with respect to property owned by him in connection with this transaction, each of the parties agrees to cooperate with the other party in connection with such exchange, including the execution of such documents as may be reasonably necessary to effectuate the same. Provided that (a) The other party shall not be obligated to delay the closing, (b) All additional costs in connection with the exchange shall be borne by the party requesting the exchange, and (c) The other party shall not be obligated to execute any note, contract, deed or other documents providing for any personal liability which would survive the exchange, nor shall the other party be obligated to take title to any property other than the property described in this agreement. The other party shall be indemnified and held harmless against any liability which arises or is claimed to have arisen on account of the acquisition of the exchange property.

_____ Buyer may elect to do a 1031 Tax Deferred Exchange

_____ Seller may elect to do a 1031 Tax Deferred Exchange

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒ N/A 8-G. OWNER'S ASSOCIATION DISCLOSURE:

At time of acceptance, Seller shall deliver to Buyer an Affidavit to Purchase Agreement for Common Ownership Interest Properties, which by this reference shall be incorporated into this Agreement. Association transfer fees of \$ N/A to be paid by ☐ Buyer ☐ Seller ☐ Other N/A. The amount of any delinquent assessments including penalties, attorney's fees, and other charges provided for in the organizational documents shall be paid over to the Seller at close of escrow. Seller represents that there are no Common Ownership Associations or Agreements related to the Property.

BUYER INCLUDED: ☒ N/A BUYER WAIVED: ☐ N/A 6.21 ADDITIONAL INSPECTIONS:

Unless stated otherwise in this agreement, the Buyer shall at ☒ Buyer's ☐ Seller's expense, have the right to order any and all inspections that Buyer deems necessary by experts, including, but not limited to

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Buyer _____ METZGER JOHNSON GROUP Seller [Signature]
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to, engineers, geologists, architects, contractors, surveyors, and structural pest control operators to inspect the property for any structural and non-structural conditions, including matters concerning, but not limited to, roofing, electrical, plumbing, heating, cooling, appliances, pool boundaries, structural inspection report, roof inspection, Phase I Environmental Report on Hazardous Waste and Materials, A.D.A. (Americans Disabilities Act) Report, asbestos testing report, lead based paint report, radon report, mold inspection, wood stove inspection, seismology report and/or earth quake fault information, electromagnetic field report, water quality / quantity report, septic system inspection, shall be ordered and must occur within thirty (30) days of acceptance of this Agreement. Reports shall be approved, rejected, or waived by Buyer within ☒ THIRTY (30) days ☐ N/A (N/A) days of receipt by Buyer of such report.

Buyer shall furnish Seller, at no cost to Seller, copies of inspections and reports obtained, along with list(s) itemizing all reports requested by Buyer as indicated by said inspections and reports, within ☒ ten (10) days ☐ N/A (N/A) days of receipt of same. Seller agrees to pay an amount NOT to exceed the total sum of \$ N/A for all repair conditions indicated, per the above contemporaneous reports and/or any defect discovered or defect which has become worse than was originally indicated.

Any needed repairs, remediation, or corrective action identified by said reports in excess of the above stated dollar amount shall be at Buyer's expense. However, if repair expenses are considered excessive by Buyer, then Buyer may terminate this agreement at Buyer's discretion unless Seller agrees to repair at Seller's expense by written addendum.

If not completed by close of escrow, funds shall be held in escrow, if not disallowed by Lender, and disbursed by escrow holder upon receipt of a statement by a licensed structural pest control operator, certifying that the property is free of evidence of active infestation or infection.

As soon as the same are available, copies of this report, and any certification or other proof of completion of the work shall be delivered to the Agent of Buyer and Seller who are authorized to receive the same on behalf of their principals.

Buyer acknowledges that he has not relied upon any representations by the Agent with respect to the condition of the Property.

9. CHANGES DURING TRANSACTION:

During the pendency of this transaction, Seller agrees that no changes in the existing lease or rental agreements shall be made, nor new lease or rental agreements entered into, nor shall any substantial alterations or repairs be made or undertaken without the written consent of the Buyer.

10. PRORATIONS:

10.1 TAXES: Real property taxes payable by the owner of the Property shall be prorated through Escrow as of the date of the recording of the deed, based upon the latest tax bill available. Buyer shall pay supplemental tax bill levied by the transfer of the Property to the Buyer. Payment shall be made promptly in cash upon receipt of a copy of any such supplemental bill of the amount necessary to accomplish such proration. Seller shall pay and discharge in full, as or before the Closing, the unpaid balance of any special assessment bonds.

10.2 INSURANCE: If Buyer elects to take an assignment of the existing casualty and/or liability insurance then it maintained by Seller, the current premium therefore shall be prorated through Escrow as of the date of Closing.

Buyer /

METZGER JOHNSON GROUP

Seller /

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P. 3

UN-WATV - Based East of Irving and Island Street

10.3 RENTALS, INTEREST AND EXPENSES: Expenses, such as, but not limited to, utilities, and operating expenses, shall be prorated as of the date of Closing. Such items shall be supplied by Seller within ☒ five (2) days or ☐ N/A (N/A) days prior to close of escrow. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

10.4 SECURITY DEPOSIT AND LEASE CREDITS: Security Deposits held by Seller and considerations involving lease credits shall be given to Buyer by a credit to the cash required of Buyer at the Closing. Such items shall be supplied by Seller within ☒ five (2) days or ☐ N/A (N/A) days prior to close of escrow.

10.6 POST CLOSING MATTERS: Any item to be provided that is not determined or determinable at the Closing shall be adjusted by the parties as soon as possible following close of escrow.

12. ENCUMBRANCES:

In addition to any encumbrances referred to herein, Buyer shall take title to the property subject to: (1) Real Estate Taxes not yet due and (2) Easements, Conditions, Restrictions, Rights of Way, and Easements of record, if any, which do not materially affect the value or intended use of the property. Such encumbrances shall be deemed approved unless written notice to the contrary is delivered to Seller or his agent within THIRTY (30) days of acceptance.

13. NOTICES:

By acceptance hereof Seller warrants that he has no notice of violations or of any claims relating to the property from City, County, State, or Federal agencies, or any other person or persons.

Pursuant to Nevada revised statutes, the Buyer(s) of real property, for or under, development is hereby informed that such property may be subject to inspection fees which have been or will be imposed by governmental agencies.

14. DEFAULT:

In the event that Buyer shall default in the performance of this agreement, Seller may subject to any rights of the Broker herein, retain Buyer's deposit on account of damages sustained all as more fully provided in paragraph 42 below, and Buyer shall have the right to take such action as he deems appropriate to recover such portion of the deposit as may be allowed by law.

15. PHYSICAL POSSESSION:

Physical possession shall be delivered to Buyer upon recordation of the deed.

16. TIME:

Time is of the essence as to each and every provision of this agreement. If after a good faith effort, any condition stated in this contract has not been eliminated or satisfied within the time limits and pursuant to the provisions of this agreement, then this contract may be deemed null and void, the deposit shall be returned to Purchaser, and the escrow shall be canceled. Either party may resort to such remedies as it may have in law or equity, subject to the liquidated damages provision set forth in Paragraph 42 below.

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Buyer /

MEITZER JOHNSON GROUP

Seller /

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