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1           PURSUANT TO NOTICE, and on Wednesday, the 3rd day of  
2           March, 2010, at the hour of 9:35 a.m. of said day, at  
3           6005 Plumas Street, Reno, Nevada, before me, Janet  
4           Menges, a notary public, personally appeared MARK  
5           STEPPAN.

6                               --oOo--

7  
8                               MARK STEPPAN  
9           called as a witness, being first duly  
10          sworn, was examined and testified  
11          as follows:

12  
13                               EXAMINATION

14          BY MR. WILSON:

15               Q     Good morning, sir.

16                       This is the continuation of your deposition.  
17          Do you understand that you're still under oath?

18               A     Yes.

19               Q     Did you review any documents in preparation for  
20          your testimony today from the end of our session  
21          yesterday until now?

22               A     No.

23               Q     Sir, I would like you to look at Exhibit 15 to  
24          your February 16 deposition, and that is Steppan 3301  
25          and the second page is 3148.

1 Do you have that in front of you?

2 A Yes.

3 Q With reference to the discussion yesterday  
4 regarding business cards for the business card that was  
5 prepared for Nathan Ogle, did that business card recite  
6 on it instead of Fisher Friedman Associates words to the  
7 effect like the stationery that is Exhibit 15, Steppan  
8 3301, and by that I mean that it reported at the top  
9 Mark B. Steppan, AIA, et cetera?

10 A I believe so.

11 Q What else did the business card that was  
12 prepared for Nathan Ogle that we spoke about yesterday  
13 that did not include Fisher Friedman Associates, what  
14 else did that business card have on it?

15 A Besides the address and his name?

16 Q Yes.

17 A I don't know if there was anything else. I  
18 don't remember.

19 Q Did it recite exactly as Exhibit 15, Steppan  
20 3301 at the top, that is Mark B. Steppan, AIA, CSI,  
21 NCARB, underscore architect?

22 A I don't remember exactly what it looked like.

23 Q Are there any of those business cards for  
24 Nathan Ogle as I just described in existence today?

25 A I don't know if there are any left. So I have

1 not seen any.

2 MR. WILSON: Counsel, we would ask that the  
3 Nathan Ogle and Rodney Friedman business cards that we  
4 discussed yesterday and again this morning be produced.

5 MR. MOLLATH: Or any printer's proofs of those  
6 that may exist.

7 MS. KERN: If they exist.

8 MR. WILSON: Is that agreeable?

9 MS. KERN: We will look. If they exist it is  
10 agreeable.

11 MR. GRUNDY: Will you let us know one way or  
12 the other? If they don't have them or can't find them  
13 will you let us know that as well?

14 MS. KERN: Absolutely, but if you do not get  
15 them and you want to send a little reminder to me that  
16 would be most appreciated.

17 MR. GRUNDY: That's fine.

18 MS. KERN: I don't always remember things that  
19 I have every good intention of doing.

20 BY MR. WILSON:

21 Q Fair enough.

22 Sir, these business cards for Nathan Ogle that  
23 we're discussing that have your name and not Fisher  
24 Friedman Associates name were produced in-house;  
25 correct?

1 A Correct.

2 Q And they were produced electronically; correct?

3 A Correct.

4 Q Is the electronic file preserved?

5 A I don't really remember. We have done clean up  
6 of a variety of things and computers have crashed. So I  
7 couldn't really say if they were preserved or not.

8 MR. MOLLATH: Can you tell what generation I'm  
9 from, printer's proofs?

10 MR. GRUNDY: Yeah.

11 MS. KERN: I wasn't going to comment, Steve.

12 BY MR. WILSON:

13 Q Who at Fisher Friedman Associates did the  
14 electronic version of the card?

15 A Probably Nobu Kaji.

16 Q Forgive me, I don't recall. Is he still with  
17 the firm?

18 A Yes.

19 Q So in looking for the business cards there will  
20 be an inquiry to Mr. Nobu Kaji about whether he has the  
21 electronic version. Is that agreeable?

22 MS. KERN: Well, if we need to. If Mark goes  
23 back and he finds one in his desk, then we don't have to  
24 ask Nobu about it.

25 MR. WILSON: I agree, but in the unlikely

1 alternative you will make an inquiry of Mr. Nobu Kaji,  
2 Gayle?

3 MS. KERN: Yes.

4 MR. WILSON: Thank you. I appreciate it.

5 BY MR. WILSON:

6 Q Could you pick up Exhibit 21?

7 A Are we done with 15?

8 Q We're done for the moment with that stack.

9 Thank you.

10 Looking at Exhibit 21 that is Bates 3262, and  
11 that is a Mark B. Steppan, architect stationery with the  
12 signature block for Rodney Friedman.

13 Do you see that?

14 A Yes.

15 Q Similarly was the business card prepared for  
16 Rodney Friedman that had Mark B. Steppan instead of  
17 Fisher Friedman Associates on it, did that have the same  
18 format as the one we have just talked about for Nathan  
19 Ogle?

20 A I believe so.

21 MR. WILSON: All right.

22 Again on the same grounds we would like copies  
23 of those either in physical or electronic form.

24 MS. KERN: Okay.

25 MR. WILSON: Thank you.



1 (Exhibit 75 was marked.)

2 BY MR. WILSON:

3 Q Sir, Exhibit 75 is Steppan 3442.

4 MS. KERN: I'm going to object to this. This  
5 obviously was produced in error. This is an attorney.  
6 I'm going to object that it may be covered by the  
7 attorney-client privilege.

8 MR. WILSON: I understand. My question won't  
9 address the text. I have a question about the  
10 stationery. How would you like to proceed?

11 MS. KERN: Well, it is a communication to their  
12 attorney. It was produced in error, and I'm going to  
13 object to anything that has to do with it because Rob  
14 Hendickson -- Is Rob Hendickson an attorney?

15 THE WITNESS: Yes.

16 MS. KERN: I will object to this. It's a  
17 privileged communication. It was produced in error.

18 MR. WILSON: We will withdraw 75.

19 So we're going to give that to me and we're  
20 going to mark next in order 76. 75 is withdrawn. That  
21 is Bates Steppan 3442.

22 (Exhibit 75 was withdrawn.)

23 MR. WILSON: 76 will be next, Bates 3362  
24 through 65.

25 (Exhibit 76 was marked.)

1 BY MR. WILSON:

2 Q Sir, Exhibit 76 is a letter dated February 15,  
3 2006 to Calvin Bosma from Nathan Ogle. Do you see that?

4 A Um-hum.

5 Q Yes?

6 A Yes.

7 Q And my questions on this exhibit are directed  
8 to the nature of the stationery. You will note that  
9 this is Fisher Friedman Associates stationery?

10 A Yes.

11 Q Do you have an understanding why Mr. Ogle sent  
12 a letter on February 15, 2006 to Calvin Bosma on Fisher  
13 Friedman Associates stationery?

14 A No.

15 Q Were there any guidelines enunciated by you  
16 governing what stationery would be used for the Reno  
17 project?

18 A I don't remember if we had any real specific  
19 guidelines that were discussed other than all of the  
20 official submissions of documents would require it to be  
21 under my letterhead and name, but the communications  
22 within the team could be handled on Fisher Friedman  
23 letterhead as they were my designated design consultant  
24 and were not purporting themselves out to be the  
25 architect of record.

1           Q     Similarly was it further your instruction or  
2     intent that communications outside the team would be on  
3     Mark Steppan stationery?

4           A     No, I said it could be on either one as long as  
5     it was not purporting to be the architect of record,  
6     especially when in the context of the client who fully  
7     was aware of what we were doing and how we were  
8     organized.

9           Q     Was it the design then that correspondence  
10    to -- Let me strike that.

11                  I will back up. When you said the client, sir,  
12    who is that?

13          A     Anyone related to Sam, Calvin, Cal Bosma, John  
14    Schleining. Any of our consultants would have been  
15    separate than clients, but people like Wood Rodgers who  
16    were not engaged by Fisher Friedman or myself.

17          Q     Would it be a fair statement that the policy  
18    regarding stationery would be that stationery from  
19    others than yourself to the client as you have described  
20    it would be on Fisher Friedman Associates stationery?

21          A     It could be on either one.

22          Q     All right.

23                  Was it the further design or policy that  
24    stationery regarding the Reno project to persons who are  
25    not the client and not working for Fisher Friedman

1 Associates, that is employed by the company, would be on  
2 Mark Steppan stationery?

3 A No, it could be on either one depending on what  
4 you were trying to do or say or what might happen. I  
5 can't guarantee that there was any way that everybody  
6 would always use one or the other or always use the Mark  
7 Steppan one.

8 So in discussions with the state board it was  
9 certainly brought up that things might go out on either  
10 type of letterhead and as long as you were not  
11 purporting to be the architect of record, et cetera,  
12 that there was no problem with that. We just had to be  
13 careful about how you define things.

14 Q When you say the state board, do you mean or  
15 refer to the conversations you had in October 2005?

16 A Yes.

17 Q Would be what you call the state board?

18 A The Nevada state board.

19 Q Is it your testimony that the state board told  
20 you that it did not matter what stationery you used,  
21 that it would be either Mark Steppan stationery or  
22 Fisher Friedman Associates stationery?

23 A I did not say that they said it did not matter.

24 Q What did they tell you, then?

25 A I'm going to try to remember what they said. I

1 won't be able to know exactly the words they used, but  
2 in discussing it it was clear to me that it would be  
3 acceptable to use Fisher Friedman in addition Mark B.  
4 Steppan as long as there was no indication on the Fisher  
5 Friedman letterhead that they were the architect of  
6 record and purporting to be the sole architects of the  
7 project.

8           Given that it's one firm and I'm the architect  
9 of record that works for Fisher Friedman Associates, it  
10 is a standard method of handling this type of a  
11 situation and the board and I were, as far as I know, on  
12 the same thing page as to how things would be managed,  
13 which is the way we attempted to manage them.

14           Q     Did either Monica or Betty at the state board  
15 tell you that in October of 2005?

16           A     What I just recited was in my discussion with  
17 one of them at that time. That was, I believe, the only  
18 conversations that I had with them.

19           Q     Do you recall if it was with Monica or Betty?

20           A     No, I don't recall who it was with.

21           Q     The conversation was with the Nevada State  
22 Board of Architecture?

23           A     Correct.

24                     (Exhibit 77 was marked.)

25           ///

1 BY MR. WILSON:

2 Q Sir, Exhibit 77 is Steppan Bates 3460, a letter  
3 dated July 27, 2006 to Michael McConnell from Nathan  
4 Ogle.

5 Do you see that?

6 A Yes.

7 Q Who is Michael McConnell?

8 A I don't know specifically who Michael is, but  
9 Enclos is a manufacturer of, I believe, curtain wall  
10 systems, and we were in discussions with manufacturers  
11 of things like the curtain wall systems and consultants  
12 that we were bringing onboard to figure out the  
13 mechanical systems, the structural systems, and things  
14 like that.

15 Q Did you ever speak to anyone at Enclos  
16 Corporation regarding curtain walls?

17 A I think they came into our office for a meeting  
18 that I was a participant in when we were talking  
19 about -- This is one of many items on the project when  
20 we were designing it.

21 Q Who attended the meeting you just spoke about?

22 A I don't remember all the attendees.

23 Q Can you name any?

24 A Nathan, myself, Rodney, probably David.

25 Q Who from Enclos Corporation?

1 A I don't remember.

2 Q Did Nathan Ogle, to your understanding, send  
3 letters on the Fisher Friedman Associates stationery to  
4 manufacturers for the Reno project?

5 A Well, apparently he did this one. I'm not  
6 aware that we sent any to any other manufacturers. This  
7 was the main one because pretty much the whole exterior  
8 skin of the building was glass, part of the curtain wall  
9 system. So I'm not aware that we would have sent any to  
10 anybody else.

11 Q Is it your testimony that Nathan Ogle could  
12 have sent correspondence on either the Fisher Friedman  
13 Associates stationery or the Mark Steppan stationery to  
14 manufacturers?

15 A Yes.

16 (Exhibit 78 was marked.)

17 BY MR. WILSON:

18 Q Sir, Exhibit 78 is taken from the documents  
19 produced by your counsel. I understand Exhibit 1 to the  
20 first session of your deposition had a different copy of  
21 it. I'm going to be showing you copies of this that  
22 came from your files rather than someone else's.

23 My preliminary question is, while this is  
24 unsigned, Exhibit 78 has on the back of it two exhibits.  
25 Could you look at those, please?

1 A Okay.

2 Q And after you look at Exhibit A and Exhibit B,  
3 were Steppan 4108 through 4115, the Exhibits A and B  
4 that were intended to be part of the final signed  
5 contract that was signed on or about April 21, 2006?

6 A Yes.

7 Q In other words, did exhibits A and B change?

8 A I don't remember if Exhibit B changed between  
9 the time of this draft and the final. I doubt that  
10 Exhibit A, which is the fee schedule changed. That fee  
11 schedule is still current.

12 Q We did talk about the 2005 fee schedule.

13 The reason I have shown you Exhibit 78, sir, is  
14 some of the other copies don't have any exhibits. To  
15 the best of your belief and understanding, Exhibit B in  
16 particular was the Exhibit B that was attached to the  
17 signed contract?

18 A I don't remember if it was attached to a signed  
19 contract. I don't remember this being attached to the  
20 signed contract. It was attached apparently to this  
21 draft. I don't know that it was necessary at the time  
22 to include it as part of the final.

23 Q Why do you say that?

24 A Most of the time we don't attach floor plans  
25 and elevations to the contract when we have defined the



1 scope of work. I don't remember why it was included and  
2 I don't know whether it was or wasn't included in the  
3 final. It's not a big deal one way or the other.

4 Q I'm trying to understand what Exhibit B was.  
5 Thank you.

6 A It was a draft.

7 Q Is it your memory that the signed version did  
8 not have a reference to Exhibit A or Exhibit B?

9 A It probably had Exhibit A. We would have kept  
10 the fee schedule in there, but I don't remember that it  
11 kept Exhibit B that was plans documenting the project.

12 (Exhibit 79 was marked.)

13 BY MR. WILSON:

14 Q Sir, Exhibit 79 is Steppan Bates 3865 through  
15 3889. You will note that at Bates 3874 and 3875 there  
16 appears to be signatures.

17 Do you see that?

18 A Yes.

19 Q On Bates 3875 that is your signature?

20 A Yes.

21 Q Whose signature is it on Steppan 3874 and again  
22 on Steppan 3875?

23 A That actually looks like Calvin Baty.

24 Q Have you seen documents signed by Calvin Baty  
25 before, other than Exhibit 79?

1 A Not that I remember.

2 Q Have you seen Sam Caniglia's signature?

3 A I believe I have seen his signature, yes.

4 Q And sitting here today, do you recognize the  
5 signature on page 3874 and 3875 as Calvin Baty's?

6 A That is what it appears to be to me.

7 Q Was there a meeting when you signed Exhibit 79?

8 A No, there was not a meeting.

9 Q Where did you sign the document Exhibit 79?

10 A In our office in Emeryville.

11 Q How did you obtain the signed copy by, I will  
12 call it BSC since we're not quite sure who signed it.  
13 How did you get the signature from BSC?

14 A My signed copies were sent off and then they  
15 were returned to us.

16 Q All right.

17 Did you send them the copies?

18 A I didn't personally send them out via messenger  
19 or mail, no.

20 Q Did you sign or send a transmittal letter  
21 sending the copies?

22 A I don't remember.

23 Q Looking at Steppan 3878, do you see that is  
24 dated April 21, 2006, do you see that?

25 A Yes.

1 Q Did you sign Bates 3875 that we looked at a  
2 moment ago at the same time you signed Bates 3878?

3 A Yes, I signed them all at the same time.

4 Q Looking at Bates 3886 near the end, is that  
5 your signature as well?

6 A Yes.

7 Q Did you sign that on April 21, 2006 as well?

8 A Yes.

9 Q In 2006, from January 1, 2006 until April 21,  
10 2006, the date of execution by you of Exhibit 79, did  
11 you have any conversations with Sam Caniglia about  
12 Exhibit 79, that is the AIA contract?

13 A I really don't remember any specific  
14 conversations. I probably had them, but I can't say  
15 about any in particular.

16 Q Same question for the time period January  
17 through April 21, 2006 with Calvin Baty?

18 A I don't remember.

19 Q Same question January 1 through April 21, 2006  
20 with Cal Bosma?

21 A I don't remember. Most of the conversations  
22 that I remember appear to be with Hale Lane and trying  
23 to work out the details of the contract and that our  
24 client end of things were not having -- or were not  
25 having any issues with what was in the contract or the

1 proposed contract.

2           There were some conversations, but I don't  
3 remember specifically with who, other than the Hale Lane  
4 group, because there were certainly back and forth as we  
5 were resolving the amendments.

6           Q     Sitting here today do you remember any  
7 conversations with Sam Caniglia, Calvin Baty or Cal  
8 Bosma in 2006 regarding the AIA contract, a copy of  
9 which is Exhibit 79, before you signed it?

10          A     I can't remember any specific conversations.  
11 I'm sure that they existed, but they are all kind of  
12 rolling together in that time frame.

13          Q     When you said Hale Lane, did you have meetings  
14 with any attorneys from Hale Lane in that --

15          A     No, we did not -- I'm sorry, I interrupted.

16          Q     That happens, but I will try to get my question  
17 out and you will wait for it and you answer it.

18          A     I apologize. I interrupted.

19          Q     Let me start again.

20                Did you, Mark Steppan, have any meetings with  
21 any attorneys from Hale Lane regarding the subject of  
22 the AIA contract, a copy of which is Exhibit 79?

23          A     No, we didn't -- Myself nor Fisher Friedman,  
24 none of us had any meetings with Hale Lane. It was all  
25 done over the phone or e-mail, correct.

1 Q Did you speak to anyone on the telephone at  
2 Hale Lane about what I will call the AIA contract, a  
3 copy of which is Exhibit 79?

4 A I was on conference calls with Nathan and I  
5 believe Sarah.

6 Q Sarah Class?

7 A Correct.

8 Q Is the only attorney at Hale Lane that you  
9 spoke to regarding the AIA contract, a copy of which is  
10 Exhibit 79, was Hale Lane attorney Sarah Class?

11 A I don't remember.

12 Q Did you ever talk to Craig Howard about that  
13 subject?

14 A I don't remember.

15 Q Did you ever talk to Karen Dennison about that  
16 subject?

17 A I don't remember.

18 Q You do remember speaking to Sarah Class?

19 A Yes.

20 Q About what time frame was that?

21 A Somewhere between January and April on more  
22 than one occasion, and that is January and April of '06.

23 Q Thank you.

24 My question was for the time period January  
25 through April 21, 2006, and your memory is that you

1 spoke to Sarah Class about the subject of the AIA  
2 contract, a copy of which is Exhibit 79, during that  
3 time period?

4 A I was a participant in phone calls with her,  
5 yes.

6 Q And on Fisher Friedman Associates side who else  
7 was on those conference calls?

8 Counsel, with all due respect I think it's  
9 coaching the witness to have in front of the witness a  
10 copy of Hale Lane time sheets when I'm asking him  
11 questions based upon his memory. So I would ask you to  
12 close that.

13 MS. KERN: Well, I'm not going to close it, and  
14 I think you're deliberately misleading him.

15 Exhibit Number 14 to one of the depositions  
16 was, in fact, some of the timecards with respect to a  
17 November '05 communication between Sarah Class and  
18 certain people at Mark Steppan's office, and I wasn't  
19 coaching him. I was trying to refresh his recollection.  
20 Sitting here five years later trying to remember dates  
21 is oftentimes very difficult, and the fact whether it  
22 was January of '06 or November of '05, while it's  
23 probably irrelevant, it most certainly is misleading to  
24 try to direct him into that time frame.

25 MR. WILSON: You can do that by making

1 objections, but you can't sit there with an exhibit book  
2 open so he can look at it while he is answering my  
3 questions.

4 MS. KERN: I was trying to refresh his  
5 recollection.

6 MR. WILSON: I would appreciate you not doing  
7 that.

8 MS. KERN: Well --

9 MR. WILSON: Okay.

10 MS. KERN: I would appreciate you not  
11 misleading the witness.

12 MR. WILSON: I'm asking questions about his  
13 memory, ma'am. You can always cross-examine or redirect  
14 and ask him questions, but it's improper to sit there  
15 and open up an exhibit book and show him documents while  
16 I'm asking him questions.

17 MS. KERN: It's not improper and I object to  
18 your characterization as such.

19 BY MR. WILSON:

20 Q Sir, having listened to this colloquy between  
21 educated counsel, is your memory refreshed in any way  
22 about when you spoke to Sarah Class about the subject of  
23 an AIA document B141?

24 A I cannot tell you whether or not I talked to  
25 her in a time frame that we previously discussed or in a

1 longer time frame. I have no way of knowing whether I  
2 was talking to her November, December, January, March or  
3 if it was only March and April. So I don't know.

4 Q So your memory is not refreshed?

5 A Correct.

6 Q Having had this colloquy, did you speak to any  
7 other lawyers at Hale Lane about the subject of an AIA  
8 contract?

9 A I don't remember if we -- if I was a  
10 participant in phone calls with anybody other than  
11 Sarah.

12 (Exhibit 80 was marked.)

13 BY MR. WILSON:

14 Q Sir, Exhibit 80 is a copy of Steppan 2741  
15 through 2800.

16 Have you ever seen the original or a copy of  
17 this before?

18 A I don't remember seeing the cover page.  
19 Obviously components of the rest of it are signed and  
20 unsigned copies of the contract.

21 Q Looking at Steppan 2471 is any of that your  
22 handwriting?

23 A No.

24 Q Do you know whose it is?

25 A It looks like Nathan's.



1 (Exhibit 81 was marked.)

2 BY MR. WILSON:

3 Q Sir, Exhibit 81 is from the documents produced  
4 by your counsel, Steppan 5013 through 5042.

5 Looking at the first page of Exhibit 81 you  
6 will note that that is labeled Fisher Friedman client  
7 documents. Do you see that?

8 A Yes, I see that.

9 Q Was there a master file of some kind maintained  
10 regarding the Reno project where someone would type  
11 labels and put certain documents in?

12 A There was not one master file and I have no  
13 idea whose file folder this is.

14 Q That was my next question.

15 Is it in the normal course of Fisher Friedman's  
16 business the practice to create a client documents  
17 folder?

18 A No, it's not normal practice. It varies from  
19 project to project and person to person. Some people  
20 are very into folders and titles on folders and other  
21 people aren't.

22 Q And the client documents that are included in  
23 Exhibit 81 refer to BSC; correct?

24 A Well, they are all the contract and some other  
25 items that relate to BSC, Decal, and an attorney. It's

1 sort of more than just BSC, but --

2 Q Who was Fisher Friedman's client for the Reno  
3 project?

4 A BSC, as I understand it.

5 MR. WILSON: Thank you.

6 (Exhibit 82 was marked.)

7 BY MR. WILSON:

8 Q Sir, Exhibit 82 is Steppan 368 through 370. Do  
9 you see that?

10 A Yes.

11 Q What is this?

12 A This is a part of a form that is being filled  
13 out for an award submittal.

14 Q What does an award submittal mean?

15 A I don't know if I can tell which one this is.  
16 This is Residential Architect Magazine Design Awards.  
17 So an architectural magazine or other group puts out  
18 yearly award programs and architects enter projects and  
19 they either win awards or they don't.

20 Q Whose handwriting is this?

21 A I think it's Nathan's, but I'm not positive.  
22 Some of it does not look like Nathan's, so it's probably  
23 someone in marketing.

24 Q Is any of it yours?

25 A No, I don't always -- I don't usually fill

1 these out.

2 Q So the concept behind Exhibit 82 was to inform  
3 people that Fisher Friedman Associates had a project on  
4 the boards and you, that is Fisher Friedman Associates  
5 wanted to submit that for possible winning of an award?

6 A No, it was submitted under my name.

7 Q Was it, in fact, submitted?

8 A I believe so, but as far as I know when we  
9 submitted -- filled these things out we have submitted  
10 them. I cannot guarantee it was submitted. If it was  
11 submitted, it was submitted under my name. I find  
12 nowhere on here where it lists Fisher Friedman  
13 Associates.

14 Q Right.

15 The name of the entity that it was submitted to  
16 is what again?

17 A It's on the last page, Residential Architect  
18 Magazine.

19 Q I see, thank you.

20 Where are they located, where do they publish?

21 A I believe their headquarters is back east.

22 Q Do you know where?

23 A No.

24 MR. WILSON: I'm going to collapse several  
25 exhibits into one, so I'm going to take a minute to do

1 that. So we will go off the record for a minute.

2 (A recess was taken.)

3 (Exhibit 83 was marked.)

4 BY MR. WILSON:

5 Q Back on the record after a short break.

6 Sir, I have shown you Exhibit 83, which  
7 comprises Steppan Bates 7104 through 109, and then  
8 Steppan 7119 through 21, and then Steppan 7116 through  
9 18.

10 Sir, have you ever seen the original or a copy  
11 of these before today?

12 A I have seen copies of invoices. I couldn't  
13 tell you whether they were specifically these.

14 Q All right.

15 Looking at Steppan 7104, I want to direct your  
16 attention to the percent complete line next to schematic  
17 design phase. Do you see that?

18 A Yes.

19 Q Now, earlier when Mr. Grundy was asking you  
20 questions there were general questions about how  
21 percentage complete was determined, but I want to ask  
22 some specific questions now about what we have in front  
23 of us.

24 You will see that as of the date of this  
25 invoice, May 18, 2006, the percentage complete is listed

1 at 23.250 percent. Do you see that?

2 A Yes.

3 Q That strikes me as a very exact percentage.  
4 With respect to this invoice dated May 18th, 2006, who  
5 determined the percentage complete?

6 A Well, this is probably or possibly a  
7 combination of factors given that after the contract was  
8 signed all of the hourly time was back credited against  
9 the phase fee. So whatever was billed previously would  
10 have been an odd percentage of completion for that  
11 phase, and if any other work was done then it would --  
12 that we wanted to say we have also done an additional  
13 five percent of the phase, then you end up with a total.

14 Q Sir, you will note on Exhibit 83, Steppan 7104  
15 it recites in the upper part for the period November 1,  
16 2005 through April 30, 2006. Do you see that?

17 A Yes.

18 Q Did you understand that the percentage complete  
19 recited on Steppan 7104 is for that period?

20 A Effectively. As I said, the hourly charges  
21 that were to be back credited against the phase when it  
22 was a signed contract, which could have occurred  
23 November, December, January, February at any point,  
24 those fees were back credited and whatever the  
25 percentage that would have generated is what it would

1 have generated, and if there was no --

2 Q I guess we don't understand each other.

3 A At this point there was no disagreement with  
4 what percentage completion on the phase that that  
5 created, then it would have been sent out as an invoice  
6 that way for starting the billing on a percent complete  
7 style.

8 Q Let me approach it this way, sir.

9 Was the percentage 23.250 percent that appears  
10 on Bates 7104 of Exhibit 83 an accurate reflection of  
11 the amount in percentage terms that was completed of the  
12 schematic design phase independent of what hours had  
13 been charged or monies paid?

14 A In May it was probably less.

15 Q Please answer my question, if you could?

16 A I just did.

17 Q I will rephrase.

18 Was the number 23.250 printed on Steppan 7104  
19 supposed to be an accurate statement of the percentage  
20 completion of the schematic design phase as of April 30,  
21 2006?

22 A To the best of my knowledge, yes.

23 Q And that was a good faith effort to determine  
24 what the percentage completion was of the phase;  
25 correct?

1           A     That would be true.

2                     It would have also included the back crediting  
3 of the previous billings.

4           Q     Sir, could you explain to me how back crediting  
5 of the prior billings would affect a good faith estimate  
6 of the percentage complete of the phase?

7           A     If everything that you had billed to date in  
8 developing the project equated to ten percent of the fee  
9 and you credited it against the fee for the phase, and  
10 you said okay, that is ten percent, but we have really  
11 done 20 percent of the work, then you might in a letter  
12 explain that the back crediting of fees is ten percent  
13 and you're adding another ten percent because that is  
14 where you in good faith have determined you are or if  
15 what has been billed is at a point that you think is  
16 reasonable you leave it alone.

17          Q     Those adjustments could be done on a separate  
18 document, correct, as opposed to giving us a good faith  
19 estimate of what the percentage completion of the phase  
20 is, isn't that right?

21          A     I'm not sure I understand the question.

22          Q     Let me try it again.

23                     Is the number percent complete for the  
24 schematic design phase that appears on Steppan 7104 a  
25 good faith estimate of the percentage completion of that

1 phase independent of prior billings?

2 A I thought I already answered that, but I  
3 believe it is, and if you go to the next invoice, which  
4 is for the next month, it goes up a little under five  
5 percent. So it seems that we agree that that percentage  
6 was a good faith number at that time, yes.

7 Q Who is we?

8 A Nathan, Rodney, I.

9 Q All right.

10 So my next question is going to be again  
11 directing your attention to Steppan 7104, who determined  
12 the 23.250 percent complete?

13 A Well, all I can do is repeat what I have said,  
14 which is that is probably the amount owed or credited  
15 based on the hourly bills from the start of the project  
16 to the signing of the contract and that in reviewing  
17 that percentage with Rodney and Nathan and myself, when  
18 Susie would have brought that number to us, we would  
19 have all agreed that that was a fair assessment of what  
20 was owed and that we didn't need to up it just for an  
21 additional percentage of completion in addition to what  
22 had been billed already.

23 Q Thank you. I think we're now understanding  
24 what I'm trying to glean by my questions, and I will  
25 rephrase.



1           Was the process that the 23.250 percent  
2 complete was arrived at is that Susie Fay ran down you  
3 or ran down Rodney or ran down Nathan or all three of  
4 you and asked words to the effect, what is the percent  
5 complete, is that what happened?

6           A     I don't remember specifically what happened for  
7 this invoice.

8           Q     Was the process -- Excuse me, if you have  
9 something to add, please do.

10          A     Yes, I do.

11                As I have already said, I believe this number  
12 is purely based on the back crediting of work billed to  
13 date. That would not require her to run around and say  
14 oh, do you think we're 23 percent complete. It is this  
15 is what the percent complete is showing based on the  
16 back billing, does that number seem appropriate to you  
17 or should we up it because we're in a greater  
18 percentage, because she could not answer that. So the  
19 process is a little different than you described.

20          Q     Is it your testimony, sir, that the way the  
21 23.250 percent complete was arrived at on Bates 7104 was  
22 to start with the amount of fees billed and backout a  
23 percentage complete?

24          A     I suppose, but what I also said is I don't know  
25 for sure that that is what was done on this invoice.

1 I'm making an assumption based on the type of percent  
2 complete number that is there versus a more straight  
3 forward number of 20 to 25 percent.

4 Q Let me approach it this way.

5 Is the method you described in your last two  
6 answers that the percentage complete is not based upon  
7 the amount of work done in relation to the amount of  
8 work required to complete the phase, but rather the  
9 amount of billings compared to the percentage fee that  
10 would be generated under a percentage contract?

11 A That is not what I said.

12 Q I'm trying to understand you, sir.

13 A Okay.

14 I don't know how to say it any more clearly, so  
15 what I said was that my estimation of what this number  
16 reflects is probably a number, a fee, or related to a  
17 fee based on prior billings, as we already discussed,  
18 and that that number was then reviewed to determine if  
19 the existing work performed matched or exceeded that  
20 percent complete for the phase that the prior billings  
21 generated as a percent complete, and clearly we  
22 determined that we did not need to -- I'm sorry, it  
23 appears we did not need to increase it nor decrease it.  
24 We felt that that was an approximately accurate  
25 assessment of the work to date, and on the next month we

1 upped it by a little under five percent, and so to me at  
2 that time that seems like it was a fair assessment of  
3 the work.

4 Q Was the process, then, in simple arithmetic  
5 terms to have the numerator of an equation the amount of  
6 billings to date, that is as of April 30, 2006, and the  
7 denominator would be the total amount of fees for the  
8 phase pursuant to the percentage contract, a copy of  
9 which is Exhibit 79?

10 In other words, you take what we billed, divide  
11 it by the total phase amount on a percentage basis and  
12 that gave us roughly 23.250 percent?

13 A Yes, because all of the hourly billings needed  
14 to be credited back against the phase fee.

15 Q I understand.

16 So we're now speaking in terms of an arithmetic  
17 computation where the numerator is the amount of prior  
18 billings and the denominator is the percentage fee based  
19 upon the contract, which is Exhibit 79?

20 A Whether that is the correct math terminology or  
21 not, the prior fees were credited against the phase fee.

22 Q To get a percentage -- All I'm saying, sir, is  
23 for example, \$400,000 was say prior billed and then the  
24 percentage completion fee for the completion of the SD  
25 phase would be a million dollars. This is totally

1 arbitrary.

2 A Sure, I understand.

3 Q The prior bills would be the top number, the  
4 numerator, and the percentage based on the percentage  
5 completion of the schematic phase would be the  
6 denominator; right?

7 A Correct.

8 Q And hopefully that is some percentage?

9 A And that would give you a percentage of about  
10 25 percent right there.

11 Q That was the purpose of my example. I didn't  
12 mean to confuse you about numerator and denominator.

13 A You didn't. I just answered the way I did.

14 Q All right.

15 So then in terms of generating Exhibit 83,  
16 Steppan 7104, was there a meeting or a discussion among  
17 Susie Fay, Rodney Friedman, Nathan Ogle, and yourself?

18 A I don't remember specifically.

19 Q Now, after that first calculation through April  
20 30, 2006, which is Bates 7104, you can see in the rest  
21 of the exhibit that there are additional estimations or  
22 rather statements of percent complete. Do you see that?

23 A Yes.

24 Q So when looking at Steppan 7106 you see for the  
25 period through June 30, 2006 percent complete is 28.1

1 percent. Do you see that?

2 A Yes.

3 Q How was that determined?

4 A Other than the process I have defined to you  
5 about talking to folks and determining what percent  
6 complete we were now at, I don't know how else that  
7 particular one was derived at. I do not remember  
8 meetings on any of these particular invoices to be able  
9 to tell you any more than that.

10 Q All right.

11 Bear with me because I would like to go through  
12 them. It will just take us a minute.

13 Let's go to Steppan 7108, which is an invoice  
14 dated August 23, 2006. For the period through July 31,  
15 2006 it shows a percent complete of 44.630 percent. Do  
16 you see that?

17 A Yes, I do.

18 Q And can you tell me how, sir, that was derived?

19 A No, I can't, other than previous descriptions  
20 of how we arrived at it.

21 Q Do you know who derived it?

22 A I cannot tell you specifically who arrived at  
23 the final number.

24 Q Was it Rodney Friedman?

25 A I don't remember who.

1 Q Moving ahead to Steppan 7119 dated September  
2 21, 2006 for the period through August 31, 2006 you show  
3 a percentage complete of 61.160 percent. Do you see  
4 that?

5 A No, I don't. 7119 or 7109?

6 Q 7119.

7 A Sorry, wrong page.

8 Yes, I see that.

9 Q And the same question as before, how was that  
10 determined?

11 A Other than the methods previously described  
12 about determining through discussion or information from  
13 Nathan, Rodney or myself as to what the percent  
14 completed of the phase is, I don't know how else it was  
15 derived at nor could I tell you who specifically gave  
16 that information to Susie.

17 Q Is it your understanding looking at Steppan  
18 7119 dated September 21, 2006 that the percent complete  
19 of 61.160 percent is a good faith estimate of the  
20 percentage of work completed in the schematic design  
21 phase?

22 A I don't know anything to the contrary.

23 Q Let's go through the rest of the documents,  
24 sir, further down in the stack, Steppan 7116 dated  
25 October 25, 2006. Do you see that?

1 A Yes.

2 Q That is the period through September 30, 2006,  
3 do you see that?

4 A Yes.

5 Q And the percentage complete estimate -- Excuse  
6 me, the percentage complete statement is 77.690. Do you  
7 see that?

8 A Yes.

9 Q As I have asked you before, what was the basis  
10 of that percent complete?

11 A It was derived at by the same process as  
12 previously described where a percent complete review was  
13 done by the project manager with input, if necessary,  
14 from other folks and a number was arrived at.

15 I must point out that the vagaries of a  
16 computer system that generate fees can sometimes come up  
17 with odd numbers that I do not have an explanation for  
18 as I sit here.

19 Q Who would know those vagaries of the computer  
20 system?

21 A I don't know if anybody knows the vagaries.  
22 It's just what happens. Maybe there isn't a vagary.  
23 I'm just saying I don't know how 77.69 is arrived at  
24 because I don't personally do it. So obtain all the  
25 information previously provided, the fees already billed

1 and percent complete that we felt each month we were at,  
2 that is the number that is there. There was never an  
3 objection to the number being an odd percentage and at  
4 this point I believe we're working under, as well, the  
5 post payment schedule by our clients.

6 Q Did you review the invoice October 25, 2006,  
7 Steppan 7716 before it went out?

8 A I don't remember.

9 Q Did you review any of the invoices that are  
10 part of Exhibit 83 before they were sent to the client?

11 A I probably did, but I have no specific memory  
12 of doing so.

13 Q Did you ever have a discussion with anyone at  
14 BSC about the percentage complete?

15 A I don't think I had a discussion with them  
16 about the percent complete, no.

17 Q Was the schematic design phase ever completed?

18 A Yes, we billed one hundred percent. It was  
19 completed when we got the entitlements.

20 Q When was that, sir?

21 A Past September, but I don't remember the exact  
22 time.

23 Q Could you pick up Exhibit 20, the timecards.  
24 Do you recall we started looking yesterday at the stack  
25 that consisted of your timecards. Could you turn to



1 those?

2 A I believe I'm there.

3 Q This stack starts at 7215 and the last question  
4 we had was on 7217. Sir, I'm going to ask you similar  
5 questions for a variety of these. In looking at the  
6 next in order, 7218 dated November 11, 2005, I believe  
7 that shows 20 hours of direct time on the Reno project.

8 A That is what it shows.

9 Q Other than -- Strike that.

10 Can you tell me, sir, what you did on the Reno  
11 project during the week in question, November 11, 2005?

12 A No.

13 Q Is there anything that you could look at that  
14 would tell us what you did?

15 A Not that I'm aware of.

16 Q Let's go to the next item, which is 7219. The  
17 document shows two hours on the Reno project. Same  
18 question, sir, can tell us what you did on the project  
19 during that week?

20 A No, not specifically.

21 Q Could you look at anything that would refresh  
22 your memory on that?

23 A No.

24 Q Next in order is 7220 for the week ending  
25 November 25, 2005. Do you see that?

1 A Yes.

2 Q This shows two hours on the Reno project. Can  
3 you tell us what you did during that week on the  
4 project?

5 A No.

6 Q Is there anything you can look at that would  
7 refresh your memory?

8 A No.

9 Q Next in order is 7221 for the week ending  
10 December 2, 2005 showing two hours on the Reno project.  
11 Can you tell us what you did on the project that week?

12 A No, not specifically.

13 Q Is there anything that you could look at that  
14 would refresh your memory as to what you did?

15 A For that week, no.

16 Q Next in order is 7222 for the week ending  
17 December 9, 2005 showing for the Reno project eight  
18 hours. Do you see that?

19 A Yes.

20 Q Can you tell us what you did during that time  
21 period?

22 A No, I can't specifically tell you.

23 Q Can you look at anything that would refresh  
24 your memory as to what you did?

25 A Not that I'm aware of.

1 Q Next in order is 7223 for the week ending  
2 December 16, 2005. This shows fifteen hours on the Reno  
3 project. Do you see that?

4 A Yes.

5 Q What did you do on the Reno project that week?

6 A I guess it would be silly to say I worked on  
7 it, but I don't know specifically what I did.

8 Q I appreciate that.

9 Can you look at anything that would refresh  
10 your memory as to what you did?

11 A No.

12 Q Next in order is Bates 7224 for the week ending  
13 December 23, 2005 reflecting six hours of work. Do you  
14 see that?

15 A Yes.

16 Q And can you tell us what you did on the project  
17 for that week?

18 A No, I cannot.

19 Q Can you look at anything that would refresh  
20 your memory on that?

21 A Not that I'm aware of.

22 Q The next in order is 7225 for the week ending  
23 January 6, 2006. For the Reno project it shows four  
24 hours. Do you see that?

25 A Yes.

1 Q What did you do on the project that week?

2 A I don't know.

3 Q Can you look at anything, sir, that would tell  
4 us what you did during that week for that project?

5 A No.

6 I think a pattern is set, but other than that I  
7 can't tell you what was done. It shows a pattern of  
8 review and participation in the project and given how I  
9 manage a project when I'm sort on this oversight role,  
10 walking around talking to people and looking over their  
11 shoulder and having comments to them generates an hour  
12 or two a day here and there. So that would be logical  
13 as to what would have been occurring.

14 Q Then let's take a look at the next in order,  
15 7226, which is for the week ending January 13, 2006. Do  
16 you see that?

17 A Yes.

18 Q This, sir, shows for direct hours that is  
19 billed to the project eight hours each day for Monday,  
20 Tuesday, Wednesday, Thursday and Friday for a total of  
21 forty hours. Do you see that?

22 A Yes.

23 Q What is it that you did on the Reno project for  
24 that week ending January 13th, 2006?

25 A I don't remember.

1 Q You would agree with me that this time sheet  
2 Bates 7226 certainly does not follow the previous  
3 pattern of a few hours a week; correct?

4 A No, there is another one in there that was like  
5 twenty plus hours so --

6 Q What, sir, was unusual about the week ending  
7 January 13, 2006 that required all of your working time  
8 for the entire week?

9 A I really don't remember.

10 Q Is there anything that you could look at that  
11 who explain this forty hours of work during this week?

12 A Not that I'm aware of.

13 Q Is this an accurate description of the hours  
14 you spent during this week?

15 A As far as I know, yes.

16 Q Is that your handwriting on the document?

17 A Yes, it is.

18 Q Can you offer any explanation as to why in this  
19 instance all of your working time for the week was  
20 devoted to the Reno project?

21 A No, I can't.

22 Q Is this an accurate reflection of how you spent  
23 your time for that week to the best of your knowledge?

24 A I have no knowledge to the contrary.

25 Q Sir, I'm going to ask some questions about

1 topics touched on by Mr. Grundy earlier at the start of  
2 his deposition. I don't mean to be repetitive, but  
3 there are some things that occurred to me in listening  
4 to him that perhaps weren't asked.

5 You were asked some questions about Rodney  
6 Friedman and I wanted to know, sir, if Mr. Friedman had  
7 worked on Nevada projects other than the Reno project  
8 before the Reno project?

9 A Not that I'm aware of.

10 Q And Mr. Rodney Friedman is married, yes?

11 A Yes.

12 Q And his wife is Shirley?

13 A Yes.

14 Q How many children does Rodney Friedman have?

15 A Two.

16 Q What are their names?

17 A Allison and John.

18 Q You're married to Allison?

19 A That's correct.

20 Q Is Susie Fay any relative to Rodney Friedman?

21 A No.

22 Q Is Susie Fay's last name F-a-y?

23 A Correct.

24 Q Is she related by blood or marriage to you?

25 A No.

1 Q Is she related to any of Rodney Friedman's  
2 family by blood or marriage?

3 A No.

4 Q Sir, when we looked at the last billing sheet  
5 of your time records, the forty hours for the week, that  
6 was the week ending January 13th, 2006?

7 A That sounds right.

8 Q Was there any event in the course of the Reno  
9 project that resulted in billing stopping for January  
10 13, 2006?

11 A There was a break in when we invoiced, but I  
12 don't know what it was that caused that stoppage.

13 (Exhibit 84 was marked.)

14 BY MR. WILSON:

15 Q Sir, Exhibit 84 is Steppan 4414 through 4464.  
16 It appears to be labeled Reno Mark's photos, November  
17 2005. Do you see that?

18 A Yes.

19 Q Are these copies of the photos that you  
20 personally took during your visit to Reno regarding the  
21 Reno project in the last quarter of 2005?

22 A That is what they look like.

23 Q Was that trip now based upon the note on Bates  
24 4414 in November of 2005?

25 A I don't remember specifically. We previously

1 talked about when I went to Reno with the folks. I  
2 don't remember specifically when it was.

3 Q Is your memory refreshed in any way by looking  
4 at Bates 4414?

5 A It seems a reasonable time frame, but I  
6 couldn't tell you for sure if it was exactly November.

7 Q When you went to Reno and took the photos that  
8 are Exhibit 84 had you already met John Schleining?

9 A I don't remember the relationship of the time  
10 frame of the meeting with Calvin and John and ourselves  
11 and this visit to Reno as I mentioned yesterday.

12 Q My question was slightly different.

13 Had you already met John Schleining the one and  
14 only time you met him before the trip to Reno which  
15 resulted in the photos being taken?

16 A I just answered that. I said I didn't know the  
17 relationship of those two occurrences to each other.

18 Q Whose handwriting is on Exhibit 84?

19 A David Tritt. So that would imply these are his  
20 copies of them.

21 (Exhibit 85 was marked.)

22 BY MR. WILSON:

23 Q Sir, after looking through Exhibit 85, which is  
24 Bates 4711 through 4721, have you ever seen the original  
25 or a copy of this before?



1           A     I don't know if I have seen all of these pages  
2 before.

3           Q     I understand.

4                     Sir, these were produced and marked in the  
5 order I received them so they may intermingle. My  
6 question is, is any handwriting on the document Exhibit  
7 85 yours?

8           A     No, these are design sketches from Rodney and  
9 David.

10          Q     Could you go through the document, Exhibit 85,  
11 and tell me which is Rodney's?

12          A     There is both David and Rodney on 4714.

13          Q     Hold on just a moment.

14                     Which is Rodney's?

15          A     27 floor, 29 floors and maybe some of the  
16 sketch.

17          Q     The darker of the handwriting?

18          A     Generally speaking, yes.

19          Q     All right, go ahead.

20          A     4716, I would say that probably the darker of  
21 the handwriting is Rodney's and the other is David's.

22          Q     Thank you.

23          A     I can't tell about 4717. I can't tell about  
24 4718. 4719 looks like Rodney's, as does 20 and 21.

25          Q     Thank you.

1           Sir, for the next several minutes I'm going to  
2 show you some documents from your files that have  
3 handwriting on them, and we are going to follow  
4 hopefully a similar format, which is show you the  
5 document and you tell me if it's yours and if it's not  
6 yours and you know it or can identify it, you can tell  
7 me that, okay?

8           A     Okay.

9           MR. WILSON: Next in order is 86.

10               (Exhibit 86 was marked.)

11 BY MR. WILSON:

12           Q     Is any of the handwriting on Exhibit 86 yours,  
13 sir?

14           A     Not that I recognize.

15           Q     Do you recognize the handwriting?

16           A     Some of it looks like Nathan. I don't know  
17 that it's all Nathan.

18               (Exhibit 87 was marked.)

19 BY MR. WILSON:

20           Q     Exhibit 87, sir, is Bates 192, 193. Is any of  
21 that your handwriting?

22           A     No, it's Nathan's.

23               (Exhibit 88 was marked.)

24 BY MR. WILSON:

25           Q     Exhibit 88, sir, is Bates 289, 290. Is any of

1 the handwriting yours?

2 A No, this is Nathan's from his files.

3 (Exhibit 89 was marked.)

4 BY MR. WILSON:

5 Q Sir, Exhibit 89 is Bates 328 through 336. Same  
6 question, is any of this your handwriting?

7 A No, this is Nathan's marking up of what needed  
8 to be filled out.

9 (Exhibit 90 was marked.)

10 BY MR. WILSON:

11 Q Sir, Exhibit 90 is Bates 366. Whose  
12 handwriting is this?

13 A It looks like Nathan's.

14 Q Sir, did you ever keep a file of handwritten  
15 notes on the Reno project?

16 A I already testified yesterday that the file  
17 that I kept was copied by counsel and you have a copy of  
18 it. Given the method of the project, how it's being  
19 managed, the bulk of the notes were kept by other folks.

20 (Exhibit 91 was marked.)

21 BY MR. WILSON:

22 Q Exhibit 91, sir, is Bates 409, 410. Is any of  
23 this your handwriting?

24 A No, I don't see mine on here.

25 Q Whose is it?

1           A     Some of it is Nathan's, some of it is David's,  
2     some of it I don't know.

3                     (Exhibit 92 was marked.)

4     BY MR. WILSON:

5           Q     Exhibit 92 is Bates 2098, sir. Is that your  
6     handwriting?

7           A     No.

8           Q     Whose is it?

9           A     This looks like Nathan's.

10                    (Exhibit 93 was marked.)

11     BY MR. WILSON:

12           Q     Exhibit 93 is Bates 174, 175, sir. Whose  
13     handwriting is that?

14           A     This is Nathan's. This is again from his file.

15                    (Exhibit 94 was marked.)

16     BY MR. WILSON:

17           Q     Exhibit 94, sir, is Bates 2090. Is that your  
18     handwriting?

19           A     No, this is Nathan's.

20                    (Exhibit 95 was marked.)

21     BY MR. WILSON:

22           Q     Exhibit 95, sir, the second page is  
23     handwriting.

24           A     That is Nathan's.

25           Q     And the rest of the document?

1 A Yes, it's all Nathan's.

2 Q That being Bates 163 through 166.

3 (Exhibit 96 was marked.)

4 BY MR. WILSON:

5 Q Sir, Exhibit 96 is Bates 6429-30. Whose  
6 handwriting is that?

7 A This is David's sketch.

8 (Exhibit 97 was marked.)

9 BY MR. WILSON:

10 Q Sir, Exhibit 97 is Bates 3084 through 91. Is  
11 any of that your handwriting?

12 A No, I see people's I don't recognize and there  
13 is David and Rodney. This is obviously from when the  
14 mix was changing.

15 Q I beg your pardon?

16 A This was from when the mix was changing for the  
17 project so they were working on figuring out the new  
18 mixes, unit count, unit types.

19 Q That came from the increase of the number of  
20 units?

21 A Whether this was an increase or a change in the  
22 mix I can't say.

23 Q When you say mix you mean --

24 A One bedroom, two bedroom, three bedrooms,  
25 studio.

1 Q Thank you, sir.

2 A Yes.

3 Q This is a mix of handwriting by whom again?

4 A Someone I don't know, Rodney and David.

5 MR. WILSON: Thank you, sir.

6 (Exhibit 98 was marked.)

7 BY MR. WILSON:

8 Q Exhibit 98, sir, is Bates 3092 through 96.

9 Whose handwriting is that?

10 A Some of this is Nathan's, some of it is someone  
11 I don't know. Again part of a form that Nathan was  
12 marking up something that he needed to fill out.

13 Q And on Bates 3092, the first page, is that  
14 cloud formation Nathan's?

15 A The words appear to be, yes, and the cloud goes  
16 with it. I can't tell that the cloud was done by him,  
17 because there is no ability to do that.

18 (Exhibit 99 was marked.)

19 BY MR. WILSON:

20 Q Exhibit 99, sir, is Bates 3077 through 79. Is  
21 any of this your handwriting?

22 A No, this appears to be Nathan's.

23 MR. WILSON: Let's take a short five minute  
24 break.

25 (A recess was taken.)

1 BY MR. WILSON:

2 Q Sir, we're back on the record after our short  
3 break. You understand that you're still under oath?

4 A Yes.

5 Q Could you pick up Exhibit 78 again. It looks  
6 like that. I want to ask you some questions about it.

7 Sir, Exhibit 78 you will recall is a document  
8 that includes Exhibit A and Exhibit B. Do you see that?

9 A Yes.

10 Q We will look at Steppan 4108, Exhibit A, for a  
11 moment.

12 When Mr. Grundy was asking you questions we had  
13 some questions and answers regarding billing rates, and  
14 I wanted to ask you questions about some of the  
15 timekeepers who appear on the timecards that were not  
16 asked about before.

17 So let me start with Nobu Kaji, if I'm  
18 pronouncing that correctly. What category or in the  
19 alternative what was his billing rate for his work on  
20 the Reno project?

21 A I have no idea what his billing rate was and I  
22 don't remember if he is called a graphic designer or  
23 something similar to that.

24 Q How would I find out, sir, what his billing  
25 rate was for the Reno project?

1           A     Well, if there was any of his time that was  
2 actually billed, which there might have been a few  
3 hours, then it would have shown up on those early bills  
4 as a person listed in the hourly when the bills were  
5 done by hourlies, but it didn't really matter because it  
6 all transitioned over to the percentage.

7           Q     I guess that is where reasonable minds differ,  
8 but bear with me.

9           A     Well --

10          Q     With respect to Kuan Chang, what was -- Is it  
11 him, it's a he?

12          A     That is a he, yes.

13          Q     What was his billing rate for the Reno project?

14          A     I have no idea.

15          Q     How would I find that out?

16          A     Same way, going back to those invoices that  
17 happened to be showing hourly billings. He would have  
18 been listed, I assume. Other than that I don't remember  
19 what it was.

20          Q     Was Nobu Kaji at a billing rate less than \$100  
21 per hour?

22          A     I would think so.

23          Q     Looking at Exhibit A, Steppan 4108, he would be  
24 in the range of persons billing from 65 to 95?

25          A     Probably 70 to 95.



1 Q And Kuan Chang, what range looking at Exhibit  
2 A?

3 A 70 to a hundred.

4 Q Because he might have been a senior designer  
5 drafter?

6 A Um-hum.

7 Q Yes?

8 A I can't remember any more.

9 Q And, sir, you were, Mark Steppan, at \$200 an  
10 hour?

11 A Yes.

12 Q Joe Preston?

13 A I don't remember his exact position. Some of  
14 the work might have been at the 200 an hour for the  
15 specialist computer image and rendering and the other  
16 would have been his normal position and I don't remember  
17 what that was. It could have been anywhere from a  
18 hundred to a little bit higher.

19 Q I have to ask, of course, how much higher, 145?

20 A Probably up to 125.

21 Q Joe Preston 100 to 125, that is your best  
22 estimate?

23 A Yes.

24 Q Nathan Ogle was at 200 an hour; is that right?

25 A No, I think he was at 170 an hour.

1 Q Rodney Friedman was at 220?

2 A Correct.

3 Q Amy Chu, what was her billing rate on the Reno  
4 project?

5 A I don't remember. It would have been in the  
6 range from 70 to 95, I would think.

7 Q Kristoffer Tendall?

8 A I don't remember what he was. It could be from  
9 90 to 110.

10 Q David Tritt?

11 A 170.

12 Q Stephanie Pusey?

13 A Somewhere between a hundred and 110, I would  
14 think.

15 Q Which job description or title would she have  
16 that would give you that information?

17 A She might have been a job captain I or a senior  
18 drafter. I don't remember. Those are just  
19 approximations.

20 MR. WILSON: Thank you, sir.

21 (Exhibit 100 was marked.)

22 BY MR. WILSON:

23 Q Sir, Exhibit 100 is Bates number 3439. Have  
24 you ever seen the original or a copy of this before?

25 A I think so, but I can't remember specifically

1 when.

2 Q What is it?

3 A It was a form that I remember talking to Nathan  
4 about filling out requesting for project policy premium  
5 indications, but other than that I really can't remember  
6 what we were doing at the time.

7 Q Whose handwriting is this?

8 A It looks like Nathan's.

9 Q What is Professional Practice Insurance  
10 Brokers's, Inc.?

11 A It's a company that deals with E and O  
12 insurance, as far as I know.

13 Q Is it the insurance broker for Fisher Friedman  
14 Associates?

15 A No, it's not.

16 Well, to be honest I don't know what the name  
17 of our broker's company is. So it could have been.

18 Q What is a request for project policy premium  
19 indications?

20 A It's kind of exactly what it says. It would be  
21 an indicator as to what a policy premium might be if  
22 someone needed to put together a policy for a particular  
23 project.

24 We were trying to work with our clients in  
25 figuring out how to do a wrap policy where the clients

1 would wrap the design team, specifically the architects,  
2 into an insurance policy, and we were also discussing  
3 with the clients the new method that a senate bill  
4 allows for creating a repair fund that would eliminate  
5 the need for some other characteristics of insurance,  
6 but we could still be asking for a wrap. So this is  
7 probably talking to the broker about getting some  
8 information about what some of the impacts fee-wise  
9 might be for that, but other than that I don't remember.

10 Q When you say a wrap, sir, that is a policy  
11 taken out by a client, am I right?

12 A Or a contractor or some other entity.

13 Q That was not the case in the Reno project;  
14 correct?

15 A I don't know that it was not the case. They  
16 hadn't done anything yet as far as I know.

17 Q Exhibit 100, Steppan Bates 3439 is dated  
18 December 5, 2005. Do you see that?

19 A Yes.

20 Q Is this a request for an insurance policy on  
21 you, Mark Steppan?

22 A I told you what I thought it was about and I  
23 don't remember any more about it at this point.

24 Q Who was the form Exhibit 100 sent to?

25 A I assume PPIB.

1 Q For what reason?

2 A I can't answer any more than what I have  
3 already said. So I don't know any more about -- I don't  
4 remember any more about it.

5 Q Did you provide the information to Nathan Ogle  
6 to put on this form, Exhibit 100?

7 A I certainly provided some of it, yes.

8 Q Prior to November 2005 were you, Mark Steppan,  
9 insured to be the architect of record for any project?

10 A I don't remember when I was added as an  
11 additional insured onto the Fisher Friedman policy.

12 Q Was it in 2005?

13 A I just said I don't remember when.

14 Q Do you remember the year, sir?

15 A No, I do not.

16 Q Were you added as an additional insured for the  
17 Reno project?

18 A Probably.

19 Q Have you ever filled out one of these requests  
20 for project policy premium indications form yourself?

21 A Not that I'm aware of.

22 Q Did you give Nathan Ogle the information to put  
23 on the form, Exhibit 100, that appears below the line  
24 name, discipline, percentage of fees?

25 A Those are things that were all talked about.

1 So whether or not I provided them to him or he knew them  
2 from discussions about what was going on in December of  
3 '05, I couldn't tell you.

4 Q Did you approve the handwriting that Nathan  
5 Ogle put on Exhibit 100?

6 A I really don't remember.

7 Q Did you have any conversations with any broker  
8 or insurance company regarding insurance for the Reno  
9 project?

10 A There were conversations with Rodney and myself  
11 with our broker, as well as with Sam about insurance for  
12 the project on multiple occasions. I cannot relay  
13 specifically when they were.

14 Q Did those conversations have to do with  
15 insurance for Fisher Friedman Associates?

16 A And Mark Steppan.

17 Q Do you recall anything about any of those  
18 conversations?

19 A Not specifically.

20 I told you that we talked about a wrap policy  
21 and I told you that we talked -- or I answered that we  
22 also discussed with the client because -- Excuse me, we  
23 discussed with Sam about having the repair fund that the  
24 senate bill allows. That was something that our broker  
25 was bringing up to us or brought to our attention.

1 Q What is the repair fund that you just spoke of?

2 A There is a senate bill that talks about the  
3 owner of the property has the ability to put money aside  
4 in a repair fund that would allow the owner to make  
5 repairs to a project should there be a window leak or  
6 some other occurrence that needs to be repaired, and so  
7 the homeowners, their first place to go to get something  
8 repaired is the owner and the repair fund. They cannot  
9 start having a homeowner lawsuit without going through  
10 that effort and giving the owner the good faith ability  
11 to make the repairs.

12 Q Is that a California senate bill?

13 A I don't think it's California. It's something  
14 that was being discussed as being available in Nevada.

15 Q Was it a Nevada state bill?

16 A I don't remember.

17 Q Or was it a federal bill?

18 A That is why I said I don't remember.

19 (Exhibit 101 was marked.)

20 BY MR. WILSON:

21 Q Sir, Exhibit 101 is Steppan Bates 2893. Whose  
22 handwriting is that?

23 A That looks like Nathan's.

24 (Exhibit 102 was marked.)

25 ///

1 BY MR. WILSON:

2 Q Exhibit 102 is Bates 3508, 09. Whose  
3 handwriting is that?

4 A That is Nathan's. It's a meeting that Rodney,  
5 David, Nathan, and myself had where we discussed curtain  
6 walls and here is a reference to Michael McConnell from  
7 Enclos.

8 Q The initials up in the upper left corner KF,  
9 DT, NO, MS?

10 A No, it's RF, DT, NO and MS.

11 Q Rodney, David, Nathan, Mark?

12 A Correct.

13 (Exhibit 103 was marked.)

14 BY MR. WILSON:

15 Q Exhibit 103, sir, is Bates 3288, 89. Whose  
16 handwriting is that?

17 A That is Nathan's.

18 (Exhibit 104 was marked.)

19 BY MR. WILSON:

20 Q Sir, next in order is 104, Steppan Bates 3275  
21 through 78. You may have seen different iterations of  
22 these documents, but these were produced separately in  
23 order and that is why I'm marking them this way.

24 On Exhibit 104 is any of the handwriting yours?

25 A No.



1 Q Whose is it?

2 A Well, it appears to be mostly Nathan's.

3 Q Anyone else's?

4 A I can't tell.

5 (Exhibit 105 was marked.)

6 BY MR. WILSON:

7 Q Sir, Exhibit 105, sir, is Bates 3283, 84.

8 Whose handwriting is this?

9 A I'm not positive about the first page. The  
10 second page is Nathan.

11 (Exhibit 106 was marked.)

12 BY MR. WILSON:

13 Q Sir, Exhibit 106 is Bates 3968, 69. Other than  
14 the signature on 69, that is 3969, what is the  
15 handwriting on the document?

16 A It's mine.

17 Q Sir, can you tell us why you were reviewing  
18 addendum number 1 dated August 1, 2005 and making --

19 A I'm sorry, I didn't mean to interrupt there. I  
20 didn't allow you to finish your question.

21 Q I will rephrase so we have a clear record.

22 Is it true that the handwriting on the first  
23 page of Exhibit 106, Bates 3968 is all yours?

24 A It appears to be, yes.

25 Q What was the occasion for you to be reviewing

1 addendum number 1 dated August 1, 2005?

2 A I don't specifically remember the occurrence  
3 where I was asked to review it.

4 Q Were you asked to review it?

5 A I believe so.

6 Q By whom?

7 A I don't remember.

8 Q Was this after the lien was filed on November  
9 7, 2006?

10 A I don't remember when this was requested of me.

11 Q Who requested it?

12 A I just said I don't remember.

13 Q Why did you do it?

14 A Because I was asked to.

15 Q Are the candidates for who would have asked you  
16 to do something like that limited to Rodney Friedman?

17 A No, could have been Gayle, could have been  
18 Rodney, could have been Sam. I don't know who it  
19 included or who it did include.

20 Q Could you read your handwriting that appears in  
21 the left margin of Exhibit 106, Bates 3968?

22 A Yes, I can read it.

23 Q Could you read that for me, please?

24 A Notice of intent to improve property and for  
25 seller to benefit from development of land. Must assume

1 that someone would need to design and get approvals for  
2 the development.

3 Q Did you write those notes, sir, with reference  
4 to the filing of a notice, claim of lien on Dr.  
5 Iliescu's property?

6 A I may have. I don't remember specifically when  
7 I did this.

8 Q Looking on the right column or right margin of  
9 3968, what is that?

10 A Plus restaurant cars.

11 Q Referring to the number of cars that is in  
12 paragraph H of Bates 3968?

13 A Yes.

14 Q What do you mean by that, sir?

15 A I had understood that there would be some  
16 parking provided for Dr. Iliescu for his restaurant.

17 Q Who told you that?

18 A It was -- It came up during the design of the  
19 project.

20 (Exhibit 107 was marked.)

21 BY MR. WILSON:

22 Q Exhibit 107 is Bates 3920, sir. Whose  
23 handwriting is that?

24 A It looks like mine.

25 Q Can you read that handwriting into the record,

1 please, beginning with appraisal subpoena?

2 A First one word is subpoena and it says  
3 appraisal of prop more than purchase price. 30 mil  
4 versus 6.5 mil, zoning gives him beneficiary. That is  
5 all I can read. Condo, cars, cocktail party after  
6 planning commission meeting.

7 Q When did you prepare Exhibit 107?

8 A Well, this appears to be something that was  
9 done after the lien was filed.

10 Q Was there a cocktail party on November 15, 2006  
11 after the entitlements were voted?

12 A I don't remember the exact date, but there was  
13 a cocktail party after the entitlements were approved,  
14 yes.

15 Q Who from Fisher Friedman Associates attended?

16 A I believe it was Nathan and Rodney.

17 Q You did not; correct?

18 A No, I did not.

19 (Exhibit 108 was marked.)

20 BY MR. WILSON:

21 Q Exhibit 108, sir, is Steppan Bates 4346. Whose  
22 handwriting is that?

23 A Looks like mine.

24 Q What is this with regard to?

25 A It looks like it was a meeting, looks like it

1 was a meeting with Sam and Tony and Calvin, Rodney,  
2 myself, and some people from the City of Reno. Michele,  
3 I don't remember, and I don't know if this was notes  
4 from that meeting or about a meeting.

5 Q And the note at the bottom third of the page  
6 there is a reference to a date December 21. Do you see  
7 that?

8 A Yes.

9 Q Below that appears to be July?

10 A July, yes. ACT tour, I believe, and May, June  
11 is kayak races.

12 Q Are these notes of meetings in 2005 with Fisher  
13 Friedman?

14 A It might be.

15 Q What is your best understanding of when these  
16 notes were taken?

17 A I really don't know if it was during that  
18 meeting or after that meeting.

19 Q Could you read for me your handwriting that is  
20 on Exhibit 108?

21 A The whole thing?

22 Q Please.

23 A Fred T, John, city. SC, TI, Calvin, MS, RF,  
24 Michele Powell, Ted Meyer.

25 Q Let me pause for a minute so I have a clear

1 record.

2 SC means Sam?

3 A Correct.

4 Q TI means Tony?

5 A Correct.

6 Q Calvin means whom?

7 A That, I believe, is Calvin Baty, unless it was  
8 Cal Bosma and I called him Calvin. I don't know for  
9 sure.

10 Q MS is you, Mark Steppan?

11 A Correct.

12 Q RF?

13 A Rodney.

14 Q Were you ever in Reno, Nevada at the same time  
15 with Rodney Friedman?

16 A Yes.

17 Q That was in 2005?

18 A Correct.

19 Q Were you in Reno with Rodney Friedman at any  
20 other time regarding the Reno project?

21 A I don't remember another occasion.

22 Q Could you read the rest of your handwriting,  
23 please?

24 A Updating for required center zoning, more mixed  
25 use, planning code online, review draft of new planning

1 code. Dan Gustin, councilman, talk to. Skating rink  
2 issue. I'm not sure of the next word. FAA for height,  
3 add other tall buildings, pedestrian connection from  
4 Court to Island and River. Art Town use part of podium,  
5 July. Exterior light a big issue. Claudia Hansen  
6 putting plan together. Entitlements planning -- Excuse  
7 me, planner, engineer, plan checker, team. LEED  
8 question mark.

9 Q I'm sorry, again, please?

10 A LEED question mark.

11 Q L-e-a-d?

12 A No, L-E-E-D.

13 Q What is that?

14 A That is a group that was created to govern and  
15 set standards for energy efficient design and  
16 construction. December 21st, July Art Tour. May, June  
17 kayak races. Morning for councilman's house, wind  
18 tunnel studies.

19 Q Having reviewed that, sir, is your memory  
20 refreshed as to when you took these notes?

21 A No, could have been at the meeting, could have  
22 been after the meeting.

23 Q Does it refresh you as to the year you took the  
24 notes, that is 2005 in particular?

25 A I'm fairly sure it's 2005.

1 MR. GRUNDY: Off the record a minute.

2 (A discussion was held off the record.)

3 BY MR. WILSON:

4 Q Off the record we had a discussion among  
5 counsel, as well as the witness about whether Exhibit  
6 108 is a photocopy of a document that had handwriting on  
7 the other side and that appears to be at least one  
8 explanation for the grayish handwriting.

9 Sir, since we're back on the record, do you  
10 have an understanding of whether or not there was  
11 additional handwriting of your notes on the back page of  
12 the original?

13 A I don't remember any. I typically write on one  
14 side because things can overlap and bleed through from  
15 the other side.

16 (Exhibit 109 was marked.)

17 BY MR. WILSON:

18 Q Sir, Exhibit 109 is Steppan Bates 3618 and  
19 several pages not in sequence which were intended to  
20 collect handwritten notes in part of the document  
21 production.

22 So if you can tell me if any of this is your  
23 handwriting, please let me know?

24 A Some of this is previously included items in  
25 today's exhibits. Most of these appear to be copies of



1 Nathan's file notes.

2 There is one page that is 3716 that I have no  
3 idea whose handwriting that is. It's someone giving  
4 Nathan a card with information. The rest appear to be  
5 Nathan's notes and a business card page.

6 Typically speaking Nathan took care of all of  
7 the meeting minutes for any of the meetings that existed  
8 on the project, so he would have done all of those.

9 (Exhibit 110 was marked.)

10 BY MR. WILSON:

11 Q Sir, Exhibit 110 is Bates 4251-52. Is any of  
12 this your handwriting?

13 A Yes, this is my handwriting.

14 Q The first page, 4251, is not dated. The second  
15 page bears the date at the upper right 1/18/06. Do you  
16 see that?

17 A Yes.

18 Q What is this a note of?

19 A I don't know if it's a meeting or a phone call  
20 with Cal Bosma. It was about some -- another project --  
21 Oh, now I'm remembering. This is about another project  
22 that Cal Bosma called me about wanting to know if we  
23 wanted to help him with. That is all it was.

24 Q Can you read your handwriting, then, on the  
25 second page, Bates 4252?

1           A     No, I can't read the telephone number at the  
2     top because it is cut off. Then it says Cal, 1/18/06,  
3     three and a half acres, 320 river frontage, up the  
4     Truckee west, Dickerson Road, 49 units, RS15-MF14,  
5     increase density, single family, Fallon, Nevada, 6 to  
6     11K lot size, 70 plus lots, 1800 to 2200.

7           Q     Were these two different possible projects, one  
8     in Reno and the other in Fallon?

9           A     I don't remember.

10          Q     Did you or Fisher Friedman Associates ever do  
11     any work on either project?

12          A     No, this was as far as the communication went.  
13                 (Exhibit 111 was marked.)

14     BY MR. WILSON:

15          Q     Sir, Exhibit 111, is that your handwriting?

16          A     I have no idea whose handwriting that is.

17          Q     What is SOM?

18          A     Skidmore, Owings and Merrill. It's one of the  
19     two largest architectural firms in the world.

20          Q     Do you know why this was a part of the document  
21     production in this case?

22          A     No, I have no idea.

23          Q     Skidmore --

24          A     Owings and Merrill, but they go by SOM. They  
25     used to go by Skidmore, Owings and Merrill.

1 (Exhibit 112 was marked.)

2 BY MR. WILSON:

3 Q Exhibit 112, sir, is Bates Steppan 2062-64. Is  
4 any of the handwriting yours?

5 A No, this is Nathan's. It looks like it was a  
6 phone call with Turner Construction.

7 (Exhibit 113 was marked.)

8 BY MR. WILSON:

9 Q Exhibit 113 is Bates Steppan 1611. Whose  
10 handwriting is this?

11 A Actually other than the numbers 1 and 2 there  
12 is no handwriting, but it looks like a Rodney sketch or  
13 two sketches.

14 Q What is this a sketch of, if you know?

15 A I have no idea.

16 (Exhibit 114 was marked.)

17 BY MR. WILSON:

18 Q Exhibit 114 is Bates Steppan 1494. Whose  
19 handwriting?

20 A It's Nathan's confirmation of an e-mail that he  
21 sent to David Snelgrove of an elevation.

22 (Exhibit 115 was marked.)

23 BY MR. WILSON:

24 Q Exhibit 115 is Bates 1465. Do you know whose  
25 handwriting that is?

1           A     Well, the top is Rodney's. The bottom could be  
2 mine.

3           Q     When you say could, do you have some certainty  
4 to that?

5           A     It's quite probably mine.

6           Q     Do you know what it was attached to or related  
7 to?

8           A     No.

9           MR. GRUNDY: Can we go off the record a minute?

10           (A discussion was held off the record.)

11 BY MR. WILSON:

12           Q     I have handed the witness another copy of  
13 Exhibit 108 with the request to find out if the original  
14 has handwriting on the back, because we have looked at  
15 the Bates range 4346 and there are no other handwritten  
16 documents in that area.

17                   Agreed?

18           A     Agreed.

19                   (Exhibit 116 was marked.)

20 BY MR. WILSON:

21           Q     Sir, next in order, Exhibit 116, is Steppan  
22 1272, which appears to be a page out of Nathan Ogle's  
23 address book. Is the handwriting yours?

24           A     No, it's Nathan's.

25                   (Exhibit 117 was marked.)

1 BY MR. WILSON:

2 Q Exhibit 117 is Bates Steppan 1101 through 1119.  
3 Is any of the handwriting yours?

4 A No, this is another copy of part of the  
5 application for Reno that Nathan was filling out and  
6 getting people to provide information on. Part of these  
7 are the same copies that were in earlier exhibits.

8 Q Is there any of your handwriting on any part of  
9 Exhibit 117?

10 A No, Nathan was filling it out.

11 (Exhibit 118 was marked.)

12 BY MR. WILSON:

13 Q Exhibit 118 is Bates Steppan 943. Whose  
14 handwriting is that?

15 A It's a sketch. It doesn't have handwriting and  
16 I don't know whose sketch it is. It could be the  
17 landscape architect's.

18 (Exhibit 119 was marked.)

19 BY MR. WILSON:

20 Q Exhibit 119 is Bates Steppan 3230 through 33.  
21 Is any of this your handwriting?

22 A No, it all appears to be Nathan's.

23 (Exhibit 120 was marked.)

24 BY MR. WILSON:

25 Q Exhibit 120, sir, is Bates 3218. Is that your

1 handwriting or a part of it?

2 A No, it's Nathan's on one of his folders.

3 Q So when you say his folders, was it his, that  
4 is Nathan Ogle's practice to have typewritten or laser  
5 printed labels with the job number and various  
6 subdivisions?

7 A On occasion, yes.

8 Q So Exhibit 120, then, is from Nathan Ogle's  
9 part of the file on the Reno project?

10 A I'm assuming, yes.

11 As I stated, he was the project manager. He  
12 would be keeping all the files and handling the bulk of  
13 the communications.

14 (Exhibit 121 was marked.)

15 BY MR. WILSON:

16 Q Exhibit 121 is Bates 1267. Following up on  
17 your comments in response to my questions regarding  
18 Exhibit 120, is Exhibit 121 part of Nathan Ogle's files  
19 on the Reno project?

20 A Could be. I don't know for sure.

21 Q Was there some standard division of files by  
22 numeric and alpha order, for example, 4F, 4H, et cetera?

23 A I have no idea.

24 Q Do you recognize that as something that Nathan  
25 did with his files?

1           A     It's possible. I didn't look through his files  
2     so I don't know how he liked dividing up the different  
3     categories.

4           Q     Is there a protocol or policy at Fisher  
5     Friedman Associates to divide client files in a  
6     particular way?

7           A     No.

8                     (Exhibit 122 was marked.)

9     BY MR. WILSON:

10          Q     Exhibit 122 is Bates 1286. Does this appear to  
11     be another file division in Nathan Ogle's files?

12          A     It could be, yes.

13          Q     Is it yours?

14          A     No, it's not. I did not keep the files.  
15     Nathan did.

16                     (Exhibit 123 was marked.)

17     BY MR. WILSON:

18          Q     Exhibit 123 is another similar kind of printed  
19     file folder. Do you know if that is from Nathan's files  
20     on the Reno project?

21          A     It could be. I don't know for sure. It's not  
22     mine.

23                     (Exhibit 124 was marked.)

24     BY MR. WILSON:

25          Q     Exhibit 124 is Steppan 4224. Is that

1       handwriting yours?

2           A       Yes.

3           Q       Did the part of the Reno project file that was  
4       produced by your counsel start with Exhibit 124 labeled  
5       Reno Tower 0515?

6           A       I have no idea. This would be the top of my  
7       stack of papers possibly.

8           Q       And did you label your files on the Reno  
9       project anything other than Reno Tower 0515?

10          A       I have no idea. It's possible. This was just  
11       a sheet on top of a stack, as far as I know. I have  
12       multiple stacks on multiple projects and I would have  
13       had similar names on top like that.

14                 MR. WILSON: Off the record.

15                 (A discussion was held off the record.)

16       BY MR. WILSON:

17          Q       Sir, excuse my reach, but I am going to show  
18       you what has previously been marked as Exhibit 8 to the  
19       February 16, 2010 volume of your deposition.

20                 Exhibit 8 is Steppan 2837, et cetera. Could  
21       you read that letter dated December 14, 2005 to  
22       yourself. I want to ask you some questions about it.

23          A       Okay, I have read it.

24          Q       You have read the December 14, 2005 letter to  
25       Sam Caniglia from Nathan Ogle, do you see that?



1 A Yes.

2 Q It references in the first line of the letter  
3 pursuant to our December 12, 2005 meeting with John  
4 Schleining. Do you see that?

5 A Yes.

6 Q Does that refresh your memory that the one time  
7 you met John Schleining was in December of 2005?

8 A That seems reasonable, but I cannot say more  
9 than that.

10 Q You may recall yesterday, you may have recalled  
11 that the one time you met John Schleining was in October  
12 of 2005. Of course memories differ when refreshed. Is  
13 your memory refreshed that the one time you met John  
14 Schleining was on December 12, 2005?

15 A No, if I remember correctly what I said  
16 yesterday was I was not sure when I met to John and how  
17 it related to the start of the project in October nor my  
18 visit to Reno, and from earlier today I didn't know  
19 whether or not my meeting with John was before or after  
20 my visit to Reno, and to the best of my knowledge this  
21 makes sense as far as when I would have met John, but I  
22 have nothing else to go on other than that.

23 Q Your memory remains that you had one and only  
24 one meeting with John Schleining?

25 A As far as I remember, that's correct.

1 Q Thank you.

2 A You're welcome.

3 Would you like this back?

4 Q Sure.

5 (Exhibit 125 was marked.)

6 BY MR. WILSON:

7 Q Exhibit 125, sir, is Steppan 6303. Have you  
8 ever seen the original or a copy of this before today?

9 A I don't remember.

10 Q This is an e-mail from Calvin Bosma to various  
11 recipients. It begins Wingfield Towers Team and then  
12 the quotes from Theodore Roosevelt. Do you see that?

13 A Yes, I see that.

14 Q Do you have an understanding or belief as to  
15 why Calvin Bosma did not send this e-mail to you?

16 A No, I don't know. I don't really know what it  
17 was about.

18 Q Well, it's dated November 20, 2006. Do you  
19 recall or remember that the entitlements were approved  
20 on November 15, 2006?

21 A Sounds right.

22 Q And the quotation goes on to make note that the  
23 credit belongs to the man who is actually in the arena.  
24 Do you see that?

25 A Yes.

1 Q Do you have an understanding that this exhibit,  
2 Exhibit 125, was meant as congratulations to the team  
3 that obtained the entitlements?

4 A That makes complete sense.

5 MR. WILSON: Let's take a five minute break. I  
6 may be done. So we can stretch our legs a little bit.

7 (A recess was taken.)

8 BY MR. WILSON:

9 Q Sir, could you pick up Exhibit 20 one more  
10 time. As I commented off the record I want to go  
11 through these last time sheets and then we will be done  
12 for the day.

13 You understand that you're still under oath?

14 A Are we off or on?

15 Q We're on.

16 A The answer is yes.

17 Q Let's look at Steppan 7227, which is for the  
18 week ending January 20th, 2006.

19 A 7227, okay.

20 Q And it shows that you worked two hours the week  
21 ending January 20, 2006 on the Reno project; correct?

22 A Yes.

23 Q What did you do on the project for that week?

24 A I don't remember.

25 Q Is there anything you can look at, sir, that

1 would refresh your memory as to what you did?

2 A No.

3 Q Next in order is Bates 7228 the week ending  
4 January 27, 2006. It shows you expended three hours on  
5 the Reno project; correct?

6 A Correct.

7 Q What did you do on the Reno project that week?

8 A I don't remember specifically.

9 Q Is there anything you can look at that would  
10 refresh your memory as to what work you did on the Reno  
11 project that week?

12 A No.

13 Q Next in order is Bates 7229 for the week ending  
14 March 3, 2006 showing that you expended six hours on the  
15 Reno project. Do you see that?

16 A Yes.

17 Q What did you do on the Reno project that week?

18 A I don't remember.

19 Q Is there anything you could look at that would  
20 refresh your memory as to what you did on the project  
21 that week?

22 A No.

23 Q Comparing the prior Exhibit, 7228, and the  
24 current one we're looking at, 7229, is there a reason  
25 there is a gap of approximately a month between your

1 time sheets?

2 A I may not have -- I must not have worked on the  
3 project during that time frame.

4 Q You have no other explanation or knowledge as  
5 to why there is no time sheet for the month?

6 A There would be no time sheet here for the month  
7 because there was no work on Reno for me that I recorded  
8 as time on the time sheet for that month. It doesn't  
9 mean that I didn't look over people's shoulders. It  
10 just means that I didn't record time.

11 Q Is there any reason in particular that you  
12 would not have recorded time, if in fact you had  
13 expended it in February of 2006 on the Reno project?

14 A As I previously mentioned, if I had been  
15 walking around and spent 15 minutes here, 15 minutes  
16 there I may not have totaled that up. It balances out  
17 in the end in any case.

18 Q How does it balance out in the end?

19 A Because this contract was a percentage of  
20 construction cost contract so it really in the end by  
21 the time we're all done wouldn't have mattered whether I  
22 put one hour down, two hours down or in October of '06  
23 put 3,000 hours down, because the work product was what  
24 was delivered.

25 So my explanation for that time frame is that I

1 probably didn't have enough hours that I felt that they  
2 were worth recording.

3 Q Next in order is 7230 for the week ending March  
4 10, 2006. This record shows you direct billed three  
5 hours on the Reno project. Do you see that?

6 A Yes.

7 Q What did you do on the project for that week?

8 A I don't remember.

9 Q Is there anything you can look at that would  
10 refresh your memory as to what you did that week on the  
11 Reno project?

12 A No.

13 Q Next in order is 7231 dated, I believe, March  
14 20, 2006. Am I right on that date?

15 A No, probably the 17th.

16 Q Thank you.

17 Bates 7231 shows you expended three hours on  
18 the Reno project. What did you do on the project that  
19 week?

20 A I don't know specifically.

21 Q Do you know generally?

22 A Well, as I said generally for all of these they  
23 all show the type of time that would have been accrued  
24 through general supervision of the work in progress,  
25 looking over people's shoulders, having discussions with

1 Nathan and Rodney, participating in phone calls, short  
2 meetings, the like, and that was my role on the project.  
3 So that is how it was generally represented.

4 Q Is there anything that you could look at, sir,  
5 that would refresh your memory as to what you actually  
6 did during the week of March 17th, 2006?

7 A Not that I'm aware of.

8 Q Next in order is 7232, the week ending March  
9 24, 2006 which record shows that you direct billed five  
10 hours on the Reno project. Do you see that?

11 A Correct.

12 Q What did you do on the project that week?

13 A I can't say specifically.

14 Q Is there anything you can look at that would  
15 refresh your memory as to what you did?

16 A Not that I'm aware of.

17 Q Next order is 7233 for the week ending March  
18 31, 2006 showing a direct billing of six hours on the  
19 Reno project?

20 A That's correct.

21 Q What did you do on the project that week?

22 A I don't know specifically. I think that any of  
23 these weeks that are leading up to the April signing of  
24 the agreement it would be logical that time was being  
25 spent reviewing the agreement, which was signed in April

1 of '06.

2 Q Did you direct bill to the client time spent  
3 reviewing the contract?

4 A I would record all my time that I worked on the  
5 project.

6 Q You noted, or perhaps you did not, but there  
7 would be times when you would indirect bill and then  
8 direct bill the Reno project; is that right?

9 A I don't remember saying that I would personally  
10 indirect or direct bill.

11 Q The two columns that I'm referring to on the  
12 time sheet, and let's use 7233, show indirect hours and  
13 direct hours. Am I right?

14 A Yes.

15 Q Did you record under direct hours time you  
16 expended reviewing the contract?

17 A I believe so.

18 Q Is that in your view appropriate to bill the  
19 client for reviewing the contract between you and the  
20 client?

21 A I don't know that it's inappropriate.

22 Q Is there anything that you could look at, sir,  
23 that would refresh your memory as to what you did on the  
24 Reno project for the week ending March 31, 2006?

25 A No.



1 Q Next in order is 7234 for the week ending April  
2 7, 2006 showing a direct bill of one hour on the Reno  
3 project?

4 A I see that.

5 Q What is it that you did on the Reno project  
6 that week?

7 A I don't know.

8 Q Is there anything that you could look at that  
9 would refresh your memory as to what work you did on the  
10 Reno project that week?

11 A Not that I'm aware of.

12 Q Your last timecard is dated June 30, 2006  
13 showing two hours direct billed to the Reno project. Do  
14 you see that?

15 A Yes.

16 Q What did you do during the week of June 30,  
17 2006 on the Reno project?

18 A I don't remember.

19 Q Is there anything that you could look at that  
20 would refresh your memory as to what work you did on the  
21 Reno project that week?

22 A Not that I'm aware of.

23 MR. WILSON: Off the record.

24 (A discussion was held off the record.)

25 (Exhibit 126 was marked.)

1 BY MR. WILSON:

2 Q Sir, we have marked as Exhibit 126 to this  
3 deposition the notice and claim of lien recorded  
4 November 7, 2006 in this matter.

5 Have you ever seen the original or a copy of  
6 this before?

7 A I believe so.

8 Q Did you review it before it was recorded?

9 A I believe so.

10 Q Turning your attention, sir, to the second  
11 page, Bates Iliescu 326 on paragraph 5 and read that to  
12 yourself, and I want to ask you some questions about it.

13 A Okay.

14 Q Sir, is paragraph 5 beginning that the first  
15 labor and materials and then ending continuing interest,  
16 attorney's fees and costs, true and accurate?

17 A Well, it relates to a contract signing date  
18 which backdates the start of the work to the previous  
19 date. So I don't know how else to answer the question.

20 Q Well, I will rephrase.

21 Is it true that the first labor and materials  
22 furnished by you incorporated into the project was on or  
23 about April 21, 2006?

24 MS. KERN: I'm going to object to the extent  
25 that you're asking for a legal conclusion with respect

1 to the work that is performed. He most certainly has  
2 testified today --

3 MR. WILSON: Hold on. You made your objection.  
4 I appreciate that, and I note the objection.

5 Could you read the question back?

6 (The record was read by the reporter.)

7 THE WITNESS: Work was done prior to the  
8 start -- started prior to April 26. April 26 was the  
9 contract date which backdated the start of work to  
10 October by contract.

11 BY MR. WILSON:

12 Q So when was the first labor and materials  
13 furnished by you incorporated into the project?

14 A Notwithstanding my lack of legal knowledge on  
15 how this all relates to each other and how it is written  
16 in the lien, et cetera, and how it relates to a contract  
17 date, the first work was started in October, as  
18 previously testified, and the contract date is April 26,  
19 which backdates all of the work to a start date of  
20 October '05, starting by contract the start date in an  
21 earlier time.

22 Q So the first labor and materials was furnished  
23 by you and incorporated into the Iliescu property in  
24 October of 2005, am I right?

25 A To my understanding.

1 Q When was the last labor and materials furnished  
2 by you and incorporated into the project?

3 A I don't remember when it ended as it related to  
4 the date of the recording of the lien, other than within  
5 90 days of November 30th, '06.

6 Q The amount of the lien claim that is in  
7 paragraph 5, one million seven hundred thousand, et  
8 cetera, who calculated that amount?

9 A That would have been calculated probably by --  
10 probably by Susie as the remainder owed once the total  
11 fee and the adjustments to the fee were taken into  
12 account less payments received.

13 Q Did Susie Fay generate a document that had that  
14 calculation?

15 A I don't remember.

16 Q Did you have a meeting with Susie Fay to  
17 discuss the amount of the -- the net amount of the lien?

18 A There were some discussions, yes.

19 Q Did Susie produce a document that said here is  
20 the amount of the lien?

21 MS. KERN: I'm going to object to the extent  
22 that you're asking for any work product. That is  
23 privileged.

24 MR. WILSON: I'm limiting my question to a  
25 document created by Susie Fay.

1 MS. KERN: I'm going to object and instruct him  
2 not to answer to the extent that that document was  
3 produced based upon my instruction in accordance with my  
4 work product.

5 BY MR. WILSON:

6 Q Other than instruction by counsel to Fisher  
7 Friedman Associates to produce a document, independent  
8 of that did Susie Fay produce a document separate and  
9 apart of that attorney instruction regarding the amount  
10 of the lien?

11 A I don't know, remember if there was a separate  
12 document produced other than whatever was left on the  
13 last invoice that showed outstanding billings or what  
14 was outstanding owed. I just don't remember.

15 MR. WILSON: I have nothing further, sir.  
16 Thank you.

17 THE WITNESS: Thank you, Greg.

18 MR. MOLLATH: I have nothing.

19 MS. KERN: Thank you.

20 MR. GRUNDY: We're done.

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\_\_\_\_\_  
MARK STEPPAN

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary

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

4 I, JANET MENGES, a notary public in and for the  
5 County of Washoe, State of Nevada, do hereby certify;

6 That on Wednesday, March 3, 2010, at the hour of  
7 9:35 a.m. of said day, at 6005 Plumas Street, Reno,  
8 Nevada, personally appeared MARK STEPPAN, who was duly  
9 sworn by me to testify the truth, the whole truth, and  
10 nothing but the truth, and thereupon was deposed in the  
11 matter entitled herein;

12 That said deposition was taken in verbatim stenotype  
13 notes by me, a Certified Court Reporter, and thereafter  
14 transcribed into typewriting as herein appears;

15 That the foregoing transcript, consisting of pages  
16 421 through 519, is a full, true and correct transcript  
17 of my stenotype notes of said deposition to the best of  
18 my knowledge, skill and ability.

19  
20  
21 DATED: At Reno, Nevada this 15th day of March, 2010.  
22

23 Janet Menges  
24 JANET MENGES, CCR #206  
25

1 STATE OF NEVADA )  
2 COUNTY OF WASHOE ) ss.  
3  
4

5 I, , a

6 notary public in and for the County of

7 , do hereby certify:

8 That on the day of

9 , 2010, before me

10 personally appeared the witness whose deposition appears  
11 herein;

12 That the deposition was read to or by the  
13 witness;

14 That any changes in form or in substance  
15 desired by the witness were entered upon the deposition  
16 by the witness;

17 That the witness thereupon signed the  
18 deposition under penalty of perjury.

19 DATED: At this

20 day of , 2010.  
21  
22  
23  
24  
25



Exhibits

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A R C H I T E C T U R E P L A N N I N G U R B A N D E S I G N

February 15, 2006

Calvin Bosma  
Decal Custom Homes  
6121 Lakeside Drive, Suite 125  
Reno, NV 89511  
Via: Cal Overnight 0515-R

**Re: BSC RESIDENTIAL TOWERS CONTRACT INFORMATION**

Dear Calvin,

Enclosed is the contract information in chronological order as we discussed. Only partial electronic copies of information can be forwarded via email.

If you have any questions or need more information please do not hesitate to contact Rodney or myself.

Yours truly,

**Nathan Ogle, AIA**  
Vice President

Cc: Agreement File  
Accounting File  
Main File  
Sam Caniglia



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AA4059

STEPPAN 3362

ARCHITECT

December 20, 2005

Sam Caniglia  
BSC Financial, LLC  
c/o Consolidated Pacific Development, Inc.  
932 Parker Street  
Berkeley, CA 94710  
Via Facsimile: 510.548.6164

**RE: RESPONSE TO AIA CONTRACT REVIEW OWNER'S ISSUES  
HALE LANE FILE NO. 20606-0004  
RESIDENTIAL PROJECT-RENO, NEVADA**

Dear Sam,

This letter shall serve as our response to the comments made to our AIA Document B141 Agreement and the A201 General Conditions of the Contract by Hale Lane Attorneys at Law.

**RESPONSE TO B141 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT**

1. Section 1.1 under Section 1.1.6 - We agree.
2. Section 1.1 under Section 1.5.2 - We invite any suggestions as to what additional project information should be included in the agreement.
3. Section 1.2.2.2 - We agree.
4. Section 1.3.2.2 - Revised text shall read:

If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

Either party to this agreement shall be deemed in default if: (a) Either party fails to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues of a period to thirty (30) days after notice by either party or beyond the time reasonably necessary for cure if such default is of a nature to require in excess of thirty (30) to remedy; (b) Either party shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or be the subject of any proceedings of any kind under any provisions of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of either party.

5. Section 1.3.6 - We recommend not deleting this paragraph.
6. Section 1.3.7.1 - The construction contract should be governed by Nevada law. The Agreement between the Owner and the Architect should be governed by California law because the Architect and one Owner are based in California.
7. Section 1.3.7.6 - Revised text shall read: Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility of the discovery, presence,

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p: 510-420-1666 f: 510-420-0599

ARCHITECT

handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site, unless if the Architect or Architect's consultants specify hazardous waste products.

8. Section 1.3.7.9 Revised partial text shall read: The Architect shall execute all consents reasonably required to facilitate such assignment, so long as insurance vehicle is also assigned maintaining architects protection.
9. Section 1.5 – The abbreviated terms used in the first paragraph are as follows:
  - Schematic Design
  - Design Development
  - Construction Documents
  - Construction Administration

There definition can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of these sections shall be provided upon request.
10. Section 1.5.9 - We agree.
11. Section 2.4.1 – In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagant systems are required by the Owner which would trigger an increase in consultants fees as well as Architects. We anticipate that the end result of the project would produce industry standard Class A units.
12. Section 2.8 - No action required.

**RESPONSE TO A201 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

Note: According to common practice, and as reflected in the AIA system of documents, the owner-contractor agreement is accompanied by a set of "general conditions." The rights and responsibilities of the owner and contractor—and to some extent the architect—are set forth in the general conditions.

Whereas the owner-contractor agreement contains project-specific provisions, the general conditions contain provisions mainly of a contractual (vs. procedural) nature that tend to be consistent from project to project. The parties need a fair and comprehensive set of guidelines and "laws" for their relationship, and the general conditions provide them.

Although only the owner and contractor are parties to the construction contract of which the general conditions are part, the architect also has an interest in the terms and provisions of the general conditions. During the construction phase, the architect has specific duties and responsibilities according to its contract with the owner. Those duties and responsibilities are restated in the general conditions to the contract for construction so the contractor is informed about the architect's role and the obligations the architect has been engaged to undertake.

The provisions in the various forms of general conditions are also consistent with the provisions in the AIA's forms of owner-architect agreement. Therefore, when a properly selected series of AIA documents are used together on a project, the terms will be consistently used and the rights and responsibilities of the parties properly coordinated. This consistency is an important reason for selecting AIA documents.

Because the general conditions are, intentionally, somewhat generic, there must be a way to tailor them to reflect the specific requirements of the owner, the project, and local law. This is accomplished via supplementary conditions, which modify or extend the general conditions. They are often used to modify the ground rules and relationships when

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ARCHITECT

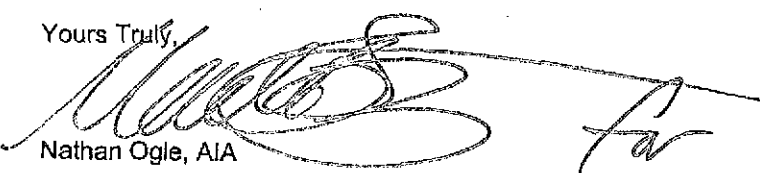
- Multiple prime contractors are involved
- The project is being fast-tracked
- The contractor is being compensated on a cost-plus basis

Currently the Owner is evaluating the above referenced project delivery options.

1. Section 2.2.1 - No impact to Architect.
2. Section 3.2.3 - We agree.
3. Section 3.3.1 - Add text at end as follows: Architect agrees to never direct to proceed with means, methods, techniques, sequences or procedures which may not be safe.
4. Section 3.10.3 - We agree.
5. Section 3.18.1 - We agree.
6. Section 4.3.10 - We agree. Owner shall determine.
7. Section 4.6.4 - Our insurance carrier does not allow consolidation or joinder. If this item is still in question, we shall respond at a later date.
8. Section 5.2 - We agree. Owner shall determine.
9. Section 6.2.3 - Separate Contractor is in Owner control and Architect is not impacted. Owner shall determine.
10. Section 10.3.3 & 10.5 - Not Architect issue.
11. Section 11.4.1.1 - We recommend property insurance coverage with architect named as insured with waiver of subrogation.
12. Section 12.2.2.1 & 4.2.1 - We agree.
13. Section 13.2.1 - We agree.
14. Section 14.2.1 - We agree.
15. Section 14.2.4 - We agree.
16. Designing the project within budget comment: Architect agrees to redraft the plans at no additional cost if the lowest bid exceeds the **approved** budget.

If you have any questions or need more information please do not hesitate to contact me.

Yours Truly,

  
Nathan Ogle, AIA

Cc: 0515-1 Agreement File  
0515-1 Accounting File

1485 Park Avenue, suite 103,  
p: 510-420-1666

Emeryville, CA 94608  
f: 510-420-0599

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A R C H I T E C T U R E P L A N N I N G U R B A N D E S I G N

July 27, 2006

Michael McConnell  
Enclos Corp  
6140 Stoneridge Mall Road, Suite 250  
Pleasanton, CA 94588-3600  
Via: California Overnight 0515-R

**Re: WINGFIELD TOWERS – RENO, NEVADA**

Dear Michael,

Enclosed are compact discs with the fly-thru and power point for the above referenced project.

If you have any questions or need more information please do not hesitate to contact me.

Yours Truly,



Nathan Ogle, AIA  
Vice President

Cc: Main File



1485 PARK AVENUE • SUITE 103 • EMERYVILLE • CALIFORNIA • 94608  
(310) 420-1666 FAX (310) 420-0599 [www.fisherfriedman.com](http://www.fisherfriedman.com)

AA4063

STEPPAN 3460



# AIA Document B141™ – 1997 Part 1

## Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services

### TABLE OF ARTICLES

- 1.1 INITIAL INFORMATION
- 1.2 RESPONSIBILITIES OF THE PARTIES
- 1.3 TERMS AND CONDITIONS
- 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS
- 1.5 COMPENSATION

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

**AGREEMENT** made as of the Thirty-first day of October in the year Two Thousand and Five

*(In words, indicate day, month and year)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, address and other information)*

BSC Financial, LLC, Limited Liability Company  
c/o Consolidated Pacific Development Inc.  
932 Parker Street  
Berkeley, CA 94710  
Telephone Number: 510.548.6093  
Fax Number: 510.548.6164

and the Architect:

*(Name, address and other information)*

Mark B. Steppan, AIA, CSI, NCARB  
1485 Park Avenue, #103  
Emeryville, CA 94608  
Telephone Number: 510.420.1666  
Fax Number: 510.420.0599

For the following Project:

*(Include detailed description of Project)*

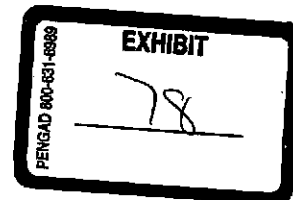
Residential Project Reno, Nevada  
Site bounded by North Arlington Avenue, Island Avenue and Court Street in Reno, Nevada.  
A mixed-use development including for-sale residential, retail and parking. Approximately 400 residential units, landscaped podium, and indoor pool are anticipated in two Type I construction high-rise towers. The estimated project's gross square footage is one million square feet.

The Owner and Architect agree as follows:

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User Notes:

(112287728)



## ARTICLE 1.1 INITIAL INFORMATION

§ 1.1.1 This Agreement is based on the following information and assumptions.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

### § 1.1.2 PROJECT PARAMETERS

§ 1.1.2.1 The objective or use is:

*(Identify or describe, if appropriate, proposed use or goals.)*

| To create an urban mixed use residential development with approximately 400 living units for a private developer

§ 1.1.2.2 The physical parameters are:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)*

| The site is approximately 1.42 acres bounded by North Arlington Avenue, Island Avenue and Court Street next to the Truckee River in Reno, Nevada.

§ 1.1.2.3 The Owner's Program is:

*(Identify documentation or state the manner in which the program will be developed.)*

| As outlined in Exhibit B.

§ 1.1.2.4 The legal parameters are:

*(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)*

| The site is approximately 1.42 acres bounded by North Arlington Avenue, Island Avenue and Court Street next to the Truckee River in Reno, Nevada. No unusual geotechnical, utility or other subsurface issues are known. The site includes the following parcels: Parcel 1 APN-011-112-03, Parcel 2 APN-011-112-06, Parcel 3 APN-011-112-07 & APN-011-112-12.

§ 1.1.2.5 The financial parameters are as follows.

- 1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is:  
unknown at time of execution of this Agreement
- 2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is:  
Total construction cost is estimated to be approximately \$160,000,000 including contractors profit and overhead.

§ 1.1.2.6 The time parameters are:

*(Identify, if appropriate, milestone dates, durations or fast track scheduling.)*

| Approximately 32 months from authorization to proceed with design through completion of construction and assuming that entitlements run concurrent with design.

§ 1.1.2.7 The proposed procurement or delivery method for the Project is:

*(Identify method such as competitive bid, negotiated contract, or construction management.)*

| Negotiated contract to be determined later by mutual agreement

§ 1.1.2.8 Other parameters are:

*(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)*

| To be determined later by mutual agreement



**§ 1.1.3 PROJECT TEAM**

**§ 1.1.3.1** The Owner's Designated Representative is:  
(List name, address and other information.)

Sam Caniglia, BSC Financial, LLC

**§ 1.1.3.2** The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:  
(List name, address and other information.)

Sam Caniglia BSC Financial, LLC

**§ 1.1.3.3** The Owner's other consultants and contractors are:  
(List discipline and, if known, identify them by name and address.)

Construction Project Manager, Survey, Civil, Geotechnical, Title 24, Lighting, Interior Design, Tele/Data, Wind Analysis, Window Washing, Cost Estimation, Audio/Visual, Graphics, Hardware, Security, Parking/Traffic, Special Cladding/Curtain Wall, Fire Protection and any other to be determined later by mutual agreement

**§ 1.1.3.4** The Architect's Designated Representative is:  
(List name, address and other information.)

Mark Steppan  
1485 Park Avenue, #103  
Emeryville, CA 94608

**§ 1.1.3.5** The consultants retained at the Architect's expense are:  
(List discipline and, if known, identify them by name and address.)

Landscape, Structural, Mechanical, Electrical, Plumbing, Acoustics, Waterproofing, Code, Elevator, Specifications, Cladding/Curtain Wall/Waterproofing System

**§ 1.1.4** Other important initial information is:

**§ 1.1.5** When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows:

**§ 1.1.6** The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Section 1.3.3.

**ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES**

**§ 1.2.1** The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

**§ 1.2.2 OWNER**

**§ 1.2.2.1** Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within

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User Notes:

(112287728)

15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.

§ 1.2.2.3 The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 1.2.2.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 1.2.2.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

#### § 1.2.3 ARCHITECT

§ 1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4.

§ 1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.2.3.3 The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

§ 1.2.3.4 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

§ 1.2.3.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

§ 1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

#### ARTICLE 1.3 TERMS AND CONDITIONS

##### § 1.3.1 COST OF THE WORK

§ 1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

§ 1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

##### § 1.3.2 INSTRUMENTS OF SERVICE

§ 1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 1.3.2.3 Except for the licenses granted in Section 1.3.2.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 1.3.2.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

### § 1.3.3 CHANGE IN SERVICES

§ 1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5.

§ 1.3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- 1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- 2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- 3 decisions of the Owner not rendered in a timely manner;
- 4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- 5 failure of performance on the part of the Owner or the Owner's consultants or contractors;
- 6 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- 7 change in the information contained in Article 1.1.

### § 1.3.4 MEDIATION

§ 1.3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

§ 1.3.4.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 1.3.4.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 1.3.5 ARBITRATION

§ 1.3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 1.3.4.

§ 1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

§ 1.3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

§ 1.3.5.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 1.3.5.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### § 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.

#### § 1.3.7 MISCELLANEOUS PROVISIONS

§ 1.3.7.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Section 1.4.2.

§ 1.3.7.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

§ 1.3.7.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

§ 1.3.7.4 To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 1.3.7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 1.3.7.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 1.3.7.8 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 1.3.7.9 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

### § 1.3.8 TERMINATION OR SUSPENSION

§ 1.3.8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 1.3.8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 1.3.8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 1.3.8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 1.3.8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7.

§ 1.3.8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

### § 1.3.9 PAYMENTS TO THE ARCHITECT

§ 1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

§ 1.3.9.2 Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Section 1.5.5;
- .8 other similar direct Project-related expenditures.

§ 1.3.9.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§ 1.3.9.4 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

#### ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

§ 1.4.1 Enumeration of Parts of the Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. This Agreement comprises the documents listed below.

§ 1.4.1.1 Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997.

§ 1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:

*(List other documents, if any, delineating Architect's scope of services.)*

§ 1.4.1.3 Other documents as follows:

*(List other documents, if any, forming part of the Agreement.)*

Exhibit A Master Fee Schedule & Reimbursable Expenses

Exhibit B Concept Design Plans and Model Images

§ 1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

#### ARTICLE 1.5 COMPENSATION

§ 1.5.1 For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

5.75% of the total construction cost including contractors profit and overhead. Compensation will be billed monthly as a percentage complete of each phase with the following assumptions: SD 20%, DD 22%, CD 40%, Bid/Negotiate 1% & CA 17%.

The Total Construction Cost of the project will be evaluated at the completion of the project in order to determine final payment for basic architectural services. Any amount over the original estimated Total Construction Cost of approximately \$160,000,000 shall be paid for architectural services based on the agreed upon 5.75% fee. Any

**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.

Electronically Filed  
Aug 11 2016 02:47 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**Supreme Court No. 68346**  
Washoe County Case No. CV07-  
00341  
(Consolidated w/CV07-01021)

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**APPELLANTS' SUPPLEMENTAL APPENDIX  
VOLUME XVII (Part 2)**

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Appeal from the Second Judicial District Court of the State of Nevada  
in and for the County of Washoe County  
Case No. CV07-00341

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

**ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**

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[dca@albrightstoddard.com](mailto:dca@albrightstoddard.com)

*Counsel for Appellants*



## DOCUMENT INDEX

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
72	04/17/08	Additional Exhibits to Applicants/ Defendants' Motion for Partial Summary Judgment not previously attached with original Appellants Appendix including Exhibits 1, 3, pages 25-152 of Exhibit 7, 8, 9, pages 13-56 of Exhibit 12	XII, XIII	AA2572-2912
73	Taken 09/29/08 Filed 12/11/13	Deposition Transcript of Mark Steppan on September 29, 2008 (Pages 1-75)	XIII	AA2913-2987
74	Taken 02/16/10 Filed 12/11/13	Deposition Transcript of Mark Steppan on February 16, 2010 (Pages 1-203), including Exhibits	XIII, XIV	AA2988-3279
75	Taken 03/02/10 Filed 12/11/13	Deposition Transcript of Mark Steppan on March 2, 2010 (Pages 1-420), including Exhibits	XIV, XV, XVI, XVII	AA3280-3958
76	Taken 03/03/10 Filed 12/11/13	Deposition Transcript of Mark Steppan on March 3, 2010 (Pages 421-519), including Exhibits	XVII, XVIII, XIX	AA3959-4402
77	09/27/12	Order Granting Mark Steppan's Motion for Reconsideration and Denying Motion to Dismiss, and Order Granting John Iliescu's Motion for Reconsideration and Denying [Hale Lane's] Motion for Summary Judgment	XIX	AA4403-4408
78	02/14/13	Second Stipulation to Stay Proceedings Against Defendant Hale Lane and Order to Stay and to Dismiss Claims Against Defendants Dennison, Howard and Snyder without Prejudice	XIX	AA4409-4411

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
79	10/27/14	Additional Exhibits to Defendants' Motion for NRCP 60(b) Relief From Court's Findings of Fact, Conclusions of Law and Decision and Related Orders not previously attached to Appellant's Appendix, including Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 10, 13, 14, and 19	XIX, XX	AA4412-4761

### **ALPHABETICAL INDEX**

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74	Taken 02/16/10 Filed 12/11/13	Deposition Transcript of Mark Steppan on February 16, 2010 (Pages 1-203), including Exhibits	XIII, XIV	AA2988-3279

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### CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 11<sup>th</sup> day of August, 2016, the foregoing **APPELLANTS' SUPPLEMENTAL APPENDIX VOLUME XVII**, was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Michael D. Hoy, Esq.  
HOY CHRISSINGER KIMMEL P.C.  
50 West Liberty Street, Suite 840  
Reno, Nevada 89501  
(775) 786-8000  
[mhoy@nevadalaw.com](mailto:mhoy@nevadalaw.com)  
*Attorney for Respondent Mark Steppan*

  
An employee of Albright, Stoddard, Warnick & Albright

**Nathan Ogle**

---

**From:** Amy Chu [amychu@fisherfriedman.com]  
**Sent:** Friday, January 13, 2006 5:30 PM  
**To:** 'Nathan Ogle'; Mark Steppan  
**Subject:** Reno application package PDF and CAD files

Nathan,

I have uploaded a pdf & CAD package of everything we did for the application onto the FTP site in the Reno Folder.

It's in the folder: 2006-01-17 develop app package  
and contains:

8x11 package -A.pdf  
8x11 package -B.pdf

sub folder: 8x11 size: all the pdf individual files in 8-1/2x11 format  
sub folder: CAD: all CAD files  
sub folder: Full size: all full size elevation and display map in pdf format

This does not contain Landscape drawings.

sincerely,

**Amy.S.I.Chu**  
FISHER FRIEDMAN ASSOCIATES  
(510) 420 - 1666 EXT 165

1/13/2006

AA3944

STEPPAN 0177

**Nathan Ogle**

---

**From:** Amy Chu [amychu@fisherfriedman.com]  
**Sent:** Monday, January 16, 2006 5:32 PM  
**To:** cbosma@decacustomhomes.com  
**Cc:** Nathan Ogle; Mark Steppan  
**Subject:** Reno residential project development application

Cal,

Below is the instruction to download our 8-1/2x11 pdf package ( in 2 files) of the Reno project.

Please contact me if you have problems downloading the files.

We have posted all the updated CAD files and a pdf package of the Reno Elevations and section renderings onto our FTP site in the **Reno / 2006-01-17 develop app package folder, dated 01/13/2006.**

Please follow the instruction below to retrieve the files. If you have any questions, please contact us.

**Accessing FFA's FTP site**

FFA's ftp site is not accessible using a browser.

Use any ftp application with the following account info:

IP: 72.18.232.3

Account Username: reno

Account Password: highrise

Click [here](http://www.download.com/Core-FTP-LE/3000-2160_4-10453603.html?tag=lst-0-1) <http://www.download.com/Core-FTP-LE/3000-2160\_4-10453603.html?tag=lst-0-1> to download Core FTP Lite, an excellent free ftp application if required.

sincerely,

**Amy.S.I.Chu**  
 FISHER FRIEDMAN ASSOCIATES  
 (510) 420 - 1666 EXT 165

1/17/2006

**AA3945**

**STFPPAN 0327**

FILE / COPY

**Nathan Ogle**

**From:** Nathan Ogle [nathan@fisherfriedman.com]  
**Sent:** Wednesday, February 15, 2006 3:08 PM  
**To:** 'cbosma@decacustomhomes.com'  
**Cc:** 'samcaniglia@sbcglobal.net'; 'calvin@decacustomhomes.com'; 'john@larvan.com';  
**Subject:** BSC Residential Towers Contract Information Attached

Calvin Bosma,

Attached is all the information I have electronically regarding our contract as discussed. A hard copy of all contract related documents shall be forwarded to your attention in the Reno office via overnight delivery. This hard copy package includes the following:

1. Original AIA B141 Owner Architect Agreement
2. Draft AIA Document A201 General Conditions
3. Hale Lane Attorney Contract Comments
4. FFA Response to Hale Lane Comments

Call with any questions.

**Nathan Ogle, AIA**  
Vice President

Fisher Friedman Associates  
1485 Park Avenue, Suite 103  
Emeryville, CA 94608  
510.420.1666  
510.420.0599 fax  
[www.fisherfriedman.com](http://www.fisherfriedman.com)



020706

iCanigliaContinueW



102605 MS

Reno.doc (48 KB)



110105 0515-1

Agreement.doc (4...



110105 Contract

Cover Letter.d...



121405

iCanigliaContinueW



122005 Contract

Response 1.doc...



Exhibit B Final.pdf  
(1 MB)

AA3946

STEPPAN 3361

**Mark Steppan**

**From:** Nathan Ogle [nathan@fisherfriedman.com]  
**Sent:** Thursday, February 16, 2006 4:05 PM  
**To:** 'Mark Steppan'; 'Amy Chu'; David Tritt  
**Subject:** FW: Downtown Ordinance Hearing

fyi

-----Original Message-----

**From:** David Snelgrove [mailto:dsnelgrove@WoodRodgers.com]  
**Sent:** Thursday, February 16, 2006 10:21 AM  
**To:** samcaniglia@sbcglobal.net  
**Cc:** cbosma@decalcustomhomes.com; nathan@fisherfriedman.com  
**Subject:** Downtown Ordinance Hearing

Sam:

I attended and presented information at the Planning Commission, last night regarding the proposed Downtown Ordinance. The Planning Commission approved the ordinance with some changes, but no change to the River Esplanade setbacks. I met Cal Bosma from DeCal at the meeting. We both had discussions with a member of the California Avenue Association (Stephen Glenn). I mentioned to Stephen that I would like to come to their group to present the project. Based upon Stephen's testimony at the hearing, their group is of the same mind we are – the area west of Virginia, south of the River and north of California Avenue is definitely under-developed, especially in light of the fact that it has been in the Downtown Core district for years. I think that we can find support from the California Avenue Association.

A lady from Park Tower Condominiums was also present at the meeting and she presented testimony that the BSC tower project would (1) lower property values (2) present traffic and parking problems, because Park Tower already has parking problems (3) destroy the views from Park Tower (4) the property for BSC should be smaller homes or businesses, because they were told that smaller buildings is what would be put there and (5) no one has come to talk to Park Tower about the project. I have made this lady sound very rational – she was not. She is riding a huge wave of emotion. When I tried to give her my card and introduce myself, she would not take the card, nor shake my hand, nor offer her name. I informed her that we would set up a meeting with the Park Tower Association to present the project and to answer questions. She quickly left after I started talking to her about the project.

I do feel that there are some items that may help us with the City and Park Tower from her list of concerns.

- (1) parking at Park Tower is apparently very impacted and there is no parking available on the street. One opportunity that I see is that the parking within the garage could have spaces either assigned or available to Park Tower. You can determine how those spaces would be available (either through lease or simply offered)
- (2) given the concern about parking in the area, I feel that a parking study of the area will need to be performed, analyzing the available parking at different times of the day, on street and in surrounding lots. While I know that we have ample parking on our site to meet our demand, the perception may become that there is a problem. The parking study would help to nip this in the bud, quickly. The parking study could either be done by Solaegui or my staff. Given that Paul is working on the traffic information and parking is correlated, the findings would probably best prepared and presented by Paul.
- (3) Given that the Planning Commission recommended approval of the new ordinance (with the esplanade setbacks), on observation that I had was that a shorter building, meeting the setback requirements of the new code would still have an impact on the views from the Park Tower Condominiums. Most likely, blocking most of all of the views currently held by residents on the south and east sides of the building.

Obviously, in addition to meetings with Council Members, we will need to meet with Park Tower and I strongly suggest meeting with the California Association. One other thought is that we should meet with the Citizens Advisory Committee (CAC) for downtown and likely the Arts Commission. The CAC is predominately made up of business people from downtown along with residents from the area. I feel that they would likely see the benefits

2/16/2006

AA3947

STEPPAN 4249



from the project without emotion. The Arts Commission would be another board due to our location either within or nearing the arts district of the City. As there would be the opportunity for art exhibits on the Podium either in conjunction with Art Town or separate, we could gain support from this board due to the positives that would be brought. Unfortunately, I do not see the City Staff being helpful in recommendations of other boards or associations that we should attend. As such, I will contact Dan Gustin to discuss his knowledge and recommendations of any other boards.

Please call to discuss these issues and thoughts.

Thanks

**R. David Snelgrove, AICP - Principal**  
Reno Planning Manager



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2/16/2006

AA3948

STEPPAN 4250

**Mark Steppan**

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**From:** Nathan Ogle [nathan@fisherfriedman.com]  
**Sent:** Thursday, February 16, 2006 4:06 PM  
**To:** 'Mark Steppan'; David Tritt; 'Amy Chu'  
**Subject:** FW: DRM - 02-07-06 Intake - Revised\_  
**Attachments:** DRM - 02-07-06 Intake - Revised\_.doc

FYI

-----Original Message-----

**From:** David Snelgrove [mailto:dsnelgrove@WoodRodgers.com]  
**Sent:** Thursday, February 16, 2006 10:30 AM  
**To:** samcaniglia@sbcglobal.net; nathan@fisherfriedman.com  
**Cc:** Jon Bailey; Scott Christy  
**Subject:** DRM - 02-07-06 Intake - Revised\_

Sam and Nathan:

Attached is a Design Review Memo from the City of Reno, noting our date for the Staff/Applicant meeting on the BSC Mixed Use Tower project. In summary of this memo, I will tell you that the meeting is scheduled for Thursday, March 2, 2006 at 11:00 am at the City of Reno Planning Department, 450 Sinclair Street, third floor in Reno.

Staff/Applicant meetings are very informal. We will not give a presentation, the meeting is intended for the agencies to issue their initial comments and questions regarding the project. We will get a list of comments and/or draft conditions from most of the agencies or reviewing departments at this meeting. I do feel that both of you should attend this meeting.

Please contact me if you have any questions, comments or concerns about this meeting.

Thank you.

Dave

2/16/2006

AA3949

STEPPAN 4248

**Nathan Ogle**

**From:** Nathan Ogle [nathan@fisherfriedman.com]  
**Sent:** Wednesday, April 05, 2006 3:38 PM  
**To:** 'cbosma@decalcustomhomes.com'; 'samcaniglia@sbcglobal.net'  
**Cc:** 'Mark Steppan'  
**Subject:** Consequential Damages Item 3

Cal and Sam,

While I am working on the three items in question of the addendum to our agreement, below is the reason we do not want to delete section 1.3.6. Take a look and we will discuss further. This section also protects the builder.

### **Is the AIA's Mutual Waiver of Consequential Damages Really Mutual?**

By Brian D. Wallace

Imagine you are the general contractor on a \$24 million hotel-casino expansion project. Your company is not performing any actual construction on the job, and your total compensation is only \$600,000. You know that this hotel-casino will be extremely profitable when completed, and as with any project, you know the owner demands timely completion. At your direction the project is substantially completed on time, with the exception of a non-functional, ornamental facade designed to attract passerbys from the boardwalk. The owner sues you for damages resulting from the delay with the facade, and an arbitrator awards the owner consequential damages of \$14,500,000 for lost profits. You not only lose all of your compensation, but are responsible for paying over 24 times your planned gross revenue on the job.

Does this sound unbelievable? Certainly inequitable. But this is a real case, *Perini Corp. v. Great Bay Hotel*, and the New Jersey appellate court upheld the consequential damages award on appeal. In response to this case and similar results across the country, in October 1997, the American Institute of Architects (AIA) adopted substantial revisions to its Owner/Architect Agreement (B141) and the General Conditions (A201) to its Owner/Contractor Agreement. One major revision is the addition of a mutual waiver of consequential damages provision to the General Conditions, A201 at § 4.3.10. The AIA included this provision at the urging of the Associated General Contractors of America (AGC) to address the gross inequities of the ever expanding awards of consequential damages against contractors. By eliminating consequential damages, it is the intent of the new AIA form to ensure that the risk taken by a contractor is proportional to the contractor's compensation on the project.

This article identifies the major issues raised with the elimination of consequential damages in an owner/contractor agreement, and provides

pointers to best deal with the revised AIA documents and its waiver of consequential damages.

### ***The AIA to the Rescue***

In response to the gross inequities caused by the ever-expanding application of consequential damages, the AIA adopted a mutual waiver of consequential damages. Recognizing that courts will not typically enforce single line or boilerplate waivers of consequential damages, the revised AIA documents specifically waive the following consequential damages:

#### Contractor's consequential Owner's consequential

- (a) Home office overhead (a) loss of use
- (b) Lost profits (b) lost profits
- (c) Bonding capacity (c) diminution in value
- (d) Professional reputation (d) lost rent

The revised AIA forms also re-define liquidated damages, as "liquidated direct damages," to remove consequential damages from a liquidated damages award. By limiting contractual damages to general or direct damages, the AIA seeks to level the risks between the owner and the contractor, so that a contractor's potential damages are proportional with its compensation under the contract. Some owners may realize, however, that the AIA documents go too far.

### ***Is the mutual release, really mutual, or did the AIA go too far?***

The AIA revisions have yet to be tested, but it appears that the mutual release of consequential damages is not really mutual at all.<sup>1</sup> The following comparison illustrates how the contractor benefits from this mutual waiver:

1. Waiver of lost profits. The contractor wins. Lost profits can be difficult for a contractor to prove, so the contractor is not giving up much. More importantly, as the *Perini* case illustrates, lost profits can be the largest category for the owner. The gross inequities in awards of lost profits against contractors was the primary focus of the AIA in adopting the waiver of consequential damages.

2. Home office overhead v. loss of use: The contractor wins. Most states limit the contractor's ability to prove home office overhead, so again, the contractor does not give up that much. On the other hand, loss of use can be powerful leverage for owners when negotiating settlements. Thus, contractors sacrifice little, while owners lose one of their best bargaining chips.

3. Liquidated "direct" damages: The contractor may win. The revised AIA forms re-define liquidated damages as "liquidated direct damages." By redefining liquidated damages, the AIA intended to remove consequential

damages from a liquidated damages award. However, there really is not such thing as liquidated "direct" damages. Liquidated damages are indirect, consequential damages which cannot be calculated at the time the parties enter the contract. If damages are direct, i.e., readily ascertainable at the time of contract, then by definition, they do not qualify as liquidated damages. By limiting liquidated damages as only liquidated "direct" damages, all liquidated damages may be eliminated. In theory, therefore, the removal of consequential damages from liquidated damages would prevent an owner from recovering liquidated damages at all.

### ***Where do we go from here...***

Until we know the actual effect and interpretation of the waiver of consequential damages, there are creative ways to gain an advantage using the AIA forms.

1. Owners should draft creative liquidated damages clauses to include the specific consequential damages waived in the new AIA contract. As discussed above, owners should be cautious of the AIA's limitation of "liquidated direct damages," which by definition, may eliminate liquidated damages. Thus, owners may want to delete the "direct" limitation, or add language including consequentials waived in the new contract.
2. Contractors should analyze their accounting systems, and consider re-characterizing some costs. For instance, all direct costs are general damages. Home office overhead is a consequential damage, which the contractor waives under the new AIA contract. Contractors should consider modifying their accounting systems to re-allocate as many home office charges to direct project costs as possible.
3. Creative lawyering. Should a dispute arise, creative lawyering may benefit both owners and contractors, and assist the courts in interpreting the revised AIA forms. For instance, the AIA documents only waive specific consequential damages, but do not prohibit the creation of new categories of consequential damages, or the re-characterization of consequential damages as direct damages. In addition, the interpretation of what constitutes direct as opposed to indirect liquidated damages is uncertain.

The AIA's mutual waiver of consequential damages accomplishes its main objective of equaling the risk allocation between the owner and contractor. Both owners and contractors should recognize not only the significant change created by this new waiver, but that they also can take advantage of the new provision by manipulating the agreement itself, or their own internal accounting records.

1. For a more detailed comparison, see "Mutual Waiver of Consequential Damages: The Contractor's Perspective," J. William Ernstrom, Esq. and Michael F. Dehmler, Esq., printed in *AIA Contract Documents: Generation Next*, ABA copyright 1997.

*This Article is published for general information, not to provide specific legal advice.  
The application of any matter discussed in this article to anyone's particular situation  
requires knowledge and analysis of the specific facts involved.*

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**Nathan Ogle, AIA**  
Vice President

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1485 Park Avenue, Suite 103  
Emeryville, CA 94608  
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510.420.0599 fax  
[www.fisherfriedman.com](http://www.fisherfriedman.com)

**Nathan Ogle**

**From:** Nathan Ogle [nathan@fisherfriedman.com]  
**Sent:** Tuesday, April 11, 2006 3:37 PM  
**To:** 'cbosma@decacustomhomes.com'; 'samcaniglia@sbcglobal.net';  
ww.chan@yahoo.com  
**Cc:** 'Mark Steppan'  
**Subject:** Reno Towers Agreement Addendum Attached



040506 Addendum  
One to AIA r3 ...

Sam and Cal,

Attached is the Addendum 1 to the standard agreement for review and comment. All modifications are based on our last meeting and are highlighted in yellow. The three sections and issues which needed further review based on my notes were the following:

- ss. 1.3.6 Consequential Damages Issue – Resolved with Article. Original text unmodified.
- ss. 1.3.7.9 Successors and Assigns Issue - Text modified.
- ss. 1.5.1 Termination – FFA added text removed. FFA is ok with the text as provided.

Thanks in advance and let me know.

**Nathan Ogle, AIA**  
Vice President

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510.420.0599 fax  
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**Nathan Ogle**

---

**From:** David Snelgrove [dsnelgrove@WoodRodgers.com]  
**Sent:** Thursday, September 07, 2006 2:35 PM  
**To:** nathan@fisherfriedman.com; Joe Preston  
**Cc:** cbosma@decalcustomhomes.com  
**Subject:** FW: reno towers - Church's Parish building scheme package WITH Attachment

Nathan and Joe:

Attached is a copy of the file received from Any Chu regarding the Parish Hall addition. It sounds as though a parking scheme with only 4 levels and the use of parking machines still needs to be prepared. If you have already prepared this and sent it, I apologize.

Please feel free to contact Cal or me with any questions.

Thanks.

**R. David Snelgrove, AICP - Principal**  
Reno Planning Manager



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**From:** Amy Chu [mailto:amychu@fisherfriedman.com]  
**Sent:** Wednesday, May 31, 2006 3:18 PM  
**To:** cbosma@decalcustomhomes.com; David Snelgrove  
**Cc:** 'Nathan Ogle'; Mark Steppan; 'david'  
**Subject:** reno towers - Church's Parish building scheme package WITH Attachment

David,

Here's the package

**Amy Chu**

Fisher Friedman Associates

1485 Park Avenue suite 103  
Emeryville Ca 94608

t.5104201666 f.5104200599  
[amychu@fisherfriedman.com](mailto:amychu@fisherfriedman.com)

9/11/2006

**AA3955**

**STEPPAN 0827**



**Nathan Ogle**

**From:** Nathan Ogle [nathan@fisherfriedman.com]  
**Sent:** Friday, July 07, 2006 9:10 AM  
**To:** 'msteppan@fisherfriedman.com'  
**Subject:** FW: Updated Meeting Schedule 07/06/06

*Five*

-----Original Message-----

**From:** David Snelgrove [mailto:dsnelgrove@WoodRodgers.com]  
**Sent:** Thursday, July 06, 2006 1:00 PM  
**To:** cbosma@decalcustomhomes.com; samcaniglia@sbcglobal.net; nathan@fisherfriedman.com; Joe Preston; gduhon@lionelsawyer.com; Chris Barrett  
**Cc:** Andy Durling; Nathan Hastings  
**Subject:** Updated Meeting Schedule 07/06/06

Team:

Attached is the latest meeting schedule for the Wingfield Tower project. I have a meeting scheduled with Bob Infantino of the Park Tower Association for July 19<sup>th</sup> at 10:00 am at Cal's office (this is the most recent addition). Additionally, I am waiting on a call back from Michael Moreno of RTC to discuss the Sierra Spirit bus line and the mutual benefits that line can give and receive from/to the project. I have that meeting roughly scheduled for July 18<sup>th</sup> but I do not have a time, yet.

As a reminder the CAC (Citizen's Advisory Committee) meeting is next week on July 11<sup>th</sup> at 3:00 pm on the 7<sup>th</sup> floor of City Hall. It is my understanding that Nathan Ogle will be in town for that meeting. Also, later that day we are scheduled for a follow-up meeting at the Neighborhood Advisory Board. The intent of this follow-up is not to represent the project, unless they request it. It is to address any questions and comments from the previous meeting that we did not have answers to, but do now and to hear any additional comments that may come from board members or residents. I have attached a copy of the agenda for that meeting. I have also attached a copy of the draft minutes from the last NAB meeting. There are a few comments listed from the young architect that held concerns. Finally, I have attached a copy of the NAB Member comments from the June meeting. Please take a look through these comments and see what answers can be brought to the meeting on July 11<sup>th</sup>.

I will be out of the office, next week and likely out of cell phone reception. Should you have any questions prior to my departure, please contact me on my cell phone (775-745-0341) prior to the close of business on Friday (tomorrow).

Thank you.

**R. David Snelgrove, AICP - Principal**  
 Reno Planning Manager



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7/10/2006

AA3956

STEPPAN 0897

Nathan Ogle

From: Nathan Ogle [nathan@fisherfriedman.com]  
 Sent: Tuesday, October 24, 2006 2:09 PM  
 To: 'john@larvan.com'; 'calvin@decalcustomhomes.com'; 'samcaniglia@sbcglobal.net'  
 Cc: 'Sanford Margolin'; 'Mark Steppan'; 'Susie Fay'; 'Calvin Bosma'; 'Tim Fasel'  
 Subject: Wingfield Towers Architect Payment Update

John, Calvin & Sam,

This email is intended to update you on the lack of payment to the architectural design team for the Wingfield Towers Project. We have not been paid for basis services, other than a \$50,000 progress payment, in the last five months. Without going into extreme detail, we have an outstanding balance due for basic services of **\$838,000**. With the addition of this month's invoice, the total would be over **\$1,200,000**.

We are very concerned with your ability to pay for our design services based on the previously agreed to payment schedule. The design team has continued work without interruption while not receiving payment over the last months.

Below is a current draft payment schedule for basic services discussed between the DeCal team and the architectural design team which is acceptable and shall supersede all previously agreed to payment schedules. We have been lead to believe that a proposal would be forthcoming today from the DeCal team. As yet, we have not seen it.

\$2,070,000,000 Value of Schematic Design/Entitlements Phase  
 \$430,870 paid to date  
 \$536,000 due 11/16/06  
 \$342,000 due 12/16/06  
 \$342,000 due 1/16/07  
 \$419,130 due 2/16/079

These fees are based on the current construction budget of \$180,000,000 and this fee should be adjusted based on actual real construction costs.

Note that the above values include basic services only. Additional services/reimbursables are separate and in addition to basic services currently totaling approximately **\$50,000** outstanding.

The DeCal team and the architectural design team are working to resolve this payment issue, but once again, we are concerned and ask for your help in resolving this matter of payment.

Thanks in advance and call with any questions.

Nathan Ogle, AIA  
 Vice President  
 LEED® Accredited Professional

Fisher Friedman Associates  
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## Mark Steppan

From: Gillian Pollard [pollardg@ci.reno.nv.us]  
Sent: Thursday, February 08, 2007 3:13 PM  
To: msteppan@fisherfriedman.com  
Subject: 3-D model of Downtown Reno

Mark:

Thank you for the use of the 3-D model. People have show great interest in this and have been able to put downtown and the projects in perspective.

Here are some questions for you:

1. What is the size of the model *model w/out case 36" x 48"*
2. What is the scale of the model *1" = 100'*
3. Is it possible for us to allow other architects/developers to use that model to conceptualize their projects and add them to the work you have already done.

Gillian

Gillian Pollard  
Redevelopment Project Manager  
Redevelopment Agency  
City of Reno  
T: 775-334-3813  
F: 775-334-3815

	NO dld ch w RFF
	Return to Cal Posner for owners
	OK for other local architects but for a fee \$1,000.00
file to FTA	Photograph on model

CV07-00341  
DC-9900051920-137  
MARK STEPPAN VS. JOHN ILIE 444 Pages  
District Court 12/11/2013 02:25 PM  
Washoe County 1595  
MNEPK/112

IN THE SECOND JUDICIAL DISTRICT COURT

**FILED**

OF THE STATE OF NEVADA

DEC 11 2013

IN AND FOR THE COUNTY OF WASHINGTON

JOE HASTINGS, CLERK

By: [Signature]  
DEPUTY CLERK

--oOo--

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, et al.,

Defendants.

AND RELATED ACTIONS.

Case No. CV07-00341  
Dept. No. B6

DEPOSITION OF MARK STEPPAN

VOLUME III

WEDNESDAY, MARCH 3, 2010

Reno, Nevada

*[Handwritten signature]*

REPORTED BY:

Janet Menges, CCR #206, RPR  
Computer-Aided Transcription

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## APPEARANCES:

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By: STEPHEN MOLLATH, ESQ.  
Reno, NV

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