

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Appellants,

vs.

HALE LANE PEEK DENNISON AND  
HOWARD PROFESSIONAL  
CORPORATION, a Nevada professional  
corporation,

Respondent.

Electronically Filed  
Nov 21 2018 11:25 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court No. 76146**

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

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**JOINT APPENDIX TO  
APPELLANT'S OPENING BRIEF  
VOLUME I**

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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

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*Counsel for Appellants*

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23	09/22/11	Reply in Support of Motion to Amend Third Party Complaint	V	JA0947-0966
81	01/12/18	Reply Points and Authorities [filed by Iliescus] in Support of Countermotion to Amend Third-Party Complaint and in Support of Countermotion for Further Time to Complete Discovery	XII XIII	JA2301-2374 JA2375-2405
66	10/17/16	Reply Points and Authorities in Support of Third-Party Plaintiffs' Motion to Amend Third-Party Complaint and Motion for Clarification as to Stay	VIII	JA1700-1705
3	05/03/07	Response to Application for Release of Mechanic's Lien	I	JA0014-0106
40	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	VI	JA1085-1087
48	09/18/13	Second Supplement to Case Conference Report	VI	JA1150-1152
51		<u>Selected Trial Exhibits</u> [Listed by Exhibit Number] 1 Notice and Claim of Lien recorded November 7, 2006 2 Amended Notice and Claim of Lien recorded May 3, 2007	VI	JA1201-1204 JA1205-1209



<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
		3 Second Amended Notice and Claim of Lien recorded November 8, 2013	VI	JA1210-1218
		6 Standard Form of Agreement (AIA B141)		JA1219-1237
		7 Addendum No. 1 to Design Contract		JA1238-1240
		8 Waiver of Conflict Letter, dated 12/14/05		JA1241-1245
		9 Letter Proposal - Architectural Design Services, dated 10/25/05		JA1246-1265
		10 Memo from Sarah Class to Calvin Baty, dated 11/14/05		JA1266-1267
		11 Email memo from Sarah Class to Calvin Baty, dated 11/18/05		JA1268-1269
		12 Email memo from Sarah Class to Calvin Baty, dated 11/29/05		JA1270
		13 Steppan Response to Owner Issues on AIA Contract, dated 12/20/05		JA1271-1273
		14 Architectural Design Services Agreement, dated 11/15/05		JA1274-1275
		15 Design Services Continuation Letter, dated 12/14/05		JA1276
		16 Design Services Continuation Letter, dated 2/7/06		JA1277
		17 Design Services Continuation Letter, dated 3/24/06		JA1278
		67 Proposal from Consolidated Pacific Development to Richard Johnson with handwriting, dated 7/14/05		JA1279-1280
		68 Land Purchase Agreement Signed by Seller, dated 7/25/05		JA1281-1302
		69 Addendum No. 1 to Land Purchase Agreement, dated 8/1/05		JA1303-1306
		70 Addendum No. 2 to Land Purchase Agreement, dated 8/2/05	VII	JA1307-01308
		71 Addendum No. 3 to Land Purchase Agreement, dated 10/9/05		JA1309-1324
		72 Addendum No. 4 to Land Purchase Agreement, dated 9/18/06		JA1325-1326

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
		76 Indemnity Agreement, dated 12/8/06 77 Waiver of Conflict Letter, dated 1/17/07	VII	JA1327-1328 JA1329-1333
35	09/04/12	Status Report [filed by Iliescu] (NV Sup. Ct. Case 60036)	V	JA1065-1066
34	08/31/12	Status Report [filed by Steppan] (NV Sup. Ct. Case 60036)	V	JA1063-1064
27	11/22/11	Stipulation	V	JA1005-1007
39	01/09/13	Stipulation and Order	VI	JA1082-1084
12	09/24/07	Stipulation to Consolidate Proceedings; Order Approving Stipulation	I	JA0216-0219
37	11/09/12	Stipulation to Dismiss Appeal (NV Sup. Ct. Case 60036)	V	JA1073-1079
14	03/07/08	Stipulation to Stay Proceedings Against Defendant Hale Lane and to Dismiss Claims Against Defendants Dennison, Howard and Snyder without Prejudice	II	JA0254-0256
10	08/03/07	Substitution of Counsel	I	JA209-0211
86	05/25/18	Supplemental Brief [filed by Third Party Defendant Hale Lane] re: Iliescu's Decision Not to Appeal Denial of Fees and Costs	XIII	JA2436-2438
9	07/30/07	Supplemental Response to Application for Release of Mechanic's Lien	I	JA0185-0208
4	05/03/07	Transcript of Proceedings – Application for Release of Mechanic's Lien held on May 3, 2007 [Transcript filed on June 29, 2007]	I	JA0107-0166
47	09/09/13	Transcript of Proceedings of Hearing regarding Motion for Continuance and to Extend Expert Disclosures	VI	JA1114-1149
88	06/06/18	Transcript of Proceedings of Third-Party Defendant Hale Lane's Motion For Summary Judgment of Third-Party Claims, filed June 21, 2018	XIII	JA2445-2496

<b>DOC.</b>	<b>FILE/HRG. DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>VOL.</b>	<b>BATES NOS.</b>
93	12/11/13	Trial Transcript – Day 3, pages 811-815	XIII	JA2540-2545
73	10/24/17	Verified Memorandum of Costs [filed by Iliescus]	IX	JA1756-1761

### **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 21<sup>st</sup> day of November, 2018, the foregoing **JOINT APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME I**, 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:

David R. Grundy, Esq.  
Todd R. Alexander, Esq.,  
LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
Tel: (775) 786-6868  
[drg@lge.net](mailto:drg@lge.net) / [tra@lge.net](mailto:tra@lge.net)  
*Attorneys for Third-Party Defendant*  
*Hale Lane*



---

An employee of Albright, Stoddard, Warnick & Albright

ORIGINAL

FILED

1 \$3850

2 Jerry M. Snyder, Esq.  
Nevada Bar Number 6830  
Hale Lane Peek Dennison and Howard  
5441 Kietzke Lane, Second Floor  
Reno, Nevada 89511  
(775) 327-3000; (775) 786-6179 (fax)  
Attorney for Applicant

2007 FEB 14 PM 2:08

RONALD A. LONGTIN, JR.

BY  DEPUTY

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

10 JOHN ILIESCU JR., SONNIA SANTEE  
11 ILIESCU AND JOHN ILIESCU JR. AND  
12 SONNIA ILIESCU AS TRUSTEES OF THE  
13 JOHN ILIESCU, JR. AND SONNIA ILIESCU  
14 1992 FAMILY TRUST,

Case No.

CV07 00341

Dept. No.

15 Applicants,

16 vs.

17 MARK B. STEPPAN,

18 Respondent.

19 APPLICATION FOR RELEASE OF MECHANIC'S LIEN

20 Applicants John Iliescu Jr., Sonnia Santee Iliescu and John Iliescu Jr. and Sonnia Iliescu as  
21 Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust ("the Iliescu") hereby file their  
22 Application for Release of Mechanic's Lien.

23 I. INTRODUCTION

24 This matter arises out of a mechanic's lien which Respondent and lien claimant Mark Steppan  
25 ("Steppan") recorded against certain real property owned by the Iliescus and being developed by BSC  
26 Financial LLC ("BSC"). BSC apparently contracted with Steppan to provide the design for the  
27 development. The parties proceeded pursuant to their contract, but a dispute arose regarding the  
28 amounts due to Steppan for the completion of preliminary schematic designs. As a result, Steppan  
recorded the instant mechanic's lien.

Hale Lane Peek Dennison and Howard  
5441 Kietzke Lane, Second Floor  
Reno, Nevada 89511

CV07-00341  
JOHN ILIESCU ETAL VS. MARK B. STEPPAN  
District Court  
Washoe County  
DC-9900000532-292  
6 Pages  
02/14/2007 01:58 PM  
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1 This lien is void and unenforceable because the putative lien claimant recorded the lien without  
2 (1) providing notice of right to lien pursuant to NRS 108.245(6) (pre-lien notice) or (2) providing  
3 notice of intent to lien under NRS 108.226(6). For these reasons, the mechanic's lien is facially  
4 unenforceable and should be released.

5  
6 **II. STATEMENT OF FACTS**

7 This matter arises out of a disagreement for the amounts due under an agreement between BSC  
8 and Steppan for architectural design services. BSC is in the process of developing the Property,  
9 located in downtown Reno, as a mixed-use development that would include the construction of high-  
10 rise condominiums to be known as Wingfield Towers.

11 On July 29, 2005, the Iliescu entered into a contract with Consolidated Pacific Development,  
12 Inc. ("CPD") for the sale of the Property. CPD subsequently transferred its interest in this property to  
13 BCS Financial, Inc. ("BCS"). As of this date, this sale has not closed. Declaration of Dr. John Iliescu  
14 ("Iliescu Decl.").

15 BSC is in the process of developing the Property into a residential condominium tower.  
16 However, Dr. Iliescu has not been regularly apprised of the status of the development. BSC has not  
17 informed him of the status of their development efforts. Although Dr. Iliescu attended certain public  
18 meetings at which someone from the BCS design team made a presentation, at no time was he  
19 introduced to any architect or engineer. Dr. Iliescu was never informed of the identity of any architect  
20 or engineer working on the development project. Iliescu Decl. ¶ 4.

21 A dispute apparently arose between BSC and the architect, Mark B. Steppan. On November 7,  
22 2006, Steppan recorded a mechanics lien against the Property. Iliescu Decl., Ex. 1. Through this lien,  
23 Steppan claims to be owed an amount exceeding \$1.8 million. *Id.* However, Steppan never served a  
24 Notice of Right to lien, as required by NRS 108.245(1). Likewise, Steppan never provided a 15-day  
25 notice of intent to lien, as required by 108.226(6). Iliescu Decl., ¶ 6-7.

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1 **III. ARGUMENT**

2 **A. Steppan's Failure To Comply With Procedural Requirements Renders The**  
3 **Subject Lien Unenforceable**

4 1. Standard for Removal of Lien Under NRS 108.2275

5 NRS 108.2275(1) specifically sets forth a procedure through which a property owner or party  
6 in interest may apply to the court for an order releasing or expunging a mechanic's lien that is  
7 frivolous, excessive, or was made without reasonable cause:

8 The debtor of the lien claimant or a party in interest in the premises  
9 subject to the lien who believes the notice of lien is frivolous and was  
10 made without reasonable cause, or that the amount of the lien is excessive,  
11 may apply by motion to the district court for the county where the  
property or some part thereof is situated for an order directing the lien  
claimant to appear before the court to show cause why the relief requested  
should not be granted.

12 Upon the filing of such an application, the district court is to issue an order setting the date for  
13 a hearing on the motion. The petitioner seeking removal of the lien then serves the order, application  
14 and other documents on the lien claimant. NRS 108.2275(2).

15 Accordingly, where a lien claimant is not entitled to record or enforce the subject lien, the court  
16 is to release or expunge the lien pursuant to NRS 108.2275. The Nevada Supreme Court has held that  
17 where a lien claimant could not establish a statutorily valid lien claim, the district court erred by failing  
18 to expunge the lien pursuant to NRS 108.2275. *See Crestline Inv. Group, Inc. v. Lewis*, 119 Nev. 365,  
19 75 P.3d 363 (2003). In *Crestline*, an employee of the property owner placed a lien on the property for  
20 unpaid wages. *Id.* The property owner moved to have the lien expunged under NRS 108.2275, but the  
21 district court denied this motion and actually increased the amount of the lien. *Id.* On appeal by the  
22 owner, the Nevada Supreme Court held that the district court erred in failing to expunge the lien  
23 because the lien claimant had not shown that his labor improved the subject property, and therefore,  
24 the lien was invalid under NRS 108.223. *Id.*

25 The Nevada Supreme Court has reasoned that "[t]he mechanics lien is a creature of statute,  
26 unknown at common law." *Schofield v. Copeland Lumber Yards, Inc.*, 101 Nev. 83, 84, 692 P.2d 519,  
27 520 (1985). "Strict compliance with the statutes creating the remedy is therefore required before a  
28 party is entitled to any benefits occasioned by its existence.... If one pursues his statutory remedy by

1 filing a complaint to perfect a mechanic's lien, he necessarily implies full compliance with the  
2 statutory prerequisites giving rise to the cause of action.'" *Id.* quoting *Fisher Bros., Inc. v. Harrah*  
3 *Realty Co.*, 92 Nev. 65, 67, 545 P.2d 203 (1976). Although the Court has held that "where there is  
4 substantial compliance with the lien statutes notices, liens and pleadings arising out of those statutes  
5 will be liberally construed in order to effect the desired object," the Court also reasoned that it "did not  
6 think that a notice of lien may be so liberally construed as to condone the total elimination of a specific  
7 requirement of the statute." *Id.* at 85, 692 P.2d at 520. For example, in *Schofield v. Copeland Lumber*  
8 *Yards, Inc.*, the Court concluded that the lien was invalid as a matter of law because the lien claimant  
9 did not fully or substantially comply with the requirement to provide a statement of the terms, time  
10 given and conditions of the contract. *Id.*

11  
12 2. Steppan's Lien Should Be Removed Because He Did Not Provide the Required  
13 Pre-Lien Notice

14 Pursuant to Section 108.245(1) of the Nevada Revised Statutes "[e]xcept as otherwise provided  
15 in subsection 5, every lien claimant, other than one who performs only labor, who claims the benefit of  
16 NRS 108.221 to 108.246, inclusive, shall, at any time after the first delivery of material or  
17 performance of work or services under his contract, deliver in person or by certified mail to the owner  
18 of the property a notice of right to lien."<sup>1</sup> NRS 108.245(3) provides that "no lien for . . . services  
19 performed . . . may be perfected or enforced pursuant to NRS 108.221 to 108.246, unless notice has  
20 been given."

21 Here, it is undisputed that Steppan claims to have a lien on the Property for architectural  
22 services. However, Steppan did not provide any Notice of Right to Lien to Dr. Iliescu, the property  
23 owner. Accordingly, pursuant to the unambiguous language of NRS 108.245, the lien Steppan  
24 recorded is not enforceable.

25  
26  
27  
28 ///

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<sup>1</sup>NRS 108.245(5) states that "[a] prime contractor or other person who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to this section." Therefore, subsection 5 does not apply in this case because Steppan did not contract directly with the Owners of the Property.



3. Steppan's Lien Should Be Removed Because He Did Not Provide the Required 15-Day Notice of Intent to Lien

Besides having to satisfy the requirements of providing the owner with notice of right to lien, a lien claimant must also comply with the notice provisions of NRS 108.226. Pursuant to NRS 108.226(6), "[i]f a work of improvement involves the construction, alteration, or repair of multi-family or single-family residences, a lien claimant, except laborers, **must serve a 15-day notice of intent to lien.**" (emphasis added). The statute outlines the required contents of the notice and the manner in which it must be served, and provides that "[a] notice of lien for materials or equipment furnished or for work or services performed, except labor, for a work of improvement involving the construction, alteration, or repair of multi-family or single-family residences **may not be perfected or enforced** pursuant to NRS 108.221 to 108.256, inclusive, **unless the 15-day notice of intent has been given.**" (emphasis added).

In the present case, Steppan's lien is statutorily invalid because there has been absolutely no attempt by Steppan to comply with the statutory notice requirements discussed above. First, Steppan did not deliver to the Iliescus a notice of right to lien at any time after he began performing under the AIA Agreement. Therefore, pursuant to NRS 108.245(6), Steppan has no right to record a lien on the Property for any of the services he has performed thus far under the AIA Agreement. Further, Steppan recorded the lien without delivering a Notice Of Intent to Lien, as required by NRS 108.226(6), to the Iliescus. Accordingly, Steppan has failed to provide both the required notice of right to lien and the required 15-day pre-lien notice. As a result, the mechanic's lien is invalid as a matter of law. Therefore, this Court is authorized to expunge Steppan's mechanic's lien pursuant to NRS 108.2275 because Steppan is not entitled to record or enforce the subject lien.

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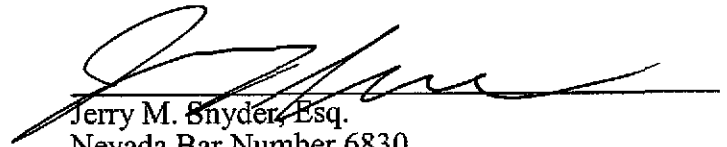
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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Iliescus respectfully request that this Court grant their  
3 Application for Release of Mechanic's Lien.

4 DATED: February 14, 2007.

5  
6 

Jerry M. Snyder, Esq.  
Nevada Bar Number 6830  
Hale Lane Peek Dennison and Howard  
5441 Kietzke Lane, Second Floor  
Reno, Nevada 89511

7  
8  
9 *Attorney for Applicant*

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1 1030

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eno, Nevada 89511  
'75) 327-3000; (775) 786-6179 (fax)  
ttorney for Applicant

2007 FEB 14 PM 2:08  
RONALD A. LONGTIN, JR.

BY   
DEPUTY

IMAGED

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

10 JOHN ILIESCU JR., SONNIA SANTEE  
11 ILIESCU AND JOHN ILIESCU JR. AND  
12 SONNIA ILIESCU AS TRUSTEES OF THE  
13 JOHN ILIESCU, JR. AND SONNIA ILIESCU  
14 1992 FAMILY TRUST,

CASE NO.

CV07-00341

DEPT. NO.

6

Applicants,

vs.

15 MARK B. STEPPAN,

Respondent.

18 **DECLARATION OF JOHN ILIESCU IN SUPPORT OF APPLICATION FOR RELEASE**  
19 **MECHANIC'S LIEN**

20 I, JOHN ILIESCU, hereby declare:

21 1. I am one of the Applicants in the above referenced matter. I have personal knowledge  
22 of the matters stated herein, except as to those matters stated upon information and belief, and as to  
23 those matters, I believe them to be true. If called as a witness, I would be competent to testify as to the  
24 matters stated in this declaration.

25 2. Along with Sonnia Santee Iliescu and the John Iliescu, Jr. and Sonnia Iliescu 1992  
26 Family Trust, I am the owner of the property located in downtown Reno, Nevada APNs 011-112-05,  
27 07, 07, and 12. (the "Property").

28 3. On July 29, 2005, I entered into a contract with Consolidated Pacific Development, Inc.  
("CPD") for the sale of the Property. I understand that CPD may have subsequently transferred its

1 interest in this property to BCS Financial, Inc. ("BCS"). However, I do not have first-hand knowledge  
2 of any such assignment and I have not been asked to approve any such assignment. As of this date,  
3 this sale has not closed.

4 4. It is my understanding that BSC intends to develop the property into a residential  
5 condominium tower. Although I understand the BSC is in the process of the development, my  
6 knowledge of their efforts is general at best. I was not aware of whether or not BSC had retained a  
7 design team to perform work on this development, and I was never notified of the identity of the BSC  
8 design team. I attended two public meetings at which BSC's design team made a presentation.  
9 However, I was not at any time introduced to any of the architects or engineers involved.

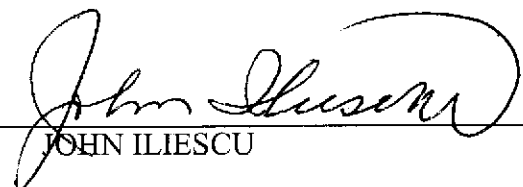
10 5. On November 7, 2006, an architect named Mark Steppan recorded a mechanics lien  
11 against the Property. Through this lien, Steppan claims to be owed in an amount exceeding 1.8  
12 million dollars. A true and correct copy of this recorded Notice of Lien is attached hereto as **Exhibit**  
13 **1.**

14 6. I have never met Mr. Steppan, nor was I aware that he was performing any work  
15 relative to the Property. My review of the recorded lien was the first knowledge I had of the identity  
16 of any architect working on this property. I was never served and have never received, either in  
17 person or by certified mail, a notice of right to lien from Respondent Mark Steppan.

18 7. Likewise, I was never served and never received a 15-day notice of intent to lien, before  
19 Mr. Steppan recorded a mechanic's lien on the Property on November 7, 2006.

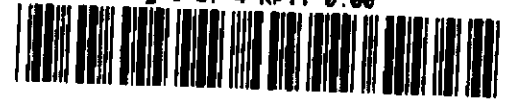
20 8. I declare under penalty of perjury under the laws of the State of Nevada that the  
21 foregoing is true.

22 DATED: February 13, 2007.

23  
24   
25 JOHN ILIESCU  
26  
27  
28

## **EXHIBIT 1**

JA0009



When Recorded Mail To:

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

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

**GRANTEE'S ADDRESS:**

Mark B. Steppan, AIA, CSI, NCARB  
1485 Park Avenue, #103  
Emeryville, CA 94608

**NOTICE AND CLAIM OF LIEN**

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

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

Claimant further states:

1. That the name of the owner or reputed owner of the premises sought to be charged is as follows: 011-112-03; 011-112-07; 011-112-12 - JOHN ILIESCU, JR., and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; and 011-112-06 - John Iliescu, a married man as his sole and separate property.

2. That the name of the person by whom lien claimant was employed and to whom lien claimant furnished work, labor, materials and/or services in connection with the project is: BSC Financial, LLC, c/o Consolidated Pacific Development, Inc., 932 Parker Street, Berkley, CA 94710; Job name: Residential Project, Reno, Nevada, Job Address: North Arlington Avenue, Island Avenue and Court Street; Owner's Designated Representative: Sam Caniglia.

3. That the terms, time given and conditions of the contract were: Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Statement of services for the building, structure or other work of improvement located at North Arlington Avenue, Island Avenue and Court Street, Reno, Nevada. All services were to be invoiced based on work performed as reflected in applications for payment, no retainage to be withheld from monthly progress payments. All invoices are due in fifteen days.



4. That work, labor, materials and/or services have been furnished to and actually used upon the above-described project in the remaining amount of ONE MILLION SIX-HUNDRED THIRTY-NINE THOUSAND ONE-HUNDRED THIRTY AND NO/100 DOLLARS (\$1,639,130.00), reimbursable expenses of ONE-HUNDRED FIFTEEN THOUSAND THREE HUNDRED SIXTY-TWO AND NO/100 DOLLARS (\$115,362.00) plus interest through October 31, 2006 in the amount of TWENTY-NINE THOUSAND FIFTY-SIX DOLLARS AND 85/100 (\$29,056.85), continuing interest, attorney's fees and costs and the amount is now due and owing to lien claimant.

5. That the first labor and materials furnished by lien claimant to and incorporated in the project was on or about April 21, 2006 and that the last labor and materials furnished by lien claimant and incorporated in the project was within the past ninety days; that there are no other just credits or off-sets to be deducted and the total amount due and owing to lien claimant is the sum of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FOURTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85), plus continuing interest, attorney's fees and costs.

6. That a demand for payment has been made by lien claimant and that no part or portion of the amount due and owing has been paid; that there are no further off-sets to the claim and that the sum of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FOURTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85), plus continuing interest, attorney's fees and costs is now due and owing to lien claimant on account of the work, labor, materials and/or services furnished as above specified and that the undersigned claims a lien upon the real property particularly described herein for said sum, together with continuing interest and attorney's fees as provided by law.

7. That the real property sought to be charged with this Claim of Lien upon which the above described work of improvement has been made is located in Washoe County of State of Nevada, and is particularly described as:

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



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

APN: 011-112-03

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

APN: 011-112-06

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

APN: 011-112-07

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

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

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

APN: 011-112-12





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

DATED: This 7<sup>th</sup> day of November, 2006.

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

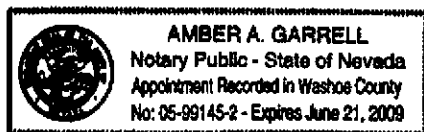
STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF WASHOE    )

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

Gayle A. Kern  
Gayle A. Kern, Esq.

SUBSCRIBED AND SWORN to before me  
this 7<sup>th</sup> day of November, 2006.

Amber A. Garrell  
Notary Public



ORIGINAL

CODE: 3880  
GAYLE A. KERN, ESQ.  
Nevada Bar No. 1620  
GAYLE A. KERN, LTD.  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
Telephone: (775) 324-5930  
Facsimile: (775) 324-6173  
E-mail: gaylekern@kernltd.com

FILED  
5-30-07  
RONALD A. LONGTIN, JR., Clerk  
By *[Signature]*  
Deputy Clerk

Attorneys for Respondent Mark B. Steppan

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

JOHN ILIESCU JR., SONNIA SANTEE  
ILIESCU, AND JOHN ILIESCU JR. AND  
SONNIA ILIESCU AS TRUSTEES OF THE  
JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST,

CASE NO.: CV07-00341

DEPT. NO.: 6

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

**RESPONSE TO APPLICATION FOR RELEASE OF MECHANIC'S LIEN**

Respondent Mark B. Steppan, by and through his attorneys, Gayle A. Kern, Ltd., respond to the Application for Release of Mechanic's Lien ("Application"). The Application, after several continuances based on the open and pending escrow for the sale of the real property, is scheduled to be heard on May 3, 2007. The Application must be continued and/or denied for several reasons.

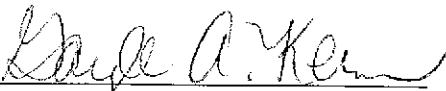
///

///

1 This Response is supported by the following Points and Authorities, attached exhibits and evidence  
2 and testimony to be heard at the Hearing.

3 DATED this 3<sup>rd</sup> day of May, 2007.

4 GAYLE A. KERN, LTD.

5  
6 By   
7 GAYLE A. KERN, ESQ.  
8 Attorneys for Respondent

9 **POINTS AND AUTHORITIES**

10  
11 **I. OVERVIEW**

12 The Applicant correctly characterizes this matter as one arising out of the mechanic's lien  
13 that was recorded against certain real property. Similarly, the Applicant is correct that the real  
14 property is owned by the Applicant. The Applicant, however, has no present right to take any action  
15 with respect to the real property *except* to sell it to BSC Investments, LLC. Accordingly, this  
16 proceeding is premature and should be continued until such time as BSC Investments, LLC no  
17 longer has sole rights to purchase and develop the real property.

18  
19 In addition, the issues raised by the Application are in large part factual and discovery may  
20 be necessary. The parties, in good faith and in reliance on the information provided, took no action  
21 with respect to this matter because all information indicated that the escrow for the sale of the real  
22 property would close on or before April 25, 2007. However, on April 25, 2007, the purchaser filed  
23 for protection under Chapter 11 of the Bankruptcy Code. Accordingly, there is an automatic stay  
24 prohibiting the Applicant from taking any action contrary to the Land Purchase Agreement and  
25 affording the purchaser, now debtor, at least an additional sixty days to perform under the Land  
26 Purchase Agreement. The Land Purchase Agreement is attached as Exhibit "A" and a copy of the  
27  
28

1 Notice of Claim to Right, Title and Interest in Real Property filed by BSC Investments LLC is  
2 attached as Exhibit "B".

3  
4 **II. STATEMENT OF FACTS**

5 There should be no dispute between the parties that the Respondent provided architectural  
6 design services for the purchaser of the property. Moreover, the Land Purchase Agreement makes  
7 it clear that the Applicant was fully aware of the work to be performed on its property, fully aware  
8 of the project and the Application should be denied.

9 The Land Sale Agreement is filled with specific language that evidences the Applicant's full  
10 knowledge of the condominium project, full knowledge of the work to be performed and full  
11 knowledge of the very services that form the basis of the mechanic's lien. *See e.g.* Exhibit "A",  
12 Paragraphs 31, 39E, 39F, 39H(1), 39H, 39L, Addendum No. 1, Addendum No. 2, Addendum No.  
13 3, 39M. The Applicant knew that prior to escrow, the purchaser would be obtaining all necessary  
14 governmental permits to develop the property as a condominium and commercial project; would  
15 be engaging professionals, including architects and engineers; the property was to be developed as  
16 quickly as possible; and that the real property could be subject to liens. In fact, the Applicant  
17 negotiated that part of the purchase price would be a 3500 square foot condominium. It is frivolous  
18 to assert that the Applicant was unaware of the work of improvement that was going to occur on  
19 the property before the close of escrow.

22 On information and belief, an appraisal was recently performed in connection with the  
23 anticipated closing that provides millions and millions of dollars of value attributed to the work  
24 done by the Respondent.

26 **III. ARGUMENT**

27 **A. This proceeding is premature.**  
28

1 Pursuant to the Purchase Agreement, the Applicant is prohibited from having any rights with  
2 respect to the real property until such time as the time for closing escrow has expired. *See e.g.*  
3 Exhibit "A", paragraphs 39A and 39I and Addendum No. 3. In light of the filing of bankruptcy,  
4 the purchaser has at least sixty days within which to perform under the Purchase Agreement. 11  
5 U.S.C. §§ 108 and 362. When the real property closes escrow, this entire issue will be rendered  
6 moot. At the very least, the Court should continue this matter to a date after which time BSC  
7 Financial LLC loses its rights to purchase the real property.  
8

9 **B. Nevada law does not require a pre-lien notice where the owner has knowledge**  
10 **that work and materials are being incorporated into the property.**  
11

12 Noticeably absent in the discussion proffered by the Applicant is the leading case dealing  
13 with NRS § 108.245. It is understandable why the Applicant does not want to focus on *Fondren*  
14 *v. K/L Complex Ltd.*, 106 Nev. 705, 800 P.2d 719 (1990). Of course the *Fondren* case is dispositive  
15 and is fatal to the position of the Applicant. The factual issues that the Court must evaluate is  
16 whether or not the Applicant knew that a work of improvement was to occur on the property. Even  
17 if the Applicant did not know the names of the architects, such lack of information misses the point,  
18 as the *Fondren* court pointed out.  
19

20 The Land Purchase Agreement could not include more specific references that demonstrate  
21 that the Applicant had full knowledge of the improvements on the real property. Not only was the  
22 improvement eventually going to be part of the purchase price, but the Applicant specifically  
23 referenced the services to be performed and the very particular action that would be taken.  
24 Moreover, the Land Purchase Agreement provided for what would happen if liens were to be filed,  
25 the *purchaser* became liable.  
26

27 As *Fondren* requires, once the owner of real property has knowledge that an improvement  
28

1 will be performed on his or her property, the burden is on the owner to file the notice of  
2 nonresponsibility. *Id.* at 709, 800 P.2d at 721. Here, the Applicant not only did *not* file a notice of  
3 nonresponsibility, but the Applicant specifically bargained with the purchaser for the liens on the  
4 property. *See e.g.* Exhibit "A" at Paragraph 31, Addendum No. 3. It was the sole decision of the  
5 Applicant to forego its right in recording a notice of nonresponsibility and to negotiate the  
6 possibility of liens with the buyer.

7  
8 Accordingly, as a matter of law, a pre-lien notice was not required. *Fondren*, at 709, 800  
9 P.2d at 721.

10  
11 **C. The 15-day notice of intent to lien was not required and even if it was, it has**  
12 **been remedied.**

13 The purpose of the 15-day Notice of Intent to Lien is to provide notice to multi-family and  
14 single-family residences of an intent to lien. In this case, the project is a mixed use of office, retail,  
15 and predominantly condominiums. *See* Exhibit "A", Paragraph 39M, Addendum No. 1.  
16 Accordingly, the project does not even require the 15-day Notice of Intent to Lien.

17  
18 However, even if the Court finds that the 15-day Notice of Intent to Lien is required, this  
19 has been remedied. Attached hereto as Exhibit "C" is the 15-day Notice of Intent to Lien and  
20 Exhibit "D" is the Notice of Claim of Lien recorded today.

21 **IV. CONCLUSION**

22 This Court should reject the Application. There is no merit to it and it is premature. The  
23 Applicant is bound to the existing Land Purchase Agreement and if the escrow closes, this matter  
24 will be moot. It is a waste of judicial resources to proceed. In addition, discovery is needed with  
25 respect to the purchaser, who is now a debtor in bankruptcy. However, even if the Court proceeds,  
26 the Application should be denied as the Applicant had full knowledge of the improvements and  
27  
28

1 even negotiated the work to be performed by architects. The Applicant could easily have protected  
2 itself by filing a notice of nonresponsibility. The Applicant made a conscious choice not to and now  
3 cannot avoid the consequences of the lien. The Applicant has the bargained for remedy as against  
4 the purchaser.  
5

6 DATED this 3<sup>rd</sup> day of May, 2007.

7 GAYLE A. KERN, LTD.

8  
9 By Gayle A. Kern  
10 GAYLE A. KERN, ESQ.  
11 Attorneys for Respondent  
12  
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## CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b), I certify under penalty of perjury that I am an employee of the law offices of Gayle A. Kern, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date I served the foregoing document(s) described as follows:

**RESPONSE TO APPLICATION FOR RELEASE OF MECHANIC'S LIEN**

on the party(s) set forth below by:

\_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

  X   Personal delivery.

\_\_\_\_\_ Facsimile (FAX).

\_\_\_\_\_ Federal Express or other overnight delivery.

\_\_\_\_\_ Reno/Carson Messenger Service.

addressed as follows:

Jerry M. Snyder, Esq.  
Hale Lane Peek Dennison and Howard  
5441 Kietzke Lane, Second Floor  
Reno, NV 89511

DATED this 3<sup>rd</sup> day of May, 2007.

  
\_\_\_\_\_  
GAYLE A. KERN



# EXHIBIT “A”

ADDRESS: Iliescu Land at Court St and Island Street

# METZKER JOHNSON GROUP

COMMERCIAL \* RESIDENTIAL \* INVESTMENT \* REALTY

6490 S. McCarran Blvd., RENO, NEVADA 89509 PHONE: (775) 823-8877 FAX: (775) 823-8848

## LAND PURCHASE AGREEMENT

Date Prepared First Amendment: July 29, 2005Property Address: APN: 011-112-06, 011-112-07, 011-112-12, 011-112-03

RECEIVED from CONSOLIDATED PACIFIC DEVELOPMENT INC., a Nevada Corporation and/or assignees (hereinafter designated as "BUYER"), the sum of \$25,000.00 (Twenty Five Thousand and no/100 Dollars) evidenced by ☐ Cash, ☒ Check, ☐ Other, n/a on account of the PURCHASE PRICE of \$7,500,000 (Seven Million Five Hundred Thousand and no/100 Dollars) for that certain land, improvements, and personal property, if any, (hereinafter collectively referred to as the "Property") situated in the City of Reno, County of Washoe, State of Nevada, and more particularly described as follows: (the "Property") 212 Court Street (APN 011-112-12 John Jr. and Sonnia Iliescu Trust, Seller), 0 Court Street (APN 011-112-07 John Jr. and Sonnia Iliescu Trust, Seller), and 223 Court Street (APN 011-112-06 John Iliescu, Seller) (APN 011-112-03 John Jr. and Sonnia Iliescu Trust, Seller) consisting of approximately 59,414 square feet of land, water rights defined in Paragraph 39(F) below upon the following TERMS and CONDITIONS:

### 1. FINANCE TERMS:

#### 1.1 DEPOSIT:

\$ 25,000.00

To be deposited within Three (3) working days of acceptance with Escrow Holder. The initial deposit shall be held by Metzker Johnson Group subject to applicable statutes and regulations.

#### 1.2 ADDITIONAL CASH DEPOSIT:

\$ 475,000.00

The deposit shall be increased in the form of cash or cashiers check to be deposited with escrow holder for immediate disbursement to the Seller and Seller's agent proportionately. Deposits are non-refundable and credited to the purchase price. The additional deposit shall be paid as follows:

- ☒ an additional \$ 75,000.00 within 30 days from acceptance,
- ☒ an additional \$ 100,000.00 within 90 days from acceptance,
- ☒ an additional \$ 100,000.00 within 150 days from acceptance,
- ☒ an additional \$ 100,000.00 within 210 days from acceptance,
- ☒ an additional \$ 100,000.00 within 270 days from acceptance,

if, through no fault of the Buyer, additional time is required for governmental approvals of the project, Seller agrees to extend the close of escrow, as needed to obtain approvals. Buyer to pay an additional \$ 50,000.00 deposit within each 30 days extension from the 270 day payment due date. All extension deposits shall be credited to the purchase price upon close of escrow. Buyers shall have a 15 day grace period to make any of the aforesaid deposits.

1

Buyer ML

METZKER JOHNSON GROUP

Seller /

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ADDRESS: Risev Land at Court St and Island Street13 BALANCE OF CASH PAYMENT: \$ 7,000,000.00

To be paid at Close of Escrow, as needed to close but not including closing costs.

14 EXISTING FINANCING: \$ n/a

Per Terms and Conditions as specified below.

15 OWNER FINANCING: \$ n/a

Per Terms and Conditions as specified below

16 NEW LOAN: \$ n/a

Contingent upon the Terms and Conditions as specified below

17 TOTAL PURCHASE PRICE: \$ 7,500,000.00  
(Not including closing costs)

☐ N/A 1.8 IF "EXISTING FINANCING", TERMS AND CONDITIONS TO BE ASSUMED SHALL INCLUDE:  
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)

☐ N/A 1.9 IF "OWNER FINANCING", TERMS AND CONDITIONS SHALL INCLUDE:  
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)

☐ N/A 1.10 IF "NEW FINANCING" CONTINGENCY:  
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)

## 2. SUBORDINATION AND PARTIAL RECONVEYANCE:

2.1 SUBORDINATION CLAUSE: N/A

2.2 PARTIAL RECONVEYANCE:

Seller does not agree to partial reconveyance. Buyer does intend to subdivide the property and improve the property in stages over a period of time after close of escrow.

## DEFINITIONS

(Unless stated otherwise in this document)

BROKER OR AGENT includes cooperating brokers, brokers, all sales persons and agents. DAYS means calendar days unless otherwise specified. If the (a) stated Closing date or (b) last day for the performance of an act falls upon a day during which normal business is not performed then the Closing

2

Buyer



METZKER JOHNSON GROUP

Seller /

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JA0023

ADDRESS: Wasson Land at Court St and Island Street

date or such last day, as the case may be, will be the next following regular business day. **DATE OF ACCEPTANCE (EFFECTIVE DATE)** means the date the Seller accepts the offer or counter offer is accepted by both parties. **DELIVERED** means personally delivered to Principals or respective licensees, transmitted by the facsimile machine, or mailed by registered carrier, next business day delivery with receipt requested. In the event of fax transmission, delivery shall be deemed to be complete at the time noted on the sender's fax confirmation sheet. **DATE OF CLOSING** means the date title is transferred. The **SINGULAR** includes the plural and the **MASCULINE** includes the feminine. **TERMINATING THE AGREEMENT** means that both parties are relieved of their obligations and all deposits will be returned to the Buyer less expenses incurred by or on account of the Buyer to the date of termination. **PROPERTY**, unless the context indicates otherwise, means all easements and rights appurtenant thereto and all improvements thereon, including all building thereon and any rights appurtenant thereto, all other improvements, all personal property owned by Seller and used in the operation or maintenance and management of the real property, and all contract or lease rights, agreements, water rights, mineral rights, utility contracts or other rights relating to the ownership, use and operation of the real property. **DATE PREPARED** is for reference only.

### 3. ADDENDUM:

Addendum(s) and Exhibit (s), identified as:

☒ Duties Owed by a Nevada Real Estate Licensee,

☐ Consent to Act,

☒ Plot map—Exhibit A ,

☒ Legal Description --Exhibit B , to be supplied to Buyer within 15 days of the execution of this agreement.

☒ Form 110.61, HAZARDOUS MATERIALS DISCLOSURE to Buyer within 15 days of the execution of this agreement.

☐ Other: n/a

signed by all parties, is attached and shall be a part of this agreement.

### 4. CLOSING AND ESCROW:

Within 270 ( Two Hundred Seventy ) days of acceptance, as may be extended pursuant to Paragraph 1.2 above both parties shall deposit with an authorized Escrow Holder, to be selected by ☐ Buyer, ☒ Seller, all funds and instruments necessary to complete the sale in accordance with the terms hereof. Promptly after mutual execution of this contract, Buyer and Seller shall open an escrow with (Escrow Holder) First Centennial Title Company (Escrow Officer) Mary Ann Infantino. Escrow fee paid by 50% by Seller and 50% by Buyer. Documentary Transfer Tax, if any, to be paid by ☐ Buyer, ☐ Seller, ☒ 50% by Seller and 50% by Buyer, ☐ Other n/a. All remaining closing costs shall be paid in customary manner and/or as required by law, ordinance and/or regulation. Possession of the Property shall be given to Buyer at close of escrow. Title shall be conveyed to Buyer by properly executed and duly recorded Grant Deed.

Buyer shall have the right to close escrow anytime prior to the Closing designated in this agreement.

3

Buyer



**METZKER JOHNSON GROUP**

Seller

/

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ADDRESS: Hiasee Land at Court St and Island Street

### 5. EVIDENCE OF TITLE:

On the date of closing, Escrow Holder shall issue commercial title insurance, in the form of ☐ CLTA or ☒ ALTA Policy of Title Insurance to be paid by ☒ Buyer ☐ Seller, insuring Buyer's title to the Property in an amount equal to the full purchase price. Said title policy shall insure that Buyer has good and marketable title to the Property subject only to the exceptions authorized.

Note: Buyer should discuss the choice of policy with the title company of his choice at the time escrow is opened.

Buyer is aware that additional coverage policies are available. All cost associated with additional coverage policy to be paid by ☒ Buyer, ☐ Seller, ☐ n/a % by buyer and n/a % by Seller.

4.1 As soon as reasonably possible following opening of escrow, but not to exceed ☒ fifteen (15) days from acceptance, ☐ Buyer, ☒ Seller, ☐ n/a % by buyer and n/a % by Seller shall pay and furnish to Buyer a Preliminary Title Report on the Property (the "Report"), together with full legible copies of all exceptions in the Report. Buyer shall have ☒ thirty (30) days of date of acceptance to notify Seller and Escrow Holder in writing of Buyer's reasonable disapproval of any such exceptions. Failure of Buyer to disapprove in writing any exceptions within the aforementioned time limit shall be deemed to be an approval of the Report.

In the event Buyer disapproves any exception in the Report, Seller shall use due diligence to remove such exceptions at his own expense.

Seller shall have ☒ ten (10) or ☐ n/a (n/a) days from notification to remove the exceptions. But if such exceptions cannot be removed, or Seller refuses to remove or correct said conditions, by this date, all rights and obligations herein may, at the election of the Buyer, terminate and the deposit shall be returned to Buyer, unless he elects to purchase the property subject to such exceptions.

4.2 The manner of taking title may have significant legal and tax consequences. Buyer should obtain advice from his legal or tax counsel regarding this matter. Title shall vest as designated in Escrow Instructions.

### 6. BONDS:

The amount of any bond or assessment which is a lien shall be: ☒ paid by the Seller, ☐ assumed by Buyer.

### 7. EXPIRATION:

This offer shall expire, and be rendered null and void, unless a copy with Seller's written acceptance (facsimile copy acceptable) is delivered to the Buyer or the Buyer's agent on or before 1:00 o'clock, ☐ AM, ☒ PM, Pacific Standard Time, on (Day) August 2 (Year) 2005.

### 8. PROVISIONS AS FURTHER DEFINED:

The Provisions marked X below, and further defined in this document, are included in this agreement.

BUYER INCLUDED: ☒ BUYER WAIVED: ☐ N/A 8-A. SOIL TESTS:

Soil Tests, within 30 days of acceptance, paid by ☒ Buyer ☐ Seller.

Upon acceptance of this agreement Buyer shall have the right, if he chooses, to go

Buyer



**METZKER JOHNSON GROUP**

Seller /

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ADDRESS: Niessu Land at Corn 1st and Island Street

upon the property to conduct soil tests, including percolation tests, to ascertain whether the property is suitable for the improvements which Buyer proposes to make. All expenses of such test shall be borne by the person indicated above, and Buyer shall be responsible for the repair and restoration of any damage to the property which may be caused by such tests. If in the reasonable opinion of the soil engineer, employed by Buyer, the property is not suitable for the proposed development, this agreement at the option of the Buyer, may be terminated and all deposits shall be refunded. Buyer shall be deemed to have waived this condition unless written notice to the contrary is delivered to Seller or his agent within the number of days of acceptance specified above.

Note: Seller shall provide to Buyer within Five(5) days of acceptance copies of any existing soils reports/tests available to the Seller (IF ANY).

BUYER INCLUDED: BUYER WAIVED:

☒ N/A ☐ N/A 8-B. SURVEY: Survey, paid by ☒ Buyer ☐ Seller.

Upon acceptance of this offer, the property ☐ shall, ☒ may, be surveyed by a licensed surveyor at the expense of the party specified above. The surveyor shall set and flag all property pins, to be approved in writing by Buyer prior to thirty (30) days prior to Close of Escrow. The purchase price is based upon the price specified above and shall not be adjusted in accordance with the area set forth in such a survey, if applicable. In the event the survey completed at the request of the Buyer discloses an encroachment of any kind or nature affecting the boundary or a set back requirement of the property, this agreement at the option of the Buyer, may be terminated and all deposits shall be refunded. Buyer shall be deemed to have waived this condition unless written notice to the contrary is delivered to Seller or his agent with the number of days of acceptance specified above.

BUYER INCLUDED: BUYER WAIVED:

☒ N/A ☐ N/A 8-C. FLOOD HAZARD ZONE:

Buyer has been advised that the property is located in an area which the Secretary of HUD has found to have special flood hazards and that it may be necessary to purchase flood insurance in order to obtain any loan secured by the property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the U.S. Government. The purpose of the program is to provide flood insurance at reasonable cost. For further information consult your lender or insurance carrier.

BUYER INCLUDED: BUYER WAIVED:

☐ N/A ☒ N/A 8-D. BROKER REPRESENTING BOTH PARTIES:

Buyer and Seller acknowledge that the broker in this transaction represents both parties and Buyer and Seller consent hereto.

BUYER INCLUDED: BUYER WAIVED:

☒ N/A ☐ N/A 8-E. SINGLE AGENCY

Notwithstanding agreements with respect to payment of commissions, or rights granted

5

Buyer [Signature]

**METZKER JOHNSON GROUP**

Seller /

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ADDRESS: Wesley Lane at Court St and Island Street

under Multiple Listing agreements, the parties agree that the Seller's Broker named herein is the agent of the Seller and is not the agent of the Buyer, and that the Buyer's Broker named herein is the agent of the Buyer and is not the agent of the Seller or a sub-agent of Seller's Broker.

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒

**8-F. CONTINGENCY RELEASE CLAUSE:**Offer is contingent upon the sale of (address) N/A.

BUYER INCLUDED: ☒ N/A BUYER WAIVED: ☐

**8-G. TAX DEFERRED EXCHANGE (INVESTMENT PROPERTY):**

In the event that Seller wishes to enter in a tax deferred exchange for the real property described herein, or if Buyer wishes to enter into tax deferred exchange with respect to property owned by him in connection with this transaction, each of the parties agrees to cooperate with the other party in connection with such exchange, including the execution of such documents as may be reasonably necessary to effectuate the same. Provided that: (a) The other party shall not be obligated to delay the closing, (b) All additional costs in connection with the exchange should be borne by the party requesting the exchange, and (c) The other party shall not be obligated to execute any note, contract, deed or other document providing for any personal liability which would survive the exchange, nor shall the other party be obligated to take title to any property other than the property described in this agreement. The other party shall be indemnified and held harmless against any liability which arises or is claimed to have arisen on account of the acquisition of the exchange property.

\_\_\_\_ Buyer may elect to do a 1031 Tax Deferred Exchange

\_\_\_\_ Seller may elect to do a 1031 Tax Deferred Exchange

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒

**8.G. OWNER'S ASSOCIATION DISCLOSURE:**

At time of acceptance, Seller shall deliver to Buyer an Addendum to Purchase Agreement for Common Ownership Interest Properties, which by this reference shall be incorporated into this Agreement. Association transfer fees of \$ N/A to be paid by ☐ Buyer ☐ Seller ☐ Other N/A. The amount of any delinquent assessments including penalties, attorney's fees, and other charges provided for in the management documents shall be paid current by the Seller at close of escrow. Seller represents that there are no Common Ownership Associations or Agreements related to the Property.

BUYER INCLUDED: ☒ N/A BUYER WAIVED: ☐

**6.21 ADDITIONAL INSPECTIONS:**

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Buyer [Signature]**METZKER JOHNSON GROUP**Seller /

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Unless stated otherwise in this agreement, the Buyer shall at ☒ Buyer's ☐ Seller's expense, have the right to order any and all inspections that Buyer deems necessary by experts, including, but not limited to, engineers, geologists, architects, contractors, surveyors, and structural pest control operators to inspect the property for any structural and non-structural conditions, including matters concerning, but not limited to, roofing, electrical, plumbing, heating, cooling, appliances, pool, boundaries, structural inspection report, roof inspection, Phase I Environmental Report on Hazardous Wastes and Materials, A.D.A. (Americans Disabilities Act) Report, Asbestos testing report, lead based paint report, radon report, mold inspection, wood stove inspection, seismology report and/or earth quake fault information, electromagnetic field report, water quality / quantify report, septic systems inspection, shall be ordered and must exercise that right within thirty (30) days of acceptance of this Agreement. Reports shall be approved, rejected, or waived by Buyer within ☒ THIRTY (30) days ☐ N/A (N/A) days of receipt by Buyer of such report.

Buyer shall furnish Seller, at no cost to Seller, copies of inspections and reports obtained, along with list(s) itemizing all repairs requested by Buyer as indicated by said inspections and reports within ☒ ten (10) days ☐ N/A (N/A) days of receipt of same. Seller agrees to pay an amount NOT to exceed the total sum of \$ N/A for all repair conditions indicated, per the above contingency reports and/or any defect discovered or defect which has become worse than was originally indicated.

Any needed repairs, remediation, or corrective action identified by said reports in excess of the above stated dollar amount shall be at Buyers expense. However, if repair expenses are considered excessive by Buyer, then Buyer may terminate this agreement at Buyers discretion unless Seller agrees to repair at Seller's expense by written addendum.

If not completed by close of escrow, funds shall be held in escrow, if not disallowed by Lender, and disbursed by escrow holder upon receipt of a statement by a licensed structure pest control operator, certifying that the property is free of evidence of active infestation or infection.

As soon as the same are available, copies of the report, and any certification or other proof of completion of the work shall be delivered to the Agent of Buyer and Seller who are authorized to receive the same on behalf of their principals.

Buyer acknowledges that he has not relied upon any representations by the Agent with respect to the condition of the Property.

#### 9. CHANGES DURING TRANSACTION:

During the pendency of this transaction, Seller agrees that no changes in the existing leases or rental agreements shall be made, nor new leases or rental agreements entered into, nor shall any substantial alterations or repairs be made or undertaken without the written consent of the Buyer.

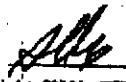
#### 10. PRORATIONS:

10.1 TAXES: Real property taxes payable by the owner of the Property shall be prorated through Escrow as of the date of the recordation of the deed, based upon the latest tax bill available. Buyer shall pay supplemental tax bill levied by the transfer of the Property to the Buyer Payment shall be made promptly in cash upon receipt of a copy of any such supplemental bill of the amount necessary to accomplish such pro-ration. Seller shall pay and discharge in full, at or before the Closing, the unpaid balance of any special assessment bonds.

10.2 INSURANCE: If Buyer elects to take an assignment of the existing casualty and/or liability

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Buyer



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insurance that is maintained by Seller, the current premium therefore shall be prorated through Escrow as of the date of Closing.

**10.3 RENTALS, INTEREST AND EXPENSES:** Expenses, such as, but not limited to, utilities, and operating expenses shall be prorated as of the date of Closing. Such items shall be supplied by Seller within ☒ two (2) days or ☐ N/A (N/A) days prior to close of escrow. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

**10.4 SECURITY DEPOSIT AND LEASE CREDITS:** Security Deposits held by Seller and considerations involving lease credits shall be given to Buyer by a credit to the cash required of Buyer at the Closing. Such items shall be supplied by Seller within ☒ two (2) days or ☐ N/A (N/A) days prior to close of escrow.

**10.6 POST CLOSING MATTERS:** Any item to be prorated that is not determined or determinable at the Closing shall be adjusted by the parties as soon as possible following close of escrow.

## 12. ENCUMBRANCES:

In addition to any encumbrances referred to herein, Buyer shall take title to the property subject to: (1) Real Estate Taxes not yet due and (2) Covenants, Conditions, Restrictions, Rights of Way, and Easements of record, if any, which do not materially affect the value or intended use of the property. Such encumbrances shall be deemed approved unless written notice to the contrary is delivered to Seller or his agent within THIRTY (30) days of acceptance.

## 13. NOTICES:

By acceptance hereof Seller warrants that he has no notice of violations or of any claims relating to the property from City, County, State, or Federal agencies, or any other person or person.

Pursuant to Nevada revised statutes, the Buyer(s) of real property, for or under, development is hereby informed that such property may be subject to impact fees which have been or will be imposed by governmental agencies.

## 14. DEFAULT:

In the event that Buyer shall default in the performance of this agreement Seller may subject to any rights of the Broker herein, retain Buyer's deposit on account of damages sustained all as more fully provided in paragraph 42 below, and Buyer shall have the right to take such action as he deems appropriate to recover such portion of the deposit as may be allowed by law.

## 15. PHYSICAL POSSESSION:

Physical possession shall be delivered to Buyer upon recordation of the deed

## 16. TIME:

Time is of the essence as to each and every provision of this agreement. If after a good faith effort, any condition stated in this contract has not been eliminated or satisfied within the time limits and pursuant to the provisions of this contract, then this contract may be deemed null and void, the deposit

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Buyer Ally

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Seller /

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shall be returned to Purchaser, and the escrow shall be canceled. Either party may resort to such remedies as it may have in law or equity, subject to the liquidated damages provision set forth in Paragraph 42 below.

#### 17. HAZARDOUS MATERIALS:

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

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

#### 18. AGENT(S) DISCLAIMER:

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

#### 19. CORRESPONDENCE:

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

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

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

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

Copies to: Richard K. Johnson Fax: 775-823-8848

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Buyer

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Seller

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ADDRESS: Wesley Land at Court St and Island Street

6490 S. McCarran Blvd. Phone: 775-823-8877  
Reno Nevada 89509

Signed documents received via facsimile shall be binding and shall be used for the preliminary negotiations, and will be followed up with original written and executed documents.

**20. SEVERABILITY:**

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

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

**21. GOVERNING LAW:**

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

**22. NO ONE DEEMED DRAFTER:**

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

**23. COUNTERPARTS:**

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

**24. EFFECTIVE DATE OF THIS AGREEMENT:**

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

**25. AUTHORITY OF INDIVIDUALS SIGNING ON BEHALF OF ENTITY:**

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

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Buyer 

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Seller 

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**26. EXHIBITS AND ADDENDUM:**

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

**27. BUSINESS DAYS:**

If the (a) stated Closing date or (b) last day for performance of an act falls upon a day during which normal business is not performed, then the Closing date or such last day, as the case may be, will be the next following regular business day.

**28. LAND USE RESTRICTIONS:**

Buyer shall satisfy himself through sources of information, other than the principals or real estate brokers or salespersons in this transaction, whether any public or private in the form of a vote, initiative, referendum, local ordinance, law, or other measure presently in force or contemplated by a governing or other body may halt entirely or otherwise restrict Buyer's use of the subject property for improvement or other use, and Buyer acknowledges that he has not relied on any advice or representations by the principals or real estate representatives in this transaction for such independent information to any extent.

**29. VERIFICATION OF INFORMATION:**

Any square footage, land or improvements, is approximate and neither Seller nor Broker guarantee its accuracy. Any oral or written representations by Seller or Broker regarding age of improvements, size, and square footage of parcel or building, or location of property lines, may not be accurate. Apparent boundary line indicators such as fences, hedges, walls, or other barriers may not represent the true boundary lines. Broker/agent does not necessarily investigate the status of permits, zoning, or code compliance. Buyer is to satisfy himself concerning this information if any of these issues are important or a critical element of the purchase decision. Buyer acknowledges that he has not received or relied upon any representations by either the Broker or the Seller with respect to the condition of the property which are not contained in this agreement or in any attachments. Although deemed accurate, the information contained in the Multiple Listing Service book, computer or advertisements, and feature sheets pertaining to this property are not warranted or guaranteed by the listing or selling office. Errors and/or omissions in inputting information, while uncommon, are possible. Buyer shall be responsible for verifying the accuracy of pertinent information, deposit of all funds necessary to close into escrow shall be deemed as final acceptance of the property. Seller agrees to hold all Brokers and Licensees in the transaction harmless and to defend and indemnify them from any claim, demand, action or proceedings resulting from any omission or alleged omission by Seller in his statements.

**30. ATTORNEYS FEES:**

If this Agreement gives rise to any litigation, arbitration, or other legal proceeding between any of the parties hereto, including Agent(s), the prevailing party shall be entitled to recover its actual costs and expenses, including court costs, costs of arbitration, and reasonable attorneys' fees, in addition to any other relief to which such party may be entitled. The undersigned parties agree to hold Broker, Metzker Johnson Group, and Broker's Agent, Richard K. Johnson harmless from and against any and all damages, costs and expenses, including attorneys' fees, arising from any disputes between Buyer and/or

Buyer *[Signature]*

**METZKER JOHNSON GROUP**

Seller           /          

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Seller and/or Agent under this Agreement, unless Agent is determined by a court of competent jurisdiction to be fraudulent in connection with any such claim or claims.

**31. ACCESS TO PROPERTY:**

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

**32. PREPAYMENT:**

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

**33. DUE ON SALE CLAUSE:**

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

**34. REAL ESTATE BROKERS AND FEES:**

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

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

Buyer and Seller each represent and warrant to the other that he/she/it has had no dealings with any person, firm, broker or finder in connection with the negotiations of this Agreement and/or the consummation of the purchase and sale contemplated herein, other than the Broker(s) named herein, and no broker or other person, firm or entity, other than said Broker(s) is/are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Buyer and Seller do each hereby agree to indemnify, defend, protect and hold the other

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Buyer



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Seller



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harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder or similar party, other than said named Broker(s) by reason of any dealings or act of the indemnifying Party.

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

**36. IMPACT FEES:**

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

**37. DEFERRED AGRICULTURAL TAX:**

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

**38. EXISTING CONDITION:**

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

**39. ADDITIONAL TERMS AND CONDITIONS:**

- A. Subject to the Terms and Conditions of this agreement, the Seller hereby grants to Buyer, an irrevocable, exclusive right to purchase the Property consisting of the parcel(s) of land along with all buildings and structures (IF ANY), easements and rights appurtenant (including, without limitations, all development rights, all mineral, oil, gas, and other hydrocarbon substances on or under the land, air rights, water, and water rights (if any). Seller shall not solicit or accept any other offers during the term of this Agreement.
- B. To the best of Seller's knowledge the property is not in violation of any federal, state, or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on under or about the property including, but not limited to, soil and groundwater condition.
- C. All covenants, representations and warrants made by Seller and Buyer to and for the benefit of each other, except and only those related to close of escrow shall survive the close of escrow under this Agreement.
- D. Purchaser has and will inspect the Property and be thoroughly acquainted with its condition.

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Buyer



**METZKER JOHNSON GROUP**

Seller

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Except as expressly stated herein, Purchaser agrees to purchase the Premises "AS-IS, WHERE IS, IN CURRENT CONDITION WITH ALL FAULTS".

- F. Buyer shall have a due diligence period of thirty (30) days from date of acceptance of this agreement by both Buyer and Seller, within which to at Buyer's expense, do any and all inspections and reports Buyer deems necessary such as but not limited to: availability and suitability of utilities, geological reports, well reports, zoning, flood zones, master plans, fees and costs of offsite and onsite improvements, building requirements, conditions and requirements affecting the development of said property for Buyer's intended use, inspect the site inclusive of surveys and soil tests, analyze information pertaining to roadways. Buyer shall indemnify seller for all such work performed. If upon examination and investigation of the matters above, Buyer determines that the property is unsuitable for Buyer's proposed use and/or future use of the property, Buyer may at any time within the due diligence period elect to terminate this agreement by giving Seller written notice of intention to do so, and receive full refund of unused deposits not already dispersed, and the escrow company shall release said deposit without any further approval or instruction from Seller. Seller shall furnish to Buyer copies of all tests, investigations, surveys, studies, and other reports it has or has access to in reference to said lot. Buyer will be responsible for the repair/restoration or any damage to the property that may be caused by subject inspections and/or tests.

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

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Zoning  | <input checked="" type="checkbox"/> Future land use designation(s)  | <input checked="" type="checkbox"/> Availability of Utilities  |
| <input checked="" type="checkbox"/> Legal Access  | <input checked="" type="checkbox"/> Easements   | <input checked="" type="checkbox"/> Subject Property Buildable |
| <input checked="" type="checkbox"/> Environmental   | <input type="checkbox"/> Mineral Right  | <input type="checkbox"/> Road Maintenance Agreement            |
|   | <input checked="" type="checkbox"/> Phase I Environmental   |  |
| <input type="checkbox"/> Corners Marked, or   | <input checked="" type="checkbox"/> Survey paid by <input type="checkbox"/> Seller, <input checked="" type="checkbox"/> Buyer |  |
| <input type="checkbox"/> Perculation Test paid by <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer   |   |  |
| <input type="checkbox"/> Well Test, Quality, paid by <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer  |   |  |
| <input type="checkbox"/> Well Test, Quantity, paid by <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer   |   |  |
| <input checked="" type="checkbox"/> Water Rights <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, in the amount of _____ acre feet of <u>ground</u> water under claim no. |   |  |
| <input type="checkbox"/> Yes <input type="checkbox"/> No, in the amount of _____ acre feet of <u>surface</u> water  |   |  |

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

- F. This offer is conditioned upon Buyer, at ☒ Buyer's ☐ Seller's expense, obtaining the following governmental approvals within 270 days of acceptance of this agreement, as may be extended pursuant to Paragraph 1.2 above:

☒ Variance ☒ Special Use Permits ☐ Parcel Map

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Buyer

[Signature]

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Seller /

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JA0035

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- ☒ Tentative Map      ☒ Zone Change & Land Use Designations  
☒ Other: architectural and design review and approval

- G. The purchase price is based upon \$n/a ☐ per acre, ☐ per square foot and ☒ will not, ☐ will be adjusted in accordance with the area set forth in the survey.
- H. It is agreed to and understood that as part of the purchase price of this property, the Buyer shall deliver to Seller one of the penthouses, of approximately 3,500 square feet, in the new condominium project, subject to the following terms and conditions. Buyer shall provide Seller with detailed floor plans of each penthouse, and the listing price for each penthouse, at which time Seller shall have thirty (30) days to choose the penthouse to be transferred to Seller. Seller shall receive credit in the amount of (\$2,200,000) Two Million, Two Hundred Thousand Dollars ("Penthouse Credit") toward the listing price of the penthouse so chosen. In the event the listing price of the penthouse so chosen is more than the Penthouse Credit, Seller shall pay the difference in cash at the time of the transfer. In the event the penthouse so chosen is less than the Penthouse Credit, Buyer shall reimburse Seller the difference at the time of transfer. Buyer and Seller shall also agree, on or before the close of escrow and as a condition thereof, upon specific language and form of legal documentation of the right to receive such condominium unit, which shall be free of all liens and encumbrances except taxes paid current, assessments and C,C & R's uniformly applicable to such building and unit.
- I. The Seller warrants that there are no leases or other contractual use agreements on said property.
- J. Seller authorizes Buyer and Seller's agent to place signage on said properties promoting identification of the Buyer, Seller's agent, and/or future use of said property.
- K. All deposits, upon receipt, shall become immediately non-refundable and fully disbursed.
- L. Seller's property adjoining the property herein is known as 260 Island St (APN 011-112-02). Seller agrees to a deed restriction that the height of this property will never exceed its current height. Buyer agrees to provide, at no cost to Seller, parking spaces within their development, as required by then governing codes, for future use of this building. Seller agrees to provide liability insurance for said parking area and will provide parking attendant(s) as required, AT NO COST TO BUYER. *1/30/05 2:05 PM*
40. **MEDIATION OF DISPUTES:** If a dispute arises out of or relates to this Agreement, or its breach, by initialing in the spaces below,
- ☒ ( Y ) Buyer agrees      ☐ ( n/a Y n/a ) Buyer does not agree
- ☒ ( Y ) Seller agrees      ☐ ( n/a Y n/a ) Seller does not agree

Buyer *[Signature]***MEITZKER JOHNSON GROUP**Seller /

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

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

#### 41. ARBITRATION OF DISPUTES:

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

The parties agree that the following procedure will govern the making of the award by the arbitrator: (a) a Tentative Award will be made by the arbitrator within 30 days following submission of the matter to the arbitrator; (b) the Tentative Award will explain the factual and legal basis for the arbitrator's decision as to each of the principal controverted issues; (c) the Tentative Award will be in writing unless the parties agree otherwise; provided, however, that if the hearing is concluded within one day, the Tentative Award may be made orally at the hearing in the presence of the parties.

Within 15 days after the Tentative Award has been served or announced, any party may serve objections to the Tentative Award. Upon objections being timely served, the arbitrator may call for additional evidence, oral or written argument, or both. If no objections are filed, the Tentative Award will become final without further action by the parties or arbitrator. Within 30 days after the filing of objections, the arbitrator will either make the Tentative Award final or modify or correct the Tentative Award, which will then become final as modified or corrected.

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

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

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in this "Arbitration of Disputes" provision to neutral arbitration.

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

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

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

Buyer

**METZKER JOHNSON GROUP**

Seller

ADDRESS: Vineau Land at Court St and Island Street

#### 42. LIQUIDATED DAMAGES:

IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED BY THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELEASED FROM HIS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH A DEFAULT BY BUYER AND AGREE THAT THE ☒ AMOUNT OF DEPOSIT(S), ☐ \$ \_\_\_\_\_ MADE BY BUYER IS A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT THE BUYER DEFAULTS IN THE PERFORMANCE OF THIS AGREEMENT, THE ABOVE STATED AMOUNT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER AND SHALL BE FORFEITED BY BUYER TO SELLER. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST THE BUYER WHICH SELLER MIGHT OTHERWISE HAVE IN LAW OR EQUITY BY REASON OF SUCH DEFAULT BY BUYER.

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

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

(Both parties must initial for Liquidated Damages to be part of this agreement.)

#### 43. HOLD HARMLESS:

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

#### 44. CODE OF ETHICS:

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

#### 45. CONSULT YOUR ADVISORS:

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

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

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Buyer 

**METZKER JOHNSON GROUP**

Seller \_\_\_\_\_

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ADDRESS: Diagon Road at Co rd St and Island Street

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

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

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

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

SELLING OFFICE: NONE  
REPRESENTED BY: NONE

Is the licensee acting for (check one): N/A

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

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

Buyers Broker: NONE Dated: \_\_\_\_\_

By None

Buyer: [Signature] Dated: 7/30/05 Time: 8:05 P.M.  
Authorized Signee, Print Name: Sam Caraglia, for Consolidated Pacific Development, Inc.

Buyer

[Signature]

**METZKER JOHNSON GROUP**

Seller

/

ADDRESS: Miraval Land at Court St and Island Street

## ACCEPTANCE

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

### COMMISSION:

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

Listing Broker's commission shall be 6 % of the accepted purchase price, and n/a % of the accepted price, or \$ n/a to n/a, the Selling Broker, irrespective of the agency relationship. Escrow instruction with respect to commissions may not be amended or revoked without the written consent of the Broker herein. Commissions shall also be payable upon any default by Seller, or the mutual rescission (not covered by this agreement) by Buyer and Seller which prevents the completion of the Sale. If earnest money or similar deposits made by Buyer are forfeited, in addition to any other rights of Broker, Broker shall be entitled to the proportionate commission stated thereof. Sale proceeds sufficient to pay the commission are hereby assigned Broker, and Escrow Holder is hereby instructed to pay said commission to Broker out of Seller's proceeds at the Close of Escrow. If this sale shall not be consummated due to the default of Seller, the Seller shall be liable to and shall pay to Broker the commission that Broker would have received had the sale been consummated. Buyer shall have no responsibility or liability to Broker or for any commission on broker or any agent of broker.

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

(Foreign Investment and Real Property Tax Act).

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

A real estate broker is not qualified to give advice on withholding requirements. Buyer should inquire of the taxing authorities as to his responsibility.

By signing below the Seller is warranting that he/she/they is not a foreign person, foreign corporation or partnership, or nonresident/alien.

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

SELLING OFFICE: Metzker Johnson Group

REPRESENTED BY: Richard K. Johnson

Is the licensee acting for (check one):

☐ the Buyer exclusively ☒ the Seller exclusively ☐ both the Buyer and Seller (Consent to Act)

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

Buyer [Signature]

**METZKER JOHNSON GROUP**

Seller [Signature]

ADDRESS: Highway 1 and U.S. 90 Street Island Beach

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

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

Sellers Broker Metzker Johnson Group Dated: \_\_\_\_\_  
By (agent) Richard K. Johnson

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

<input checked="" type="checkbox"/> <b>ACCEPTANCE:</b> The undersigned Seller accepts this offer to purchase, agrees and has the authority to sell above described property on the terms and conditions as stated herein.		
Seller: _____ <i>Authorized Signee, John Ilescu Jr.</i>	Dated: _____	Time: _____
Seller: _____ <i>Authorized Signee, Sonia Ilescu</i>	Dated: _____	Time: _____

OR

<input type="checkbox"/> <b>COUNTER OFFER:</b> Seller accepts this offer subject to the Counter Offer Dated: _____		
Seller: _____	Dated: _____	Time: _____
Seller: _____	Dated: _____	Time: _____

OR

<input type="checkbox"/> <b>REJECTION:</b> By his signature below, Seller rejects the foregoing offer.
--

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Buyer [Signature] **METZKER JOHNSON GROUP** Seller /  
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JA0041

ADDRESS: Highway 1 and at Hwy 1 Stand Island Street

Seller: _____	Dated: _____	Time _____
Seller: _____	Dated: _____	Time _____

Buyer



**METZKER JOHNSON GROUP**

Seller

/

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ADDRESS: Higson Land at Co. at St. and Island Street



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Buyer

**METZKER JOHNSON GROUP**

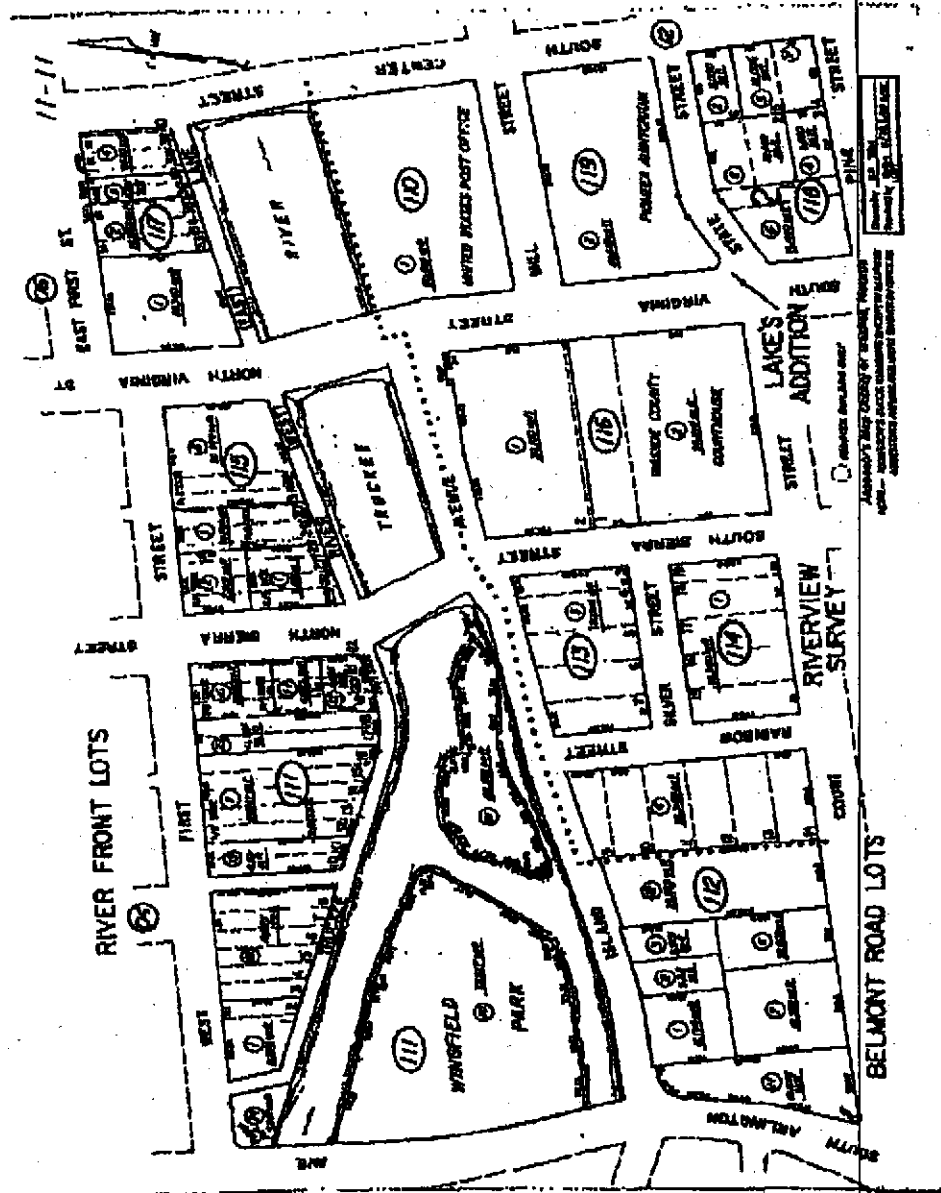
Seller

/

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JA0043

ADDRESS: Highway Land at Can. St and Island Street



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Buyer [Signature]

**METZKER JOHNSON GROUP**

Seller /

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JA0044



UNWITNESSED: Witnessed at Court of said Island, Nevada

**METZKER JOHNSON GROUP**  
 COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY  
 6470 S. McCarran Blvd., SUITE 100, NEVADA 89149 PHONE: (775) 823-4877 FAX: (775) 823-8848

## LAND PURCHASE AGREEMENT

Date Prepared: July 28, 2003

Property Address: APNs: 011-112-06, 011-112-07, 011-112-12, 011-112-22

RECEIVED FROM CONSOLIDATED PACIFIC DEVELOPMENT INC., a Nevada Corporation and/or assignees (hereinafter designated as "BUYER"), the sum of \$25,000.00 (Twenty Five Thousand and no/100 Dollars) evidenced by ☐ Cash, ☒ Check, ☐ Other, uh, on account of the PURCHASE PRICE of \$7,500,000 (Seven Million Five Hundred Thousand and no/100 Dollars) for that certain land, improvements, and personal property, if any, (hereinafter collectively referred to as the "Property") situated in the City of Elko, County of Washoe, State of Nevada, and more particularly described as follows: (the "Property") 212 Court Street (APN 011-112-12, John J. and Sylvia Hesse Trust, Seller), 9 Court Street (APN 011-112-07, John J. and Sylvia Hesse Trust, Seller), and 273 Court Street (APN 011-112-06, John Hesse, Seller) (APN 011-112-09, John J. and Sylvia Hesse Trust, Seller) consisting of approximately 52.415 square feet of land, water rights defined in Paragraph 39(f) below upon the following TERMS and CONDITIONS:

### FINANCE TERMS:

#### 1.1 DEPOSIT:

\$75,000.00

To be deposited within Thirteen (13) working days of acceptance with Escrow Holder. The initial deposit shall be held by Metzker Johnson Group, subject to applicable statutes and regulations.

#### 1.2 ADDITIONAL CASH DEPOSIT:

\$475,000.00

The deposit shall be increased in the form of cash or certified check to be deposited with escrow holder for immediate disbursement to the Seller and Seller's agent proportionately. Deposits are non-refundable and credited to the purchase price. The additional deposit shall be paid as follows:

- ☒ an additional \$ 75,000.00 within 30 days from acceptance,
- ☒ an additional \$ 100,000.00 within 90 days from acceptance,
- ☒ an additional \$ 100,000.00 within 150 days from acceptance,
- ☒ an additional \$ 100,000.00 within 210 days from acceptance,
- ☒ an additional \$ 100,000.00 within 270 days from acceptance,

If, through no fault of the Buyer, additional time is required for governmental approvals of the project, Seller agrees to extend the close of escrow, as needed to obtain approvals. Buyer to pay an additional \$ 20,000.00 deposit within each 30 day extension from the 270 day payment due date. All extension deposits shall be credited to the purchase price upon close of escrow. Buyer shall have a 15 day grace period to make any of the above deposits.

1

Buyer /

**METZKER JOHNSON GROUP**

Seller [Signature]

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All WYANN, Illinois 1, April 24 and 25, 1961

- 1.3 **BALANCE OF CASH PAYMENT:** \$7,000,000.00.  
To be paid at Close of Escrow, as needed to close but not including closing costs.
- 1.4 **EXISTING FINANCING:** \$ N/A  
For Terms and Conditions as specified below.
- 1.5 **OWNER FINANCING:** \$ N/A  
For Terms and Conditions as specified below.
- 1.6 **NEW LOAN:** \$ N/A  
Contingent upon the Terms and Conditions as specified below.
- 1.7 **TOTAL PURCHASE PRICE:** \$7,500,000.00.  
(Not including closing costs).

- ☐ **N/A 1.8 IF "EXISTING FINANCING" TERMS AND CONDITIONS TO BE ASSUMED SHALL INCLUDE:**  
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)
- ☐ **N/A 1.9 IF "OWNER FINANCING" TERMS AND CONDITIONS SHALL INCLUDE:**  
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)
- ☐ **N/A 1.10 IF "NEW FINANCING" CONTINGENCY:**  
(NOT APPLICABLE IN THIS TRANSACTION AS A CONTINGENCY)

## 2. SUBORDINATION AND PARTIAL RECONVEYANCE:

### 2.1 SUBORDINATION CLAUSE: N/A

### 2.2 PARTIAL RECONVEYANCE:

Seller does not agree to partial reconveyance. Buyer does intend to subdivide the property and improve the property in stages over a period of time after close of escrow.

### DEFINITIONS

(Unless stated otherwise in this document)

**BROKER OR AGENT** includes cooperating brokers, brokers, all sales persons and agents. **DAYS** means calendar days unless otherwise specified. If the (a) stated Closing date or (b) last day for the performance of an act falls upon a day during which normal business is not performed then the

2

Buyer

**MEYER JOHNSON GROUP**

Seller *[Signature]*

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THIS OFFICE: Megan Land at Coast Elgin Island, Nant

Closing date or such last day, as the case may be, will be the next following regular business day. **DATE OF ACCEPTANCE (EFFECTIVE DATE)** means the date the Seller accepts the offer or counter offer is accepted by both parties. **DELIVERED** means personally delivered to Principals or respective Representatives, transmitted by the facsimile machine, or mailed by registered mail, next business day delivery with receipt requested. In the event of fax transmission, delivery shall be deemed to be complete at the time noted on the sender's fax confirmation sheet. **DATE OF CLOSING** means the date title is transferred. The **SINGULAR** includes the plural and the **MASCULINE** includes the feminine. **TERMINATING THE AGREEMENT** means that both parties are relieved of their obligations and all deposits will be returned to the Buyer less expenses incurred by or on account of the Buyer in the chain of transmission. **PROPERTY**, unless the context indicates otherwise, means all easements and rights appurtenant thereto and all improvements thereon, including all building thereon and any rights appurtenant thereto, all other improvements, all personal property owned by Seller and used in the operation or maintenance and management of the real property, and all contract or lease rights, agreements, water rights, mineral rights, utility contracts or other rights relating to the ownership, use and operation of the real property. **DATE PREPARED** is for reference only.

### 3. ADDENDUM:

Addendum(s) and Exhibit(s), identified as:

☒ Deeds Given by a Nevada Real Estate Licensee.

☐ Consent to Act,

☒ Plot map—Exhibit A.

☒ Legal Description—Exhibit B, to be supplied to Buyer within 15 days of the execution of this Agreement.

☒ Form 1104J, **HAZARDOUS MATERIALS ENCLOSURE**, to Buyer within 15 days of the execution of this agreement.

☐ Other: n/a

required by all parties, is attached and shall be a part of this agreement.

### 4. CLOSING AND ESCROW:

Within 270 (Two Hundred Seventy) days of acceptance, as may be extended pursuant to Paragraph 1.2 above both parties shall deposit with an authorized Escrow Holder, to be selected by ☐ Buyer, ☒ Seller, all funds and instruments necessary to complete the sale in accordance with the terms hereof. Promptly after mutual execution of this contract, Buyer and Seller shall open an escrow with (Escrow Holder) First Commercial Title Company (Escrow Office) Mary Ann Johnson. Escrow fee paid by 50% by Seller and 50% by Buyer. Documentary Transfer Tax, if any, to be paid by ☐ Buyer, ☐ Seller, ☒ 50% by Seller and 50% by Buyer. ☐ Other: n/a. All remaining closing costs shall be paid in customary manner and/or as required by law, ordinance and/or regulation. Possession of the Property shall be given to Buyer at close of escrow. Title shall be conveyed to Buyer by properly executed and duly recorded Grant Deed.

Buyer shall have the right to close escrow anytime prior to the Closing designated in this agreement.

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Buyer 1

**METZGER JOHNSON GROUP**

Seller 2/1/08

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(9)

JUN 2004 through 2004 (Copy 2) and 2004 (Copy 3)

**5. EVIDENCE OF TITLE:**

On the date of closing, Escrow Holder shall issue commercial title insurance, in the form of ☐ CLTA or ☒ ALTA Policy of Title Insurance to be paid by ☒ Buyer ☐ Seller, insuring Buyer's title to the Property in an amount equal to the full purchase price. Said title policy shall insure that Buyer has good and marketable title to the Property subject only to the exceptions authorized.

Now, Buyer should discuss the choice of policy with the title company of his choice at the time escrow is opened.

Buyer is aware that additional coverage policies are available. All cost associated with additional coverage policy to be paid by ☒ Buyer, ☐ Seller, ☐ n/a. % by buyer and ☐ n/a. % by Seller.

4.1 As soon as reasonably possible following opening of escrow, but not to exceed ☒ fifteen (15) days from acceptance, ☐ Buyer, ☒ Seller, ☐ n/a. % by buyer and ☐ n/a. % by Seller shall pay and furnish to Buyer a Preliminary Title Report on the Property (the "Report"), together with full legible copies of all exceptions in the Report. Buyer shall have ☒ thirty (30) days of date of acceptance to notify Seller and Escrow Holder in writing of Buyer's reasonable disapproval of any such exceptions. Failure of Buyer to disapprove in writing any exceptions within the aforementioned time limit shall be deemed to be an approval of the Report.

In the event Buyer disapproves any exception in the Report, Seller shall use due diligence to remove such exceptions at his own expense.

Seller shall have ☒ ten (10) or ☐ n/a. (n/a) days from notification to remove the exceptions. But if such exceptions cannot be removed, or Seller refuses to remove or correct said exceptions, by this date, all rights and obligations herein may, at the election of the Buyer, terminate and the deposit shall be returned to Buyer, unless he elects to purchase the property subject to such exceptions.

4.2 The manner of making title may have significant legal and tax consequences. Buyer should obtain advice from his legal or tax counsel regarding this matter. Title shall vest as designated in Escrow Instructions.

**6. BONDS:**

The amount of any bond or assessment which is a lien shall be: ☒ paid by the Seller, ☐ assumed by Buyer.

**7. EXPIRATION:**

This offer shall expire, and be rendered null and void, unless a copy with Seller's written acceptance (hardcopy copy acceptable) is delivered to the Buyer or the Buyer's agent on or before 1:00 o'clock, ☐ AM, ☒ PM, Pacific Standard Time, on (Date) August 2, (Year) 2005.

**8. PROVISIONS AS FURTHER DEFINED:**

The Provisions marked ☒ below, and further defined in this document, are included in this agreement.

BUYER  
EXCLUDED: ☒ BUYER  
WAIVED: ☐ N/A

**8-A. SOIL TESTS:**

Soil Tests, within 30 days of acceptance, paid by ☒ Buyer ☐ Seller.

Upon acceptance of this agreement Buyer shall have the right, if he chooses, to go upon the property to conduct soil tests, including percolation tests, to ascertain whether the property is suitable for

Buyer

METZGER JOHNSON GROUP

Seller

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ADDRESS: [Redacted] at [Redacted] Street

the improvements which Buyer proposes to make. All expense of such test shall be borne by the person indicated above, and Buyer shall be responsible for the repair and restoration of any damage to the property which may be caused by such tests. If in the reasonable opinion of the soil engineer, employed by Buyer, the property is not suitable for the proposed development, this agreement at the option of the Buyer, may be terminated and all deposits shall be refunded. Buyer shall be deemed to have waived this condition unless written notice to the contrary is delivered to Seller or his agent within the number of days of acceptance specified above.

Note: Seller shall provide to Buyer within Five (5) days of acceptance copies of any existing soils reports/notes available to the Seller (IF ANY).

BUYER INCLUDED: ☐ BUYER WAIVED: ☐

☒ N/A 8-B. SURVEY: Survey, paid by ☒ Buyer ☐ Seller.

Upon acceptance of this offer, the property ☐ shall, ☒ may, be surveyed by a licensed surveyor at the expense of the party specified above. The surveyor shall set and flag all property lines, to be approved in writing by Buyer prior to Seller's 09 days prior to Close of Escrow. The purchase price is based upon the price specified above and shall not be adjusted in accordance with the area set forth in such a survey, if applicable. In the event the survey completed at the request of the Buyer discloses an encroachment of any kind or nature affecting the boundary or a set back requirement of the property, this agreement at the option of the Buyer, may be terminated and all deposits shall be refunded. Buyer shall be deemed to have waived this condition unless written notice to the contrary is delivered to Seller or his agent within the number of days of acceptance specified above.

BUYER INCLUDED: ☐ BUYER WAIVED: ☐

☒ N/A 8-C. FLOOD HAZARD ZONE:

Buyer has been advised that the property is located in an area which the Secretary of HUD has found to have special flood hazards and that it may be necessary to purchase flood insurance in order to obtain any loan secured by the property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the U.S. Government. The purpose of the program is to provide flood insurance at reasonable cost. For further information consult your lender or insurance carrier.

BUYER INCLUDED: ☐ BUYER WAIVED: ☐

☐ N/A ☒ 8-D. BROKER REPRESENTING BOTH PARTIES:

Buyer and Seller acknowledge that the broker in this transaction represents both parties and Buyer and Seller consent hereto.

BUYER INCLUDED: ☐ BUYER WAIVED: ☐

☒ N/A 8-E. SINGLE AGENCY

Notwithstanding agreements with respect to payment of commissions, or rights granted under Multiple Listing agreements, the parties agree that the Seller's Broker named herein is the agent of the Seller and is not the agent of the Buyer, and that the Buyer's Broker named herein is the agent of the Buyer.

Buyer 1

METZGER JOHNSON GROUP

Seller 2

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UNWARRANTED ...

and is not the agent of the Seller or a sub-agent of Seller's Broker.

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒ 2-F. CONTINGENCY RELEASE CLAUSE:

Offer is contingent upon the sale of (address) n/a

BUYER INCLUDED: ☒ N/A BUYER WAIVED: ☐ 3-G. TAX DEFERRED EXCHANGE (INVESTMENT PROPERTY):

In the event that Seller wishes to enter in a tax deferred exchange for the real property described herein, or if Buyer wishes to enter into tax deferred exchange with respect to property owned by him in connection with this transaction, each of the parties agrees to cooperate with the other party in connection with such exchange, including the execution of such documents as may be reasonably necessary to effectuate the same. Provided that: (a) The other party shall not be obligated to delay the closing, (b) All additional costs in connection with the exchange should be borne by the party requesting the exchange, and (c) The other party shall not be obligated to execute any note, contract, deed or other document providing for any personal liability which would survive the exchange, nor shall the other party be obligated to take title to any property other than the property described in this agreement. The other party shall be indemnified and held harmless against any liability which arises or is claimed to have arisen on account of the acquisition of the exchange property.

Buyer may elect to do a 1031 Tax Deferred Exchange

Seller may elect to do a 1031 Tax Deferred Exchange

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒ 3-G. OWNER'S ASSOCIATION DISCLOSURE:

At time of acceptance, Seller shall deliver to Buyer an Addendum to Purchase Agreement for Common Ownership Interest Properties, which by this reference shall be incorporated into this Agreement. Association transfer fee of \$ N/A, to be paid by ☐ Buyer ☐ Seller ☐ Other N/A. The amount of any delinquent assessments including penalties, attorney's fees, and other charges provided for in the management documents shall be paid current by the Seller at close of escrow. Seller represents that there are no Common Ownership Associations or Agreements related to the Property.

BUYER INCLUDED: ☒ N/A BUYER WAIVED: ☐ 6.21 ADDITIONAL INSPECTIONS:

Unless stated otherwise in this agreement, the Buyer shall at ☒ Buyer's ☐ Seller's expense, have the right to order any and all inspections that Buyer deems necessary by experts, including, but not limited to

6

Buyer

MEIKER JOHNSON GROUP

Seller

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to, engineers, geologists, architects, contractors, surveyors, and structural pest control operators to inspect the property for any structural and non-structural conditions, including matters concerning, but not limited to, roofing, electrical, plumbing, heating, cooling, appliances, pool boundaries, structural inspection report, roof inspection, Phase I Environmental Report on Hazardous Waste and Materials, A.D.A. (Americans Disabilities Act) Report, Asbestos testing report, lead based paint report, radon report, mold inspection, wood stove inspection, entomology report and/or earth quake risk information, electromagnetic field report, water quality / quantity report, septic systems inspection, shall be ordered and must exercise that right within thirty (30) days of acceptance of this Agreement. Reports shall be approved, rejected, or waived by Buyer within ☒ THIRTY (30) days of receipt of receipt by Buyer of such report.

Buyer shall furnish Seller, at no cost to Seller, copies of inspections and reports obtained, along with (a) itemizing all repairs requested by Buyer as indicated by said inspections and reports within ☒ THIRTY (30) days of receipt of same. Seller agrees to pay an amount NOT to exceed the total sum of \$ N/A for all repair conditions indicated, per the above contingency reports and/or any defect discovered or defect which has become worse than was originally indicated.

Any needed repairs, remediation, or corrective action identified by said reports in excess of the above stated dollar amount shall be at Buyer's expense. However, if repair expenses are considered excessive by Buyer, then Buyer may terminate this agreement at Buyer's discretion unless Seller agrees to repair at Seller's expense by written addendum.

If not accomplished by close of escrow, funds shall be held in escrow, if not disallowed by Lender, and disbursed by escrow holder upon receipt of a statement by a licensed structural pest control operator, certifying that the property is free of evidence of active infestation or infection.

As soon as the same are available, copies of the report, and any certification or other proof of completion of the work shall be delivered to the Agent of Buyer and Seller who are authorized to receive the same on behalf of their principals.

Buyer acknowledges that he has not relied upon any representations by the Agent with respect to the condition of the Property.

### 9. CHANGES DURING TRANSACTION:

During the pendency of this transaction, Seller agrees that no changes in the existing leases or rental agreements shall be made, nor new leases or rental agreements entered into, nor shall any substantial alterations or repairs be made or undertaken without the written consent of the Buyer.

### 10. PROVISIONS:

10.1 TAXES: Real property taxes payable by the owner of the Property shall be provided through Escrow as of the date of the recording of the deed, based upon the latest tax bill available. Buyer shall pay supplemental tax bill levied by the transfer of the Property to the Buyer. Payment shall be made promptly in cash upon receipt of a copy of any such supplemental bill of the amount necessary to accomplish such provision. Seller shall pay and discharge in full, as or before the Closing, the unpaid balance of any special assessment bonds.

10.2 INSURANCE: If Buyer elects to take an assignment of the existing casualty and/or liability insurance that is maintained by Seller, the current premium therefore shall be provided through Escrow as of the date of Closing.

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Buyer 1

**MEYER & JOHNSON GROUP**

Seller RL

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UN-1000: (Given List of UN-1000 and related items)

**10.3 RENTALS, INTEREST AND EXPENSES:** Reimburse, such as, but not limited to, utilities, and operating expenses shall be provided as of the date of Closing. Such items shall be supplied by Seller within ☒ ten (2) days or ☐ N/A (N/A) days prior to close of escrow. The Parties agree to promptly adjust, between themselves outside of Escrow any rents received after the Closing.

**10.4 SECURITY DEPOSIT AND LEASE CREDITS:** Security Deposits held by Seller and considerations involving lease credits shall be given to Buyer by a credit to the cash required of Buyer at the Closing. Such items shall be supplied by Seller within ☒ ten (2) days or ☐ N/A (N/A) days prior to close of escrow.

**10.6 POST CLOSING MATTERS:** Any item to be provided that is not determined or determinable at the Closing shall be adjusted by the parties as soon as possible following close of escrow.

## 12. ENCUMBRANCES:

In addition to any encumbrances referred to herein, Buyer shall take title to the property subject to: (1) Real Estate Taxes not yet due and (2) Covenants, Conditions, Restrictions, Rights of Way, and Easements of record, if any, which do not materially affect the value or intended use of the property. Such encumbrances shall be deemed approved unless written notice to the contrary is delivered to Seller or his agent within THIRTY (30) days of acceptance.

## 13. NOTICES:

By acceptance hereof Seller warrants that he has no notice of violations or of any claims relating to the property from City, County, State, or Federal agencies, or any other person or person.

Pursuant to Nevada revised statutes, the Buyer(s) of real property, for or under, development is hereby informed that such property may be subject to impact fees which have been or will be imposed by governmental agencies.

## 14. DEFAULT:

In the event that Buyer shall default in the performance of this agreement, Seller may subject to any rights of the Broker herein, retain Buyer's deposit on account of damages sustained all as more fully provided in paragraph 4.2 below, and Buyer shall have the right to take such action as he deems appropriate to recover such portion of the deposit as may be allowed by law.

## 15. PHYSICAL POSSESSION:

Physical possession shall be delivered to Buyer upon recordation of the deed.

## 16. TIME:

Time is of the essence as to each and every provision of this agreement. If after a good faith effort, any condition stated in this contract has not been eliminated or satisfied within the time fixed and pursuant to the provisions of this contract, then this contract may be deemed null and void, the deposit shall be returned to Purchaser, and the escrow shall be canceled. Either party may resort to such remedies as it may have in law or equity, subject to the liquidated damages provision set forth in Paragraph 4.2 below.

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Buyer

**MEIZKE JOHNSON GROUP**

Seller

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UNWARRANTED: Review, Level of (Standard, etc.) (4/10/01) (NHS)

#### 17. HAZARDOUS MATERIALS:

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

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

#### 18. AGENT(S) DISCLAIMER:

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

#### 19. CORRESPONDENCE:

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

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

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

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

Copies to: Richard K. Johnson POB 775-823-0848  
6490 S. McCanna Blvd. Phone: 775-823-6877  
Reno Nevada 89502

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

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Buyer

**METZGER JOHNSON GROUP**

Seller R. K. Johnson

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Richard K. Johnson

775-623-8848

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ADDRESS: 10000 S. Highway 100, Suite 100, Las Vegas, NV 89135

**27. BUSINESS DAYS:**

If the (a) stated Closing date or (b) last day for performance of an act falls upon a day during which normal business is not performed, then the Closing date or such last day, as the case may be, will be the next following regular business day.

**28. LAND USE RESTRICTIONS:**

Buyer shall satisfy himself through sources of information, other than the principals or real estate brokers or salespersons in this transaction, whether any public or private in the form of a vote, initiative, referendum, local ordinance, law, or other measure presently in force or contemplated by a governing or other body may limit actively or otherwise restrict Buyer's use of the subject property for improvement or other use, and Buyer acknowledges that he has not relied on any advice or representations by the principals or real estate representatives in this transaction for such independent information to any extent.

**29. VERIFICATION OF INFORMATION:**

Any square footage, load or improvement, is approximate and neither Seller nor Broker guarantees its accuracy. Any oral or written representations by Seller or Broker regarding age of improvements, size, and square footage of parcel or building, or location of property lines, may not be accurate. Apparent boundary line indicators such as fences, hedges, walls, or other barriers may not represent the true boundary lines. Brokerage does not necessarily investigate the status of permits, zoning, or code compliance. Buyer is to satisfy himself concerning this information if any of these factors are important or a critical element of the purchase decision. Buyer acknowledges that he has not received or relied upon any representations by either the Broker or the Seller with respect to the condition of the property which are not contained in this agreement or in any attachments. Although deemed accurate, the information contained in the Multiple Listing Service book, computer or advertisement, and listing sheets pertaining to this property are not warranted or guaranteed by the listing or selling office. Errors and/or omissions in reporting information, while uncommon, are possible. Buyer shall be responsible for verifying the accuracy of pertinent information, deposit of all funds necessary to close into escrow shall be deemed an final acceptance of the property. Seller agrees to hold all Brokers and Licensees in the transaction harmless and to defend and indemnify them from any claims, demand, action or proceedings resulting from any omission or alleged omission by Seller in his statements.

**30. ATTORNEYS FEES:**

If this Agreement gives rise to any litigation, arbitration, or other legal proceeding between any of the parties hereto, including Agent(s), the prevailing party shall be entitled to recover its actual costs and expenses, including court costs, costs of arbitration, and reasonable attorneys' fees, in addition to any other relief to which such party may be entitled. The undersigned parties agree to hold Broker, Mettler Johnson Group, and Broker's Agent, Richard K. Johnson harmless from and against any and all damages, costs and expenses, including attorneys' fees, arising from any dispute between Buyer and/or Seller and/or Agent under this Agreement, unless Agent is determined by a court of competent jurisdiction to be fraudulent in connection with any such claim or claims.

**31. ACCESS TO PROPERTY:**

Seller agrees to provide access to the property to Buyer, inspectors, appraisers, and all other professionals representing Buyer. Buyer shall indemnify, defend and hold Seller harmless from any loss,

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Buyer \_\_\_\_\_ **METTLER JOHNSON GROUP** Seller R. K. Johnson

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

### 32. PREPAYMENT:

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

### 33. DUE ON SALE CLAUSE:

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

### 34. REAL ESTATE BROKERS AND FEES:

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

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

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

### 35. VESTED TITLE:

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

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Buyer

METZGER JOHNSON GROUP

Seller [Signature]

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NOTICE: Buyer hereby agrees to pay for the cost of

designated in Buyer Instructions.

### 36. IMPACT FEES:

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

### 37. DEFERRED AGRICULTURAL TAX:

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

### 38. EXISTING CONDITION:

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

### 39. ADDITIONAL TERMS AND CONDITIONS:

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

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Buyer

**MEITZER JOHNSON GROUP**

Seller *[Signature]*

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IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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

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

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Zoning  | <input checked="" type="checkbox"/> Proper land use designation(s)  | <input checked="" type="checkbox"/> Availability of Utilities  |
| <input checked="" type="checkbox"/> Legal Access  | <input checked="" type="checkbox"/> Easements   | <input checked="" type="checkbox"/> Subject Property Bulletin  |
| <input checked="" type="checkbox"/> Environmental   | <input checked="" type="checkbox"/> Mineral Right   | <input checked="" type="checkbox"/> Road Maintenance Agreement |
| <input checked="" type="checkbox"/> Phase I Environmental   | <input checked="" type="checkbox"/> Phase I Environmental   |  |
| <input type="checkbox"/> Census Mailed, or  | <input checked="" type="checkbox"/> Survey paid by <input type="checkbox"/> Seller, <input checked="" type="checkbox"/> Buyer |  |
| <input type="checkbox"/> Percolation Test paid by <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer   |   |  |
| <input type="checkbox"/> Well Test, Quality, paid by <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer  |   |  |
| <input type="checkbox"/> Well Test, Quantity, paid by <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer   |   |  |
| <input checked="" type="checkbox"/> Water Rights <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, in the amount of _____ acre feet of ground water under claim on _____ |   |  |
| <input type="checkbox"/> Yes <input type="checkbox"/> No, in the amount of _____ acre feet of surface water   |   |  |

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

- F. This offer is conditioned upon Buyer, at ☒ Buyer's ☐ Seller's expense, obtaining the following governmental approvals within 210 days of acceptance of this agreement, as may be extended pursuant to Paragraph 1.2 above:
- |   |  |                                     |
|---|--|-------------------------------------|
| <input checked="" type="checkbox"/> Variances   | <input checked="" type="checkbox"/> Special Use Permits                | <input type="checkbox"/> Parcel Map |
| <input checked="" type="checkbox"/> Tentative Map   | <input checked="" type="checkbox"/> Zone Change & Land Use Designation |                                     |
| <input checked="" type="checkbox"/> Other <u>architectural and design review and approval</u> |  |                                     |

- G. The purchase price is based upon \$6.5 ☐ per acre, ☐ per square foot and ☒ will not, ☐ will be adjusted in accordance with the area set forth in the survey.

- H. It is agreed to and understood that as part of the purchase price of this property, the Buyer shall deliver to Seller one of the penthouses, of approximately 3,500 square feet, in the new condominium project, subject to the following terms and conditions. Buyer shall provide Seller with detailed floor plans of each penthouse, and the listing price for each penthouse, at

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Buyer Metzger Johnson Group Seller Metzger Johnson Group

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which time Seller shall have thirty (30) days to choose the penthouse to be transferred to Seller. Seller shall receive credit in the amount of (\$2,200,000) Two Million, Two Hundred Thousand Dollars ("Penthouse Credit") toward the listing price of the penthouse so chosen. In the event the listing price of the penthouse so chosen is more than the Penthouse Credit, Seller shall pay the difference in cash at the time of the transfer. In the event the penthouse so chosen is less than the Penthouse Credit, Buyer shall reimburse Seller the difference at the time of transfer. Buyer and Seller shall also agree, on or before the close of escrow and as a condition thereof, upon specific language and form of legal documentation of the right to receive such condominium unit, which shall be free of all liens and encumbrances except taxes paid current, assessments and C.C. & R.'s uniformly applicable to each building and unit.

I. The Seller warrants that there are no leases or other contractual use agreements on said property. *See Addendum 18*

J. Seller authorizes Buyer and Seller's agent to place signage on said properties promoting identification of the Buyer, Seller's agent, and/or future use of said property.

K. All deposits, upon receipt, shall become immediately non-refundable and fully disbursed.

L. Seller's property adjoining the property herein is known as 260 Island St (APN 011-112-02). Seller agrees to a deed restriction that the height of this property will never exceed its current height. Buyer agrees to provide, at no cost to Seller, parking spaces within their development, as required by the governing codes, for future use of this building. Seller agrees to provide liability insurance for said parking area and will provide parking attendant(s) as required, at no cost to the buyer. *See Addendum 18*

40. **MEDIATION OF DISPUTES:** If a dispute arises out of or relates to this Agreement, or its breach, by initialing in the spaces below,

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

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

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

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

#### 41. **ARBITRATION OF DISPUTES:**

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

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Buyer                      **MEYER JOHNSON GROUP** Seller                       
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ATTENTION: Please read this document carefully.

The parties agree that the following procedure will govern the making of the award by the arbitrator: (a) a Tentative Award will be made by the arbitrator within 30 days following submission of the matter to the arbitrator; (b) the Tentative Award will explain the factual and legal basis for the arbitrator's decision as to each of the principal controverted issues; (c) the Tentative Award will be in writing unless the parties agree otherwise; provided, however, that if the hearing is concluded within 60 days, the Tentative Award may be made orally at the hearing in the presence of the parties. Within 15 days after the Tentative Award has been served or announced, any party may serve objections to the Tentative Award. Upon objections being timely served, the arbitrator may call for additional evidence, oral or written argument, or both. If no objections are filed, the Tentative Award will become final without further action by the parties or arbitrator. Within 30 days after the filing of objections, the arbitrator will either make the Tentative Award final or modify or correct the Tentative Award, which will then become final as modified or corrected.

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

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

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in this "Arbitration of Disputes" provision to neutral arbitration.

☐ (n/a) Buyer agrees

☒ ( ) Buyer does not agree

☐ (n/a) Seller agrees

☒ ( ) Seller does not agree

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

#### 42. LIQUIDATED DAMAGES:

IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED BY THIS AGREEMENT, BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELIEVED FROM HIS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE CONTRACTUAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTIMATE THE ACTUAL DAMAGES SUSTAINED BY SELLER AS A RESULT OF SUCH A DEFAULT BY BUYER AND AGREE THAT THE ☒ AMOUNT OF DEPOSIT(S), ☐ \$ \_\_\_\_\_, MADE BY BUYER IS A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT THE BUYER DEFAULTS IN THE PERFORMANCE OF THIS AGREEMENT, THE ABOVE STATED AMOUNT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER AND SHALL BE FORFEITED BY BUYER TO SELLER. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST THE BUYER WHICH

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Buyer \_\_\_\_\_

**METZGER JOHNSON GROUP**

Seller 12/10/00

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

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

#### 43. HOLD HARMLESS:

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

#### 44. CODE OF ETHICS:

Not all real estate licensees are REALTORS. A REALTOR is a member of the National Association of REALTORS and therefore subscribes to a higher ethical standard in the industry. The REALTOR Code of Ethics. To receive a copy of the REALTOR Code of Ethics, ask your real estate professional, the Real Estate Association of REALTORS, or go to [www.nar.org](http://www.nar.org).

#### 45. CONSULT YOUR ADVISORS:

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

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

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

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

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Buyer 1 **Mitchell Johnson Group** Seller LL/AD  
 Copyright 2004 by M.J.G. All rights reserved. This representation, report, and document are valid without signature by M.J.G. to accept.

(17)

Rug 03 05 11:47a

K. Johnson

775-823-8848

P.10

UNPUBLISHED - This document is not to be used for any purpose other than the one for which it was prepared.

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

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

SELLING OFFICER: NONE

REPRESENTED BY: NONE

Is the Broker acting for (check one): N/A

The State of Nevada form titled, "DISCLOSURE BY A NEVADA LICENSED" is hereby incorporated as an addendum to this agreement.

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

Buyer's Broker: NONE Dated: \_\_\_\_\_

By: None

Buyer: \_\_\_\_\_ Dated: \_\_\_\_\_ Time: \_\_\_\_\_  
Authorized Signer, Print Name: Rep. Cynthia for Consolidated Pacific Development, Inc.

### ACCEPTANCE

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

### COMMISSION:

Seller agrees to pay in cash the following real estate commission for services rendered, which commission Seller hereby irrevocably assigns to Escrow:

Listing Broker's commission shall be 5% of the accepted purchase price, and

0% of the accepted price, or \$ 0.00, to n/a, the Selling Broker,

irrespective of the agency relationship. Escrow instruction with respect to commissions may not be amended or revoked without the written consent of the Broker herein. Commissions shall also be payable upon any default by Seller, or the mutual rescission (not covered by this

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Buyer / **MEYER JOHNSON GROUP** Seller R.A.P.  
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(18)

JA0062

... BUYER'S AND SELLER'S MULTIPLE FORM ...

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

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

(Foreign Investment and Real Property Tax Act).

Unless the property is acquired for use as a primary residence and is sold for no more than \$500,000, Seller agrees to provide Buyer with (a) **NON-FOREIGN SELLER AFFIDAVIT** (FAR Form 101-V), OR (b) **WITHHOLDING CERTIFICATE FORM** from the Internal Revenue Service stating that withholding is not required. In the event none of the foregoing is applicable, Buyer must withhold 10% of the Gross Sales Price under the **FOREIGN INVESTMENT AND REAL PROPERTY TAX ACT (IRC SECTION 1445)**.

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

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

**SELLING OFFICER:** Metzger Johnson Group

**REPRESENTED BY:** Richard K. Johnson

Is the licensee acting for (check one):

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

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

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

Sellers Broker Metzger Johnson Group  
By (agent) Richard K. Johnson

Dated: \_\_\_\_\_

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Buyer \_\_\_\_\_ **METZGER JOHNSON GROUP** Seller Richard K. Johnson  
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(12)

UNWITNESSED (Buyer and Seller must sign and date)

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

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

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

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

OR

☐ **COUNTER OFFER:**  
 Seller accepts this offer subject to the Counter Offer Dated: \_\_\_\_\_

Seller: \_\_\_\_\_ Dated: \_\_\_\_\_ Time: \_\_\_\_\_

Seller: \_\_\_\_\_ Dated: \_\_\_\_\_ Time: \_\_\_\_\_

OR

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

Seller: \_\_\_\_\_ Dated: \_\_\_\_\_ Time: \_\_\_\_\_

Seller: \_\_\_\_\_ Dated: \_\_\_\_\_ Time: \_\_\_\_\_

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Buyer

METZGER JOHNSON GROUP

Selling Agent

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JA0064

AUG 03 05 11:50a

K. Johnson

778-823-8848

P.22

ATTENTION: Airport Landfill, Court 23 and Island Street



21

Buyer

**MEIZNER JOHNSON GROUP**

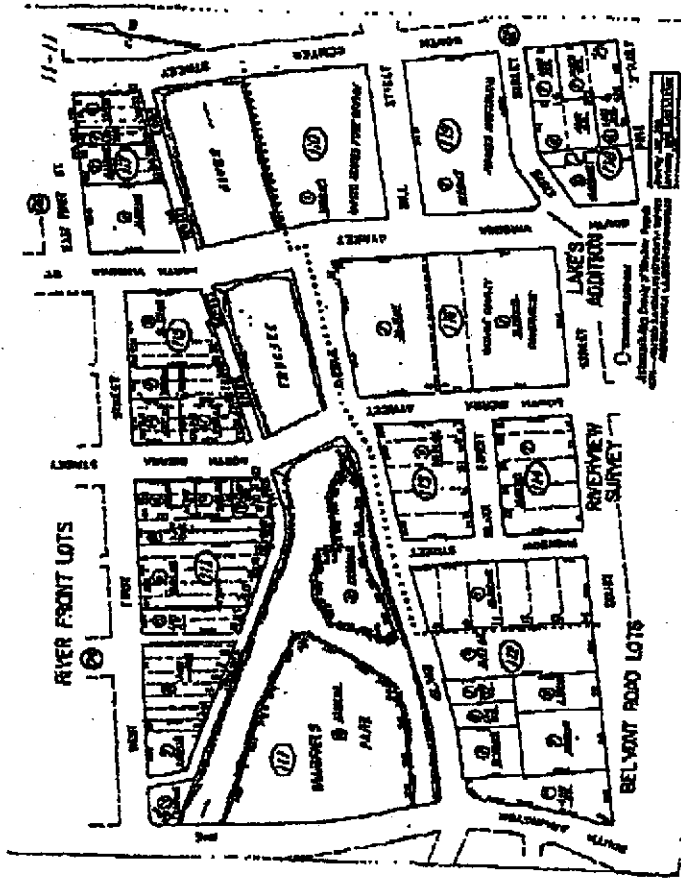
*John Johnson*

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(2)

JA0065

Figure 1 and 2 of Great St. and Belmont Street



22

By Metzger Johnson Group dated 8/2/11  
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(23)

5/1

**METZKER JOHNSON GROUP**  
COMMERCIAL \* RESIDENTIAL \* INVESTMENT \* REALTY

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

## ADDENDUM NO. 2

Date Prepared: August 2, 2005

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

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

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

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

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

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

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

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

Seller/Agent: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

1

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JA0067

**Consolidated Pacific Development Inc.**

932 Parker Street, Berkeley, CA 94710

(510) 548-6093 (FAX) 548-6164

**TELECOPIER COVER SHEET**

Please deliver enclosed pages to:

NAME: DICK JOHNSON

COMPANY: \_\_\_\_\_

FAX No.: 775 823 8848 Phone No.: \_\_\_\_\_FROM: Sam Caniglia

MESSAGE/COMMENTS:

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



**METZKER JOHNSON GROUP**  
**COMMERCIAL \* RESIDENTIAL \* INVESTMENT \* REALTY**

6490 S. McCarran Blvd., Reno, Nevada 89309 Phone: (775) 823-8877 Fax: (775) 823-8848

## ADDENDUM NO. 1

Date Prepared: August 1, 2005

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

### 39. ADDITIONAL TERMS AND CONDITIONS:

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

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

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

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

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

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

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

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

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

Seller/Agent: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

**METZKER JOHNSON GROUP**  
**COMMERCIAL \* RESIDENTIAL \* INVESTMENT \* REALTY**

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

**ADDENDUM NO. 1**

Date Prepared: August 1, 2005

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

**39. ADDITIONAL TERMS AND CONDITIONS:**

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

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

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

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

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

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

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

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

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

Seller/Agent: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

**MAITZER JOHNSON GROUP**  
COMMERCIAL • RESIDENTIAL • INVESTMENT • REAL ESTATE

1490 S. McCaskey Blvd., Reno, Nevada 89509 Phone (775) 572-9677 Fax (775) 521-9218

**ADDENDUM NO. 2**

Date Prepared: August 2, 2005

Property address APNs 011-112-06, 011-112-07, 011-112-12, 011-112-02  
In reference to the LAND PURCHASE AGREEMENT made by CONSOLIDATED  
PACIFIC DEVELOPMENT INC. a Nevada Corporation, Buyer, and Blanca, John Jr. and  
Sandra Trust, Seller, Date Prepared 7/29/2005 and the ADDENDUM NO. 1 Date  
Prepared 8/1/2005 the Buyer and Seller hereby agree as follows:

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

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

*Please see Land Purchase Agreement & Addendum #1 as part of this transaction. JH*  
**EXPIRATION:** This Addendum shall expire unless written acceptance is delivered to Seller/Landlord or his/her Agent on or before 3:00 ☐ AM ☒ PM, on August 4, 2005.

Seller/Landlord: John Blum Date: 8-2-05 Time: 7:30 PM  
*Dr. John Blum, (Blanca, John Jr. and Sandra, Trust)*

Seller/Landlord: Sandra Blum Date: 8-2-05 Time: 7:30 PM  
*Sandra Blum, (Blanca, John Jr. and Sandra, Trust)*

Buyer/Tenant: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_  
*Sara Coughlin, for Consolidated Pacific Development, Inc.*

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

Seller/Agent: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

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(85)

**MEYER JOHNSON GROUP**  
COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY

4499 S. McCarran Blvd., Suite 1000, Las Vegas, NV 89149 Phone (775) 822-8877 Fax (775) 822-8848

## ADDENDUM NO. 1

Date Prepared: August 1, 2001

Property address: APT# 811-112-06, 811-112-07, 811-112-12, 811-112-03

In reference to the offer made by CONSOLIDATED PACIFIC DEVELOPMENT INC., Nevada Corporation, Buyer, and Meyer, John Jr. and Sarah Trust, Seller, dated 7/29/2001, the following terms and changes are hereby incorporated as part of the Purchase Agreement:

### 39. ADDITIONAL TERMS AND CONDITIONS:

H. It is agreed to and understood that as part of the purchase price of this property, the Buyer shall deliver to Seller one of the penthouses of 3,750 square feet of living area, in the new condominium project subject to the following terms and conditions. Buyer shall provide Seller with the initial floor plans for each penthouse so that Seller may select his location and commence with his input to the Architect for the completion of his unit. Seller shall select his unit within thirty (30) days after receipt of the initial floor plans. Seller shall receive credit in the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000), (Penthouse Credit) toward the hard cost of construction, as evidenced by paid invoices. Seller unit will have four (4) cars parking assigned in a location of Seller choice. Five Hundred (500) square feet storage is to be provided to Seller in the building for their personal use. Ceiling height in this unit is to be Nine (9) feet or better. Multiple build-ins will be provided and installed as selected by Seller. Buyer and Seller shall also agree, in or before the close of escrow and as a condition thereof, upon, specific language and form of legal documentation of the right to receive such condominium unit, which shall be free of all liens and encumbrances except taxes paid current, assessments and C, C, & R's uniformly applicable to such building and unit.

I. Seller agrees to provide liability insurance for said parking area, and will provide parking attendant(s) as required, at no cost to buyer. Seller may exceed the current height of said building if needed for addition of items such as but not limited to antenna, and television dish. Buyer agrees to give pedestrian easement rights for direct access from rear of existing building to new building parking being provided for existing building. Car access to parking garage for existing building shall be from Island Street. A Lot line adjustment shall be made at existing parking lot side (east side of building), enlarging the existing building's lot sufficient enough to allow for a Ten (10) foot side yard from existing building and to meet any required governmental requirements.

1

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(23)

*See Addendum #1 p. 20*

Aug 03 05 11:54a

K. Johnson

775-823-8848

P.75

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

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

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

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

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

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

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

Buyer/Tenant: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Sam Coniglio, for Consolidated Pacific Development, Inc.

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

Seller/Agent: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

## Addendum No. 3

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

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

## 1.2 Additional Cash Deposit:

\$475,000.00

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

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

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

04203400002  
 --ODMA\FPCDOCS\RENO\DOCS\4816304

*SW*  
 10/8/05

*MS* *JD* 10/10/05



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Close of escrow for Seller's Penthouse Unit shall occur, at Seller's election, (i) within five (5) business days after the date Seller is notified in writing that a certificate of occupancy is issued for Seller's Penthouse Unit or (ii) on such earlier date which Seller may elect in writing. In the event the Penthouse Purchase Price exceeds \$2,200,000.00, Seller shall pay the difference between the Penthouse Purchase Price and \$2,200,000.00 in full at the close of the escrow transferring Seller's Penthouse Unit to Seller. In the event the Penthouse Purchase Price is less than \$2,200,000.00, then Buyer shall pay Seller the difference between \$2,200,000.00 and the Penthouse Purchase Price at the close of such escrow. The closing costs for Seller's Penthouse Unit shall be paid by Seller and Buyer as follows: Buyer shall pay any real estate broker's commission owed to any real estate broker which Buyer has engaged. Buyer shall pay for the cost of a CLTA title insurance policy and one-half (½) of the real property transfer tax. Seller shall pay any real estate broker's commission owed to any real estate broker which Seller has engaged. Seller shall pay one-half (½) of the real property transfer tax and the additional cost of any ALTA policy and any title endorsements requested by Seller. Buyer and Seller shall each pay one-half (½) of the remaining costs and fees of the escrow related to the transfer of Seller's Penthouse Unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48. Miscellaneous.

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

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

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

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

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

Seller:

John Ilescu Jr.  
John Ilescu Jr.

Sonia Santee Ilescu  
Sonia Santee Ilescu

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

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

Buyer:

Consolidated Pacific Development, Inc.,  
a Nevada corporation

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

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**Exhibit "A"**  
**Preliminary Title Report**

(See attached.)

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# FIRST CENTENNIAL TITLE COMPANY OF NEVADA

- ☐ 1450 RIDGEVIEW DR., SUITE 100 - RENO, NV 89509 (775) 689-8510
- ☐ 505 DIAMONTE RANCH PARKWAY, SUITE 200 - RENO, NV 89521 (775) 830-3559
- ☐ 716 NORTH CARSON STREET, #100 - CARSON CITY, NV 89701 (775) 687-8560
- ☐ 6121 LAKESIDE DR., SUITE 150 - RENO, NV 89531 (775) 689-8530
- ☐ 599 TALHOE BLVD., SUITE 300 - P.O. BOX 8236, INCLINE VILLAGE, NV 89450 (775) 531-8200
- ☐ 1025 ROBERTA LANE, - SPARKS, NV 89431 (775) 685-2121
- ☐ 3748 LAKESIDE DR., SUITE 100 - RENO, NV 89509 (775) 689-8225
- ☐ 6190 MAEYANNE AVENUE, SUITE 1 - RENO, NV 89528 (775) 746-7080

Issuing Policies Of

First American Title Insurance Company

Today's Date:  
August 18, 2005

## PRELIMINARY REPORT

PROPOSED BUYER: Consolidated Pacific Development, Inc.  
PROPERTY ADDRESS: APN 011-112-03, 06, 07 and 12,  
Reno, NV

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

Escrow Officer: Maryann Infantino

Our No.: 145279-MI

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

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

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

by: *Julie Moreno*  
Julie Moreno, Title Officer

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## SCHEDULE A

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

Fee Simple

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

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

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

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

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## SCHEDULE B

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

1. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.  
 Total Amount: \$1,501.77  
 First Installment: \$376.77, Unpaid  
 Said installment becomes delinquent August 26, 2005.  
 The Second, Third and Fourth Installments: \$375.00, each, Unpaid  
 Assessors Parcel No.: 011-112-01  
 Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
2. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.  
 Total Amount: \$2,010.02  
 First Installment: \$504.02, Unpaid  
 Said installment becomes delinquent August 26, 2005.  
 The Second, Third and Fourth Installments: \$502.00, each, Unpaid  
 Assessors Parcel No.: 011-112-06  
 Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
3. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.  
 Total Amount: \$3,541.47  
 First Installment: \$886.47, Unpaid  
 Said installment becomes delinquent August 26, 2005.  
 The Second, Third and Fourth Installments: \$885.00, each, Unpaid  
 Assessors Parcel No.: 011-112-07  
 Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
4. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.  
 Total Amount: \$4,984.02  
 First Installment: \$1,276.02, Unpaid  
 Said installment becomes delinquent August 26, 2005.  
 The Second, Third and Fourth Installments: \$1,236.00, each, Unpaid  
 Assessors Parcel No.: 011-112-12  
 Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.

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**SCHEDULE B**  
(Continued)

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

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**EXHIBIT "A"**  
**Legal Description**

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

**PARCEL 1:**

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

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

APN: 011-112-03

**PARCEL 2:**

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

APN: 011-112-06

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**PARCEL 3:**

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

APN: 011-112-07

**PARCEL 4:**

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

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

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

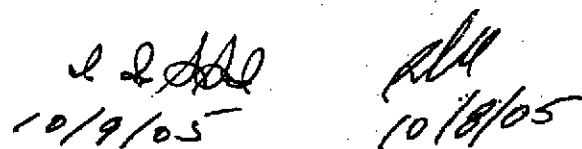
APN: 011-112-12

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

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22 ALL  
10/9/05

elle  
10/8/05



# METZKER JOHNSON GROUP®

COMMERCIAL \* RESIDENTIAL \* INVESTMENT \* REALTY

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

## ADDENDUM No. 4.

Date Prepared: September 18, 2006

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

### RECITALS:

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

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

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

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




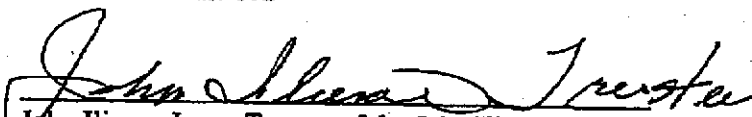
2. The Additional Extension Deposit shall be in addition to all other sums payable under the Agreement, including, but not limited to, the extension deposits described in the Agreement.
3. The purchase price of \$7,500,000.00 (Seven Million Five Hundred Thousand Dollars) as set forth in the Agreement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

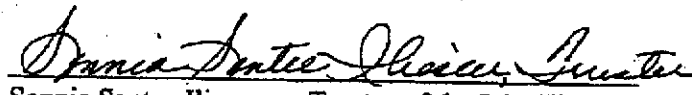
This Addendum No. 4 is dated this 19<sup>TH</sup> day of September, 2006.

Seller:

  
John Iliescu Jr.

  
Sonia Santee Iliescu

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

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

Buyer:

Consolidated Pacific Development, Inc.,  
a Nevada corporation

By:   
Sam A Caniglia, President

# EXHIBIT “B”

1 STEPHEN R. HARRIS, ESQ.  
2 BELDING, HARRIS & PETRONI, LTD.  
3 Nevada Bar No. 001463  
4 417 West Plumb Lane  
5 Reno, Nevada 89509  
6 Telephone: (775) 786-7600  
7 Facsimile: (775) 786-7764

ELECTRONICALLY FILED BY  
BELDING, HARRIS & PETRONI, LTD.

ON 4/25/07

Attorney for Debtor

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

\* \* \* \* \*

IN RE:

BSC INVESTMENTS LLC,  
an Oregon limited liability company,

BK-N-07-50477  
(Chapter 11)

Debtor.

**NOTICE OF CLAIM TO RIGHT, TITLE  
AND INTEREST IN REAL PROPERTY**

Hrg. DATE: N/A  
and TIME:

COMES NOW, BSC INVESTMENTS LLC, an Oregon limited liability company, by and through its attorney STEPHEN R. HARRIS, ESQ. of BELDING, HARRIS & PETRONI, LTD., Debtor and Debtor-in-possession in the Chapter 11 case pending as Case No.BK-N-07-50477, in the United States Bankruptcy Court, Reno, Nevada, and hereby gives notice of its claim to right, title and interest in certain real property identified as APNs: 011-112-03, 06, 07 and 12, including water rights, in the City of Reno, County of Washoe, State of Nevada, according to the Land Purchase Agreement dated July 29, 2005, and as amended subsequent thereto, by and between John Iliescu, Jr. and Sonnia Santee Iliescu, individually and as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust (collectively "Sellers"), and BSC Investments LLC, an Oregon limited liability company, as the assignee from the original Buyer, Consolidated Pacific Development, Inc., a Nevada corporation. By reason of the Voluntary Petition for Chapter 11

1 relief filed by BSC INVESTMENTS LLC, on April 25, 2007, the 11 U.S.C. §362(a) automatic  
2 stay is in effect and operative.

3 Dated this 25<sup>th</sup> day of April, 2007.

4 STEPHEN R. HARRIS, ESQ.  
5 BELDING, HARRIS & PETRONI, LTD.  
6 417 West Plumb Lane  
7 Reno, NV 89509

8   
9 Attorney for Debtor

# EXHIBIT “C”

Assessor's Parcel Numbers: 011-112-03; 011-112-06; 011-112-07; 011-112-12

**15 DAY NOTICE OF INTENT TO CLAIM LIEN  
ON RESIDENTIAL PROPERTY**

The undersigned hereby provides notice that it will claim a lien upon the property described in this notice for work, materials or equipment furnished for the improvement of the property if it is not paid the amount set forth in paragraph 4 within 15 days:

1. The amount of the original contract is based upon the total construction costs. The amount due as of October 31, 2006 for that work, labor, materials and/or services have been furnished to and actually used upon the above-described project in the remaining amount of ONE MILLION SIX-HUNDRED THIRTY-NINE THOUSAND ONE-HUNDRED THIRTY AND NO/100 DOLLARS (\$1,639,130.00), reimbursable expenses of ONE-HUNDRED FIFTEEN THOUSAND THREE HUNDRED SIXTY-TWO AND NO/100 DOLLARS (\$115,362.00) plus interest through October 31, 2006 in the amount of TWENTY-NINE THOUSAND FIFTY-SIX DOLLARS AND 85/100 (\$29,056.85), continuing interest, attorney's fees and costs.
2. The total amount of all changes and additions, if any, is: \$N/A. Construction costs dictate amount due.
3. The total amount of all payments received to date is: \$0.
4. The amount of the lien, after deducting all just credits and offsets, is: \$1,783,548.85.
5. The name of the owner, if known, of the property is: 011-112-03; 011-112-07; 011-112-12 - John Iliescu, Jr., and Sonnia Iliescu, as Trustees of the John Iliescu, Jr., and Sonnia Iliescu 1992 Family Trust Agreement; and 011-112-06 - John Iliescu, a married man as his sole and separate property.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished work, materials or equipment is: BSC Financial, LLC, c/o Consolidated Pacific Development, Inc., 932 Parker Street, Berkley, CA 94710.
7. A brief statement of the terms of payment of the lien claimant's contract is: Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Statement of services. All services were to be invoiced based on work performed as reflected in applications for payment, no retainage to be withheld from monthly progress payments. All invoices are due in fifteen days.
8. A description of the property to be charged with the lien is: North Arlington Avenue, Island Avenue and Court Street, Reno, NV. Assessor's Parcel Numbers: 011-112-03; 011-112-06; 011-112-07; 011-112-12.

Mark B. Steppan, AIA, NCARB

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

Attorneys for Mark B. Steppan, AIA, NCARB

NOTARY ON NEXT PAGE

JA0098

State of Nevada                                 )  
  ) ss.  
County of Washoe                                 )

Gayle A. Kern, being first dully sworn on oath according to law, deposes and says:

I have read the foregoing 15 DAY NOTICE OF INTENT TO CLAIM LIEN ON RESIDENTIAL PROPERTY, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

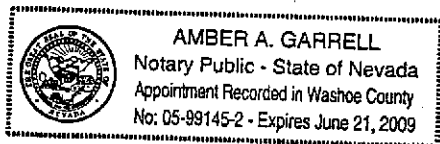
Gayle A. Kern

Gayle A. Kern, Esq.  
Attorneys for Mark B. Steppan, AIA, NCARB

Subscribed and sworn to before me  
this 6th day of the month of March of the year 2007

Amber A. Garrell

Notary Public in and for  
the County and State



# EXHIBIT “D”



COPY - has not been compared  
with the Original Document - WCR

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

Recording Requested by:  
Gayle A. Kern, Esq.  
Gayle A. Kern, Ltd.  
5421 Kietzke Lane, Suite 200  
Reno, NV 89511

When Recorded Mail to:  
Gayle A. Kern, Esq.  
Gayle A. Kern, Ltd.  
5421 Kietzke Lane, Suite 200  
Reno, NV 89511

# 3528313

05/03/2007 11:32:12 AM

Requested By  
GAYLE A KERN

Washoe County Recorder

Kathryn L. Burke - Recorder

Fee: \$18.00 RPTT: \$0.00

Page 1 of 5

CONFORMED COPY

AMENDED NOTICE AND CLAIM OF LIEN

☒ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

☐ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the social security number of a person or persons as required by law: \_\_\_\_\_ (state specific law)

Signature

AIA, CSI, NCARB

Title

Mark Steppan

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030, Section 4.

This cover page must be typed or printed in black ink.

JA0101

When Recorded Mail To:

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

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

GRANTEE'S ADDRESS:

Mark B. Steppan, AIA, CSI, NCARB  
1485 Park Avenue, #103  
Emeryville, CA 94608

**AMENDED NOTICE AND CLAIM OF LIEN**

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

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

Claimant further states:

1. That the name of the owner or reputed owner of the premises sought to be charged is as follows: 011-112-03; 011-112-07; 011-112-12 - JOHN ILIESCU, JR., and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR., AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; and 011-112-06 - John Iliescu, a married man as his sole and separate property.

2. That the name of the person by whom lien claimant was employed and to whom lien claimant furnished work, labor, materials and/or services in connection with the project is: BSC Financial, LLC, c/o Consolidated Pacific Development, Inc., 932 Parker Street, Berkley, CA 94710; Job name: Residential Project, Reno, Nevada, Job Address: North Arlington Avenue, Island Avenue and Court Street; Owner's Designated Representative: Sam Caniglia.

3. That the terms, time given and conditions of the contract were: Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Statement of services for the building, structure or other work of improvement located at North Arlington Avenue, Island Avenue and Court Street, Reno, Nevada. All services were to be invoiced based on work performed as reflected in applications for payment, no retainage to be withheld from monthly progress payments. All invoices are due in fifteen days.

4. That work, labor, materials and/or services have been furnished to and actually used upon the above-described project in the remaining amount of ONE MILLION SIX-HUNDRED THIRTY-NINE THOUSAND ONE-HUNDRED THIRTY AND NO/100 DOLLARS (\$1,639,130.00), reimbursable expenses of ONE-HUNDRED FIFTEEN THOUSAND THREE HUNDRED SIXTY-TWO AND NO/100 DOLLARS (\$115,362.00) plus interest through October 31, 2006 in the amount of TWENTY-NINE THOUSAND FIFTY-SIX DOLLARS AND 85/100 (\$29,056.85), for a total principal balance of ONE MILLION SEVEN-HUNDRED EIGHTY-THREE THOUSAND FIVE-HUNDRED FORTY-EIGHT AND 85/100 DOLLARS (\$1,783,548.85) continuing interest, attorney's fees and costs and the amount is now due and owing to lien claimant.

5. That the first labor and materials furnished by lien claimant to and incorporated in the project was on or about April 21, 2006 and that the last labor and materials furnished by lien claimant and incorporated in the project was within the past ninety days; that there are no other just credits or off-sets to be deducted and the total amount due and owing to lien claimant as of April 19, 2007, is the sum of ONE MILLION NINE-HUNDRED THIRTY-NINE THOUSAND THREE HUNDRED FORTY-SEVEN AND 51/100 DOLLARS (\$1,939,347.51), plus continuing interest, attorney's fees and costs.

6. That a demand for payment has been made by lien claimant and that no part or portion of the amount due and owing has been paid; that there are no further off-sets to the claim and that as of April 19, 2007, the sum of ONE MILLION NINE-HUNDRED THIRTY-NINE THOUSAND THREE HUNDRED FORTY-SEVEN AND 51/100 DOLLARS (\$1,939,347.51), plus continuing interest, attorney's fees and costs is now due and owing to lien claimant on account of the work, labor, materials and/or services furnished as above specified and that the undersigned claims a lien upon the real property particularly described herein for said sum, together with continuing interest and attorney's fees as provided by law.

7. That the real property sought to be charged with this Claim of Lien upon which the above described work of improvement has been made is located in Washoe County of State of Nevada, and is particularly described as:

Commencing at a point formed by the intersection of the East line of Flint Street (if protracted Northerly) with the North line of Court Street in the City of Reno; running thence Easterly, along the North line of Court Street, a distance of 100 feet, thence at a right angle Northerly, a distance of 140 feet to the true point of

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

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

APN: 011-112-03

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

APN: 011-112-06

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

APN: 011-112-07

Commencing on the North line of Court Street, at the intersection of the North line of Court Street with the West line of Hill Street, if said Hill Street was protracted Northerly to said point of inter-section according to the official plat of Lake's South Addition to Reno, Washoe County, State of Nevada; thence running westerly and along the North line of said Court Street 100 feet; thence Northerly and parallel with the West line of said Hill Street, if protracted, 276 feet more or less to the South Bank of the Truckee River; thence Easterly and along the south

bank of the Truckee River to the West line of Hill Street, protracted, 324 feet more or less to the North line of Court Street and the place of beginning, being the same lands conveyed by Antonio Robori and Carlotta Robori, his wife, to Charles Snyder, May 27, 1907, and by Antonio Robori to Charles Snyder, January 12, 1905, by deeds duly recorded in Book 32 of Deeds, page 405, and book 26 of deeds, page 296, Records of said Washoe County.


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

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

APN: 011-112-12

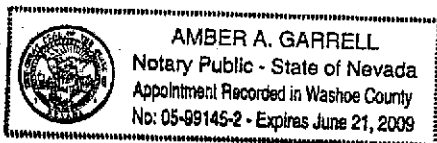
8. That the four parcels are to be developed as the project and it is appropriate to equally apportion the amount due between the four parcels identified herein.


DATED: This 3<sup>rd</sup> day of May, 2007.

By   
Mark Steppan, AIA, CSI, NCARB

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF WASHOE        )

This instrument was acknowledged before me on May 3<sup>rd</sup>, 2007 by Mark Steppan, AIA, CSI, NCARB.



  
NOTARY PUBLIC

**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, RESPONSE TO APPLICATION FOR RELEASE OF MECHANICS LIEN filed in case number: CV07-00341

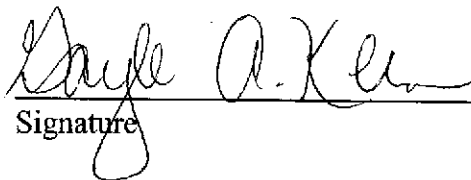
☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

Dated this 3<sup>rd</sup> day of May, 2007.



Signature

Gayle A. Kern

Print Name

Attorney for

Mark B. Steppan, Respondent

CV07-00341  
JOHN ILIESCU ETAL VS. MARK 60 Pages  
District Court 06/29/2007 01:08 PM  
Washoe County 4185  
TWHTT

ORIGINAL

4185

FILED  
2007 JUN 29 PM 3:59  
RONALD A. ALBERTIN JR.  
BY DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT

STATE OF NEVADA, COUNTY OF WASHOE

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

JOHN ILIESCU, ET AL,

Plaintiffs,

vs.

MARK STEPPAN,

Case No. CV07-00341  
Dept. 6

Defendant.

Pages 1 to 60, inclusive.

TRANSCRIPT OF PROCEEDINGS  
MOTION FOR RELEASE OF MECHANIC'S LIEN  
Thursday, May 3, 2007

A P P E A R A N C E S:

FOR THE PLAINTIFF:

JERRY SNYDER, ESQUIRE  
Hale, Lane, Et Al  
5441 Kietzke Lane, 2nd Floor  
Reno, Nevada 89511

FOR THE DEFENDANT:

GAYLE KERN, ESQUIRE  
Kern & Associates  
5421 Kietzke Lane, Ste. 200  
Reno, NV 89511

REPORTED BY:

Christina Herbert, CCR #641  
Molezzo Reporters, 322.3334

1 RENO, NEVADA -- THURSDAY, MAY 3, 2007, 1:31 P.M.

2 -o0o-

3 THE COURT: This proceeding is in Case CV07-00341,  
4 John Iliescu versus Steppan. This is the time set for the  
5 application to release mechanic's lien.

6 Mr. Snyder, you may proceed.

7 MR. SNYDER: Thank you, your Honor. This is an  
8 application to release a mechanic's lien on certain property  
9 in downtown Reno that was sold by my client pursuant to a  
10 purchase agreement dated in, I think, August of 2005 to a  
11 company called Consolidated Pacific.

12 THE COURT: And that transaction has not yet  
13 closed?

14 MR. SNYDER: That's correct. While that  
15 transaction was pending, Consolidated Pacific, we believe,  
16 somehow assigned their interest in it to a company called  
17 B.S.C. B.S.C., in turn, retained an architecture firm of  
18 whom, I believe, Mark Steppan is the Nevada licensee, to  
19 perform architectural services and obtain entitlements to  
20 build a 40-story condominium tower.

21 As part of the purchase and sale agreement between  
22 Dr. Iliescu and Consolidated Pacific, Dr. Iliescu was to be  
23 provided with a condominium in this tower. So it is the case  
24 that he had knowledge that something would be built, that a



1 condo tower would be built.

2 The architects went on and did some amount of work,  
3 obtained entitlements, did some design work. I don't believe  
4 the design work is complete. B.S.C., which retained the  
5 architects, has not yet paid the architects and, as a result,  
6 they filed a lien and recorded a lien against the Island  
7 Avenue property at issue here.

8 Just some of the relevant dates are the purchase  
9 and sale agreement is dated July 2005. According to the  
10 architect's lien statement, their first delivery of work was  
11 April 21, 2006. The first Planning Commission meeting  
12 regarding this was, I believe, in October of 2006. The city  
13 council meeting at which the zoning change was finally  
14 approved was November 15th, 2006 and the lien was filed on  
15 November 7th, 2006.

16 The lien is invalid for two reasons. First of all,  
17 under NRS 108.245 plaintiffs -- or the lien claimant was  
18 obliged to provide a pre-lien notice to the owner notifying  
19 him they were out there and doing work and that the owner  
20 ought to take whatever steps necessary to protect himself  
21 against any lien such as filing a notice of  
22 non-responsibility.

23 THE COURT: Now, that's a notice of right to lien  
24 as opposed to notice of intent. Right?

1 MR. SNYDER: Exactly. The second reason is because  
2 they failed to file the 15-day notice of intent to lien, as  
3 is required by NRS 108.226, subparagraph six. Claimants  
4 assert in their response to the application for release of  
5 mechanic's lien, which I did just receive a copy of --

6 THE COURT: I received it just a moment ago.

7 MR. SNYDER: I don't have any unfair advantage over  
8 you.

9 THE COURT: You don't.

10 MR. SNYDER: They assert under Fondren BKL Complex,  
11 which is a 1992 case, they weren't required to file the  
12 pre-lien notice or notice of right to lien because the owner  
13 had actual knowledge of construction. And if we look at the  
14 Fondren case it's really quite instructive. In that case the  
15 court says, "If the owners fails to file --

16 THE COURT: What's the citation?

17 MR. SNYDER: That is 106 Nevada 705.

18 THE COURT: Thank you.

19 BY MR. SNYDER:

20 Q "If the owner fails to file a notice of  
21 non-responsibility within the time provided in the law after  
22 knowledge of the construction, the statute provides that  
23 construction is at the instance of the owner."

24 Now, the whole question here is whether Dr. Iliescu

1 had knowledge of construction, knowledge of the lien  
2 claimant's work that was sufficient to enable him to file a  
3 notice of non-responsibility. In order to record a notice of  
4 non-responsibility -- and, incidentally, that case was 1992  
5 in -- or in 2005, rather, the notice of non-responsibility  
6 statute 108.234 was amended to add the words "to be effective  
7 and valid" to the following paragraph.

8 Subparagraph three of 108.234 now says "To be  
9 effective and valid, each notice of non-responsibility  
10 recorded pursuant to this section must identify A, the names  
11 and addresses of each disinterested owner" -- in this case  
12 Dr. Iliescu -- "and the person who is causing the work or  
13 improvement to be constructed, altered or repaired."

14 THE COURT: I'm sorry. Which subsection was that?

15 MR. SNYDER: 3-A.

16 THE COURT: I see that.

17 MR. SNYDER: The notice of non-responsibility under  
18 Subsection 4, in order to be effective and valid, must  
19 further be served upon the prime contractor for the work or  
20 improvement within ten days after the date upon which the  
21 contract is formed with the prime contractor.

22 Here there is no way on earth Dr. Iliescu could  
23 have recorded a valid notice of non-responsibility because he  
24 did not know the identity of the architects or the prime --

1 the architects being the prime contractor in this case -- or  
2 the entity who was contracting with the architects, in other  
3 words, Consolidated Pacific's assignee B.S.C. Development.  
4 So he could not have filed a notice of non-responsibility.  
5 Therefore, the fact that he had some notice that work was  
6 being done, some notice that there was an architect doing  
7 this work -- I believe he actually went to the city council  
8 meetings in October.

9 THE COURT: Right. I was looking at his  
10 declaration. He obviously knew that this condo project was  
11 underway. By the way, was this an existing building or a  
12 brand-new building?

13 MR. SNYDER: It's to be a brand-new building.

14 THE COURT: Okay. And so I assume if he went to  
15 the meetings, he knows there's a construction project. That  
16 doesn't necessarily mean that he knows that A architectural  
17 firm is engaged and rendering services.

18 MR. SNYDER: Exactly.

19 THE COURT: He even knows there must be an  
20 architect, but that doesn't mean he knows this architect and  
21 what services they're performing.

22 MR. SNYDER: I don't know his level of familiarity  
23 with the entitlement process. I don't think --

24 THE COURT: As he said in his declaration, he was

1 not aware he had met Mr. Steppan and was not aware that he  
2 was performing any work relative to the property.

3 MR. SNYDER: Right. Did he suspect there was  
4 probably some people performing work to get entitlements?  
5 Yes. Sure. I mean, that's not rocket science. Did he know  
6 it would be an architect -- you know, did he know the  
7 identity of them or even the exact, you know, disciplines  
8 that would be involved? I don't think so, if, you know --  
9 Dr. Iliescu is here and I'm sure he would be happy to testify  
10 if you had questions for him.

11 But the ultimate question is whether he could have  
12 recorded a valid notice of non-responsibility. Keep in mind  
13 that the -- even if his attendance at those meetings provided  
14 him further notice of who the architects were, that wasn't  
15 until October. The architect began work in April of 2006.  
16 So for most of the time the architect was working, he had no  
17 way of knowing, no way of putting the architect on notice  
18 that the owner is not going to be responsible for this lien.  
19 So I think under Fondren he couldn't have recorded a valid  
20 notice of non-responsibility based on the knowledge he had.

21 The other argument that Mr. Steppan makes in his  
22 brief is that the proceeding is premature and some discovery  
23 should take place. We filed this motion in April of this  
24 year and this is the first we've heard -- that's not exactly

1 true. Ms. Kern told me yesterday that she would want to take  
2 some discovery before final determination. I think -- I  
3 think that's a little bit too late. I think if discovery was  
4 required, I would have liked to have known about it much  
5 farther back. In fairness to her, we did think the deal was  
6 going to close prior to this but, still, you know, this  
7 motion has been pending.

8 THE COURT: Is the closing imminent? Has there  
9 been any discussion with the buyer about --

10 MR. SNYDER: The check's in the mail.

11 THE COURT: To relieve the owner of responsibility?

12 MR. SNYDER: No. I mean, the closing is, you know,  
13 hopefully imminent but I don't know if anyone can really put  
14 much store in that. I think everyone hopes the closing is  
15 imminent but --

16 THE COURT: If for whatever reason the purchaser  
17 has not been able to work out an arrangement with the owner  
18 and the architect --

19 MR. SNYDER: The purchaser -- the purchaser filed  
20 for bankruptcy shortly after the closing was to occur, and  
21 it's our understanding the purchaser is attempting to work  
22 something out on that so that the deal can close.

23 THE COURT: When you say "purchaser," you're  
24 talking about the assignee or the actual --

1 MR. SNYDER: The assignee.

2 THE COURT: The assignee is in bankruptcy?

3 MR. SNYDER: I believe it's not -- I don't know  
4 this as a point of fact, whether it's B.S.C. or a further  
5 assignee. I think they may have transferred it to another  
6 entity. One of the entities is in bankruptcy that has held  
7 that portion of it. I don't think that affects this motion.  
8 I don't have a legal citation other than I talked to our  
9 bankruptcy guy and he said it ought not to. I don't think  
10 the automatic stay provisions would affect this. That's our  
11 position summed up as thoroughly but as briefly as I can. Do  
12 you have any other questions?

13 THE COURT: No, I don't think so. Ms. Kern?

14 MS. KERN: Good afternoon, your Honor. The  
15 teaching of Fondren is we are not going to allow owners of  
16 real property to put their hands over their eyes, put their  
17 hands over their ears and say I don't know what's going on,  
18 and that's exactly what the applicant is doing here.

19 In fact, the applicant, not only had complete and  
20 absolute knowledge of what is going on, but in the land  
21 purchase agreement he actually negotiated what would happen  
22 if a lien was recorded. When a purchaser of property is  
23 coming to the owner of the property and the escrow isn't  
24 going to close -- that is, prior to escrow there are lots of

1 things that are going to happen -- in this case there was a  
2 tremendous amount of work that was going to be done and it  
3 was contemplated by the parties it would be done prior to the  
4 close of escrow. Specifically they were going to obtain all  
5 governmental permits, all zoning changes, everything so that  
6 the project, that is, the condominium project, which the  
7 parties were very specific about what it was down to the  
8 number of parking spaces that Dr. Iliescu would be afforded  
9 and allowed to have within this project. They were very  
10 specific about what it was. It was -- it's a massive project  
11 and they knew that it was going to take some time to get all  
12 the permits done and do all of the work, not --

13 THE COURT: Is that why the escrow was so  
14 lengthy -- the closing. It still hasn't closed after what,  
15 two years?

16 MS. KERN: Correct. Because they were going  
17 through this entire process and, in fact, there have been  
18 some negotiated extensions of time within which to close.  
19 The most recent one was addendum number three to the  
20 agreement which provided that the closing would be on or  
21 before April 25th.

22 What happened on April 25th is that the entity that  
23 is now the holder of the rights under that land purchase  
24 agreement, B.S.C. Investments, LLC, filed for protection



1 under the bankruptcy code and they did that for a very  
2 specific reason. Because under eleven U.S.C. Section 108 the  
3 debtor in bankruptcy gets 60 days more to perform an  
4 unexpired contract.

5           So they weren't able to reach an agreement,  
6 apparently, for another extension and execute an addendum,  
7 but they most certainly were able to get 60 days by filing  
8 bankruptcy, and that's what they did. So right now Dr.  
9 Iliescu -- the applicant does not have -- they can't do  
10 anything with this property. They can't sell it, they can't  
11 lease it. They cannot even enter into a contract for the  
12 sale because their land purchase agreement prohibits them  
13 from doing that.

14           THE COURT: They're still -- the trust is still the  
15 owner of the land?

16           MS. KERN: The owner, but cannot enter into any  
17 agreements to sell, agreements to lease. Can't do anything  
18 with it. The purchaser still has all of those rights and is  
19 going to for at least another 60 days. I've practiced in  
20 bankruptcy court a lot of time and sometimes that 60 days  
21 becomes a little bit longer with some different things a  
22 debtor can do. I haven't been on the debtor's side, but I've  
23 certainly been on the creditor's side enough where I've been  
24 frustrated because something else happens and I have to wait

1 a little longer for us to exercise our rights. But at the  
2 very minimum they've got 60 days. So under that alone I  
3 believe this hearing is premature and, in fact --

4 THE COURT: How does that affect this hearing? It  
5 may -- obviously, it has delayed the closing of the sales  
6 transaction but it doesn't change the fact that the plaintiff  
7 in this case is the owner of the property.

8 MS. KERN: It does, because there was a complete  
9 agreement that upon the close of escrow this lien would be  
10 satisfied in full and paid. It would completely moot the  
11 entire matter and, in fact --

12 THE COURT: That's probably true too but it didn't  
13 happen because the buyer went into bankruptcy.

14 MS. KERN: But it's now frozen. They still get the  
15 opportunity to do so.

16 THE COURT: Maybe they do. The only thing here we  
17 are here today to decide is whether or not the lien should be  
18 extinguished because of noncompliance with the statute.

19 MS. KERN: And I would simply assert, your Honor,  
20 that it is better for judicial resources to continue it to  
21 see if the matter closes and then it's all paid in full. He  
22 can't do anything with the property right now anyway. That  
23 lien is not affecting anything.

24 THE COURT: Didn't you just tell me he would get

1 the 60 days and your experience teaches he'll get more time  
2 and we don't know what's going to happen?

3 MS. KERN: But he's already negotiated for that and  
4 has to live with it. They're -- in the agreement there was  
5 already a freeze on anything that he could do with this  
6 property.

7 THE COURT: Well, I guess I see your point. It's  
8 probably true as a practical matter whether your client has a  
9 lien or doesn't have a lien, nothing will happen with that  
10 property as long as the United States bankruptcy proceeding  
11 is pending. Right?

12 MS. KERN: Yes, I believe so.

13 THE COURT: But that doesn't mean that this court  
14 just ignores the lien process and the statutes that pertain  
15 to the liens. I don't think as a practical matter it's going  
16 to make any difference at all until something happens in  
17 bankruptcy court.

18 But if an owner moves to extinguish the lien, then  
19 this court has to consider was the lien properly noticed, was  
20 the right to lien properly noticed, was the intent to lien  
21 properly noticed and was the lien perfected.

22 MS. KERN: I will get to the merits. Sometimes it  
23 seems as though we waste judicial resources in dealing with  
24 the issues --

1           THE COURT: I think it probably accomplishes  
2 nothing. If the lien disappears tomorrow, the plaintiff in  
3 this case can't do anything in terms of selling the property  
4 or --

5           MS. KERN: And there's also an argument that we  
6 could record a lien. The time hasn't run yet.

7           THE COURT: I thought about that too but that's not  
8 really performing either.

9           MS. KERN: Exactly.

10          THE COURT: Maybe you could start all over again, I  
11 don't know. Let's talk about the merits.

12          MS. KERN: On the merits -- and I understand that  
13 you did not -- nobody got a response in any amount of time to  
14 be able to prepare.

15          THE COURT: I did but it was 1:29.

16          MS. KERN: I understand, your Honor, and I do  
17 apologize. But we had been continuing this in the  
18 anticipation of a closing, and I misunderstood with respect  
19 to today's hearing. So it is -- it is my fault and we found  
20 out last Thursday that the bankruptcy had been filed. But I  
21 do -- if I could have you look at the attachment, Exhibit A.

22          THE COURT: Let me just ask you this: Do you agree  
23 or disagree that the statutory notice for right to lien and  
24 intent of lien was not given to the owner and, therefore,

1 you're relying on actual notice, or do you believe that the  
2 statutory notices were given in this case.

3 MS. KERN: I agree that the notice required under  
4 108.245 was not provided, and I apologize. I'm old school.  
5 I still call the it "pre-lien notice" but, yes, that notice  
6 was --

7 THE COURT: What about the other notice, the notice  
8 of intent to lien? Do you believe that was --

9 MS. KERN: The 15-day notice, in my opinion, is not  
10 required under this circumstance. I do not believe this is a  
11 residential property that is the subject of that pre-lien  
12 notice. But, similarly, had that been a requirement, that  
13 defect has already been cured. A pre-lien notice was  
14 provided and a new lien recorded.

15 So that portion of it goes away, and in my  
16 discussions with Mr. Snyder we did agree that the real meat  
17 and the real issue -- because that can be corrected, that  
18 defect can be taken care of --

19 THE COURT: Right.

20 MS. KERN: But what can't be taken care of because  
21 the time has already passed is that pre-lien notice. And --

22 THE COURT: And that was not given?

23 MS. KERN: That was not given, no.

24 THE COURT: Okay.

1 MS. KERN: But it is my opinion that surely one of  
2 the amendments to 108.234 did not overrule Fondren. The  
3 Fondren principles are as valid today as they were in 1990  
4 when the Supreme Court issued that opinion. That is, that  
5 when an owner has notice, there is an affirmative burden  
6 placed upon that owner to record a notice of  
7 non-responsibility.

8 Now, Mr. Snyder would have you believe that, if  
9 nobody tells me who the architect is, I don't have any  
10 obligation or burden to satisfy the requirements of what goes  
11 into a notice of non-responsibility. That's ludicrous. That  
12 is absolutely ludicrous.

13 THE COURT: This relationship between the nature  
14 and extent of actual notice and the obligation to proceed  
15 with a notice of non-responsibility, as I said earlier, if I  
16 know that a building will be built on the property, I can  
17 certainly assume that there will be an architect, there will  
18 be a contractor, there will be subcontractors.

19 But that doesn't mean I know who the particular  
20 architect is, the scope of their undertaking or the financial  
21 risk involved in their contract. You need to know more than  
22 just generically a project must have an architect in order to  
23 prepare a notice of non-responsibility.

24 MS. KERN: And are you suggesting that an owner of

1 property therefore has no responsibility or obligation to  
2 make inquiry to determine the name, if that's one of the  
3 requirements? If I've got the burden --

4 THE COURT: I don't know. I haven't even read the  
5 case. I just heard about it 20 minutes ago.

6 MS. KERN: Okay.

7 THE COURT: But I assume it's kind of a continuum,  
8 you know. The more you know, the greater your responsibility  
9 is.

10 MS. KERN: But in this case we need to look at this  
11 agreement. This was a very sophisticated seller of property.  
12 This agreement took care of everything. They negotiated and  
13 decided to the extent that part of the purchase price was  
14 going to be the 3,500-square-foot penthouse that the  
15 architect designed, that part of --

16 THE COURT: Is there evidence you have today that  
17 the plaintiff knew who the architect was, or just that there  
18 would be an architect with these particular designs?

19 MS. KERN: We found out that escrow was not going  
20 to close -- and I'm taking great exception to the assertion  
21 that we should not be able to conduct discovery for the  
22 following reason: We found out that escrow was not going to  
23 close on April 25th. That was the date it was supposed to  
24 close and up until then we were all still being told, it's

1 there, it's going to close. We even got our release of lien  
2 over to the escrow company, everything was good, champagne  
3 was ready to go. On the 25th B.S.C. Investments, the holder  
4 of all rights under the purchase agreement, filed bankruptcy.  
5 And automatic stay went into effect.

6 Even though the same attorneys represent B.S.C.  
7 Investments and Dr. Iliescu, I no longer could go there to  
8 try to get discovery from B.S.C. as to what information they  
9 may have provided to Dr. Iliescu. I don't know. And I can't  
10 do any discovery.

11 THE COURT: You don't know if Dr. Iliescu or his  
12 wife or the trust knew that Mr. Steppan was the architect or  
13 what the terms of his agreement were?

14 MS. KERN: I know at some point they did. I mean,  
15 he was at the hearings. It was the architects that presented  
16 the project. I absolutely know that he had knowledge of who  
17 they were.

18 THE COURT: He says in his declaration "I've never  
19 met Mr. Steppan nor was I aware that he was performing any  
20 work relative to the project." What evidence is there  
21 otherwise?

22 MS. KERN: There is evidence that he admits to as  
23 having been at the council meetings in which the architects  
24 were identified, were there, were making the presentation.



1 And I most certainly want to be able to explore what  
2 information was received from B.S.C. They had the same  
3 attorneys. We were negotiating when we were doing the  
4 agreements as to how this would be paid with the same  
5 attorneys as Dr. Iliescu's attorneys. They were all  
6 represented by the same party -- by the same firm.

7           Once the bankruptcy was filed, Mr. Harris filed the  
8 bankruptcy on behalf of the debtor. And at that point in  
9 time I am prohibited by the stay until I go to the court to  
10 either get an application for a 2004 exam or some other  
11 method by which I would be entitled to examine the debtor in  
12 that bankruptcy. And I have been prohibited since the date  
13 that we found out that escrow was not going to close, which  
14 was a week ago.

15           THE COURT: Is this Mr. Steppan here?

16           MS. KERN: Yes.

17           THE COURT: Did he have conversations with Dr.  
18 Iliescu? Did he talk to him about the -- how the project was  
19 going? Did he review plans with him? Did they discuss  
20 compensation? Has he had any -- Dr. Iliescu said he's never  
21 even met him.

22           MS. KERN: There was an entire design team and  
23 there were other architects that at least had been introduced  
24 to Dr. Iliescu that are within Mr. Steppan's firm that were

1 introduced to Dr. Iliescu at or about the time of -- and I  
2 don't know whether it was the planning commission hearing or  
3 the city council hearing but yes, in fact, he met  
4 Mr. Friedman and was introduced to him at -- I believe it was  
5 after the city council hearing, is what I recall being  
6 told. Mr. Friedman is in Hawaii so my -- I mean, we literally  
7 found out.

8 THE COURT: Who is Mr. Friedman?

9 MS. KERN: Mr. Friedman is on the design team and a  
10 principal at Fisher, Friedman, which is the firm that Mr.  
11 Steppan is employed at. And it's very important, your Honor.  
12 And this agreement, for goodness sakes, they even mention  
13 architectural services. They talk about what will happen if  
14 a lien is recorded.

15 An owner of property has two alternatives. Number  
16 one, they can record a notice of non-responsibility. And I  
17 would argue it is just as large of a burden on the owner of a  
18 property to make sure they get that information. You can't  
19 point to 108.234 and say, well, I needed to know who the  
20 person was -- who the actual name of the person was but I  
21 didn't know it so I don't have to do a notice of  
22 non-responsibility. That's frivolous and that's not what  
23 Fondren says. Fondren says the burden shifts.

24 THE COURT: Isn't it frivolous to say the owner of

1 this property is one of the most sophisticated real property  
2 owners in Nevada, they have this extremely complex sales  
3 agreement that even delves into the architectural and design  
4 process for this building but we don't have to serve them a  
5 notice of right to lien?

6 MS. KERN: That's exactly what Fondren says.  
7 That's exactly it, that there is no pre-lien requirement when  
8 the owner has knowledge. That's exactly what the case says.

9 THE COURT: What do -- I guess -- shortly I will  
10 read this case but what does it say they have to have notice  
11 of? Any construction?

12 MS. KERN: That some improvement is going to be  
13 done on the property.

14 THE COURT: Any improvement is going to be done?  
15 If you have any building in the world which, by definition,  
16 requires an architect, then that -- that eliminates any  
17 notice of lien or the -- I mean, the notice of lien doesn't  
18 just tell the owner that the property may be encumbered. It  
19 tells the owner that the extent of the obligation, the amount  
20 of the obligation. All that just disappears if the owner  
21 happens to know there's going to be a building built?

22 MS. KERN: Well, first of all, you don't even have  
23 to reach that issue, because in the agreement it specifically  
24 defines what the project is and it specifically defines that

1 the architect will be retained before the close of escrow and  
2 will perform services.

3 THE COURT: I'll take your word for it. If the  
4 development process was going to occur before the close of  
5 escrow, then I would assume the agreement says all those  
6 things. But is that information sufficient to relieve the  
7 respondent in this case from having to give the lien notice?

8 MS. KERN: Absolutely.

9 THE COURT: Well, let me take a look at the case.  
10 Are there any of these other materials that I need to look  
11 at? I assume these are provisions of the contract that go  
12 into detail about the design of the project and so on.

13 MS. KERN: The large exhibit is Exhibit A, which is  
14 the agreement itself. That's what was provided to me  
15 yesterday with respect to what the agreement is.

16 THE COURT: Are there some parts of that you'd like  
17 me to take a look at?

18 MS. KERN: Yes, I've specifically referenced them  
19 in the response. I would direct your attention to paragraphs  
20 31, 39-E.

21 THE COURT: Hold on.

22 MS. KERN: I'm sorry. Page 3 of the response, they  
23 are identified.

24 THE COURT: Thirty-one, access to property. How

1 does that --

2 MS. KERN: This goes to my offer of fact that I  
3 gave you that this property is completely tied up. There is  
4 nothing that can be done with any other party other than the  
5 purchaser with respect to any kind of a contract or a lease  
6 or anything that can be done.

7 It also provides evidence that, in fact, the seller  
8 was aware that there was going to be professionals that would  
9 be going onto the property, and the seller decided to  
10 negotiate that, if that occurred and there were any  
11 consequences as a result of those professionals going onto  
12 the property, the seller would look to the buyer for  
13 indemnification. He deliberately decided and chose --

14 THE COURT: You know that a project is going to be  
15 built and the buyer will be in charge of the project, and so  
16 the buyer agrees to indemnify the seller from any risk of the  
17 project.

18 MS. KERN: But that goes to the deliberate  
19 determination, I'm not going to protect myself from liens  
20 with a notice of non-responsibility. I'm going to allow the  
21 buyer to indemnify me from those possibilities. Keep in  
22 mind, if the seller wishes to have the information with  
23 respect to any professionals that are going to go on --

24 THE COURT: Wait a minute. Let's go back to what

1 you just said. The buyer doesn't -- you said the seller here  
2 chooses to rely on indemnification from the buyer instead of  
3 a notice of responsibility.

4 MS. KERN: Non-responsibility.

5 THE COURT: Non-responsibility. Indemnification  
6 from the buyer doesn't really have any relationship to  
7 non-responsibility.

8 The whole idea of the lien process vis-a-vis the  
9 owner is it gives the lienholder the right to encumber the  
10 owner's property for an obligation that the buyer entered  
11 into. What I'm saying is there's no -- if the buyer could  
12 have performed the obligation, there's no occasion for the  
13 lien.

14 MS. KERN: That's not true.

15 THE COURT: No rational seller is going to exchange  
16 indemnity. They're always going to want indemnification by  
17 the buyer in virtually every contract but that doesn't  
18 provide them any protection against the lien.

19 MS. KERN: I disagree. That's --

20 THE COURT: What protection is it? They've got it  
21 and so what?

22 MS. KERN: Well, they also have the statutory  
23 protection of notice of non-responsibility, but if they  
24 choose not to do it --

1           THE COURT: What I'm saying is paragraph 31 is not  
2 an intent not to have -- not to proceed with the notice of  
3 non-responsibility. It doesn't have any relationship to it.

4           MS. KERN: Well, I disagree with your Honor. I  
5 think that --

6           THE COURT: What's the relationship?

7           MS. KERN: I think that the relationship is that,  
8 number one, it demonstrates knowledge by the seller that  
9 professionals are going to be going onto the property as the  
10 sole impetus from the buyer --

11          THE COURT: That's true.

12          MS. KERN: It's the buyer that's picking them, so  
13 if you want to know who the buyer is picking, it would have  
14 been really easy. Ask them.

15                It also demonstrates that there is knowledge that  
16 work may or may not be performed and we're going -- and it  
17 also specifically says, "The buyer shall hold seller harmless  
18 from any lien." That means that they know that a lien might  
19 be recorded.

20          THE COURT: Well, sure, that's true. It's true  
21 that that paragraph says there will be people going on the  
22 property, people selected by the buyer, people who are  
23 professionals, that there's a risk of a lien, they  
24 acknowledge that by saying that risk is going to be borne by

1 the buyer, okay. What is the --

2 MS. KERN: And that's all important information  
3 under Fondren with respect to shifting the burden of  
4 responsibility to the seller.

5 THE COURT: Okay. What's the next paragraph?

6 MS. KERN: Once again, 39-A is simply a provision  
7 that indicates that the seller cannot solicit or accept any  
8 other offers during the terms of the agreement. Once again,  
9 it's that notion that this property is completely tied up and  
10 held by the purchaser at the present time.

11 THE COURT: Okay.

12 MS. KERN: There is a provision at F -- which is on  
13 page -- at the bottom of page 14, I'm sorry 39-F, which  
14 specifically identifies and provides that the offer is  
15 conditioned upon the buyer provide -- obtaining variance  
16 special use permits, tentative map, zone change and land use  
17 designations, and they even typed in "other," and it's  
18 "architectural and design review and approval."

19 THE COURT: Okay.

20 MS. KERN: 39-H. Once again, going to the  
21 knowledge of this seller as to what this property was going  
22 to be developed as. It was specifically negotiated that a  
23 portion of the purchase price would be the penthouse of the  
24 condominium project and there is a specific amount identified



1 for the penthouse credit.

2 THE COURT: Your argument is, if you know there's  
3 going to be a penthouse, you know there's going to be an  
4 architect to design the penthouse?

5 MS. KERN: Not only is the architect specifically  
6 named but you know --

7 THE COURT: Where was the architect specifically  
8 named?

9 MS. KERN: I just said in subpart F. They even  
10 typed in "other, architectural."

11 THE COURT: I thought you meant the name of the  
12 architect.

13 MS. KERN: No. The fact that architectural and  
14 design review. I have absolutely no doubt that on this date  
15 the name Mark Steppan or Fisher, Friedman or any of the other  
16 design professionals would not have been known by either the  
17 buyer or the seller.

18 THE COURT: When was the agreement between Mr.  
19 Steppan's company and the buyer?

20 MS. KERN: October 21st, 2006.

21 THE COURT: Anything else in the agreement?

22 MS. KERN: Yes. Subpart I provides, once again,  
23 that the seller is prohibited from entering into and even  
24 warrants that there are no leases or other contractual use

1 agreements, that the property will solely be -- the right to  
2 develop is given solely to the purchaser.

3 THE COURT: Okay.

4 MS. KERN: In subpart L, once again, there was a  
5 negotiation for parking spaces demonstrating an understanding  
6 and knowledge of what this project was going to be, how it  
7 was going to look. There was going to be parking, condos,  
8 retail, all kinds of things and this seller knew about it and  
9 negotiated parking spaces as part of the agreement.

10 THE COURT: Okay.

11 MS. KERN: There were then a series of addendums  
12 that were executed by the parties and I --

13 MR. SNYDER: You know what, I have a much cleaner  
14 copy of the contract.

15 MS. KERN: This is what was sent to me.

16 MR. SNYDER: Yeah. I took out all the duplicate  
17 copies, if you want to use this. Your Honor, may I approach?

18 THE COURT: Sure. Do you have a copy of those too,  
19 Ms. Kern?

20 MS. KERN: I think it's included in this. I think  
21 I had a lot of duplicate pages, as I understand.

22 THE COURT: So where do we go now? Are there any  
23 other provisions in the initial agreement you wanted me to  
24 look at? By the way, does the agreement somewhere early on

1 discuss in general terms the nature of the project that's  
2 going to be built?

3 MS. KERN: It's in one of the addendums.

4 THE COURT: Okay. So where do we go now?

5 MS. KERN: Okay. Addendum -- and let me -- in my  
6 copy the addendums were not in order, so let me go to --

7 THE COURT: Okay. We have reference to the  
8 penthouse again in addendum one.

9 MS. KERN: Yes, in H. Now they're getting even  
10 more specific identifying both the size of the penthouse that  
11 Mr. -- excuse me -- the seller of the property will receive  
12 is 3,750 square feet of living area in the new condominium  
13 project. There's also going to be four-car -- four parking  
14 spaces assigned to that particular property with the location  
15 being chosen by the seller. There is also a provision for  
16 the next page, page 2, subpart M.

17 THE COURT: Excuse me. Where does the project  
18 stand now in terms of its development?

19 MS. KERN: It has been fully approved.

20 THE COURT: Is it ready for occupancy?

21 MS. KERN: No, no. They haven't built it.

22 THE COURT: Where is it?

23 MS. KERN: They have to buy the land. It's on  
24 Court Street.

1 THE COURT: So it has not -- construction has not  
2 begun?

3 MS. KERN: No. And I don't believe it can -- I  
4 don't think construction was allowed to be done before escrow  
5 closed. I think escrow has to close before they can commence  
6 construction.

7 THE COURT: So they went through the permitting  
8 process, the design process and that's pretty much where we  
9 are now.

10 MS. KERN: And they also received entitlements  
11 which attached to the property as provided by the design  
12 plans.

13 THE COURT: If I can go back to for a minute to the  
14 provision we discussed earlier, have the variances and  
15 special use permits been obtained, if they were necessary, do  
16 you know?

17 MS. KERN: We believe that they have. We believe  
18 it's poised to proceed to go to the next step.

19 THE COURT: Were there --

20 MS. KERN: I don't have those in front of me so I  
21 don't know.

22 THE COURT: Okay.

23 MR. SNYDER: It's my understanding that they are.  
24 Someone else handled that, Gary Duhan handled it.

1 THE COURT: One of the --

2 MR. SNYDER: Your Honor, the broker involved, Mr.

3 Johnson, is here if you'd like -- if you have any questions.

4 THE COURT: Going back to what Ms. Kern quoted was

5 the typed-in portion --

6 MS. KERN: Of the architectural services.

7 THE COURT: -- of the architectural services, it's

8 subparagraph F on pages 14 and 15.

9 MS. KERN: Yes.

10 THE COURT: And it relates to variances and special

11 use permits, and it also says "architectural design review

12 and approval." Has there been an architectural design,

13 review and approval process with the planning authorities or

14 with the city?

15 MS. KERN: Yes.

16 THE COURT: When was that?

17 MS. KERN: October and November of 2006.

18 THE COURT: Was Dr. Iliescu or a representative of

19 the trust present for those presentations?

20 MS. KERN: To our knowledge, yes.

21 THE COURT: Now, the lien was recorded

22 November 7th, right, of last year?

23 MS. KERN: Yes.

24 THE COURT: And you said the agreement was October

1 21st.

2 MS. KERN: April.

3 THE COURT: Oh, I'm sorry. I wrote down -- April

4 21st?

5 MS. KERN: Yes.

6 THE COURT: So the firm had been working since

7 April of last year?

8 MS. KERN: Yes. And, as we understand it, this

9 agreement with the addendums and everything finally was done

10 between the purchaser and the seller sometime in October of

11 2005, although I'm going by the agreement.

12 THE COURT: You mean the purchase agreement was

13 finalized?

14 MS. KERN: Yes.

15 THE COURT: Well, is there evidence to the effect

16 that Dr. Iliescu, or some representative of the trust, was

17 present when Mr. Stepan or his group made architectural

18 presentations to the planning authorities about the design of

19 this building?

20 MS. KERN: I thought Dr. Iliescu in his declaration

21 said that he had been present --

22 THE COURT: Well, yes, he did. What he said was --

23 MS. KERN: Which is in conformance with what our

24 understanding was as well. "I attended two public meetings

1 at which B.S.C.'s design team did a presentation."

2 THE COURT: "However, I was not at any time  
3 introduced to any of the architects or engineers involved."

4 MS. KERN: And we believe that that is incorrect.  
5 I'm sure not intentionally incorrect but --

6 THE COURT: It seems to me on the one hand if you  
7 sell a piece of property of this nature, you know that the  
8 building is going to be built and it needs to be designed and  
9 it needs to be constructed and you know there's an extensive  
10 permitting process. That doesn't necessarily mean that you  
11 know either who is going to be performing each one of these  
12 components of the process or what the nature and size of the  
13 risk is going to be.

14 But if you, as an example, are sitting in a  
15 planning meeting and an architectural firm is making some  
16 sort of detailed presentation of the design to the planning  
17 authorities, I don't know what else you need to know, or at  
18 least need to know in order to have a duty to inquire an  
19 obligation to file your notice of non-responsibility. So  
20 that's --

21 MS. KERN: I agree.

22 THE COURT: They may not have had any personal  
23 dealings or even conversations with each other. But if  
24 you're the owner of the property you know it's being

1 developed, the planning agency is talking about your  
2 development, which is going to include your own residence in  
3 it, and there's an architect identified at the meeting who is  
4 the architect for the project, that may be enough to do it.  
5 I don't know. Are there any exhibits or is Mr. Steppan going  
6 to testify today on this subject?

7 MS. KERN: I don't think that it's necessary  
8 currently based upon -- I mean, I believe that we haven't  
9 reached that provision. I would like to continue to provide  
10 some additional information out of the agreement, if you  
11 don't mind --

12 THE COURT: Okay.

13 MS. KERN: -- and also argument. Because I think  
14 you just raised a very excellent observation that is exactly  
15 what the Fondren court was going to. What Mr. Snyder is  
16 arguing is that the notice of non-responsibility statute that  
17 existed at the time of Fondren did not require that you  
18 actually identify the name of the person that you're telling  
19 I'm not -- I'm not responsible for this property. At that  
20 time you didn't have to name the professional. You could  
21 just record I'm not responsible for any work done on this  
22 property.

23 Mr. Snyder is arguing that, because he was not  
24 specifically told, then he could not comply with his



1 obligation to record a notice of non-responsibility. But  
2 that is ridiculous. Because what Fondren says is the burden  
3 shifts to the seller, to the owner of the property, to record  
4 and prepare a notice of non-responsibility.

5 Incumbent upon that responsibility is to get the  
6 information necessary to comply with the statute. It doesn't  
7 matter what the statute says. It doesn't matter that it's  
8 changed. It would have been a very simple process, even had  
9 he not known, to simply make an inquiry so that he could  
10 comply.

11 THE COURT: You told me he didn't need to make an  
12 inquiry. He was there when this architectural firm presented  
13 this project to the Planning Commission.

14 MS. KERN: Exactly. But even if that obligation  
15 arose earlier, he still -- all he had to do is make an  
16 inquiry. If I have an obligation, that's like me stepping  
17 back and saying well, I have an obligation to record a  
18 mechanic's lien but someone didn't tell me his APN number or  
19 legal description so I don't have to do it. That's  
20 ridiculous. If there's a statutory obligation, the one --

21 THE COURT: It's not as ridiculous as saying I'm  
22 providing the services. They're going to be worth over \$1  
23 million. I know who the owner is but, gee, I guess I won't  
24 give him a notice of right to lien.

1 MS. KERN: But he was intimately -- they had --  
2 THE COURT: Your client's position is as ludicrous  
3 as his.  
4 MS. KERN: No, it's not, because they knew he knew  
5 about it. He didn't sell this property without knowledge of  
6 what was going on. They knew he was going to get a  
7 penthouse.  
8 THE COURT: Is there any evidence as to the reason  
9 why the respondent didn't serve a notice to file right to  
10 lien?  
11 MS. KERN: Because the way the project was provided  
12 and was going, everybody knew what was going and was a part  
13 of it. He showed up at the meetings when they presented it.  
14 THE COURT: Is it just that they didn't do it? Why  
15 would they not do it except inadvertently? Are you saying  
16 that somebody actually thought this through, read the case  
17 law and said the circumstantial evidence is so strong of Dr.  
18 Iliescu's knowledge that we don't need to do this?  
19 MS. KERN: No, of course not.  
20 THE COURT: Somebody just didn't do it.  
21 MS. KERN: Of course not. But there also was never  
22 any question that the seller of this property was not just  
23 selling the land and walking away. There was always an  
24 understanding the seller was going to be intimately involved

1 after the --

2 THE COURT: The seller, though, was - I just very  
3 briefly looked at this agreement. But, as I understand it,  
4 although you have this unconventional situation with the long  
5 escrow, the indemnification provisions, but the buyer is  
6 still, nevertheless, in charge of the development. There's  
7 some exceptions, the penthouse and so on, but this is not a  
8 situation where the seller is actively involved in the  
9 development.

10 MS. KERN: Correct. That is absolutely correct.

11 THE COURT: They knew it was a development, how it  
12 was going to happen, and they wouldn't let it go to the --  
13 they weren't in charge of the development process.

14 MS. KERN: You are correct. Now, once they got to  
15 the actual design of the penthouse, there was going to be --  
16 there was provisions in there that he specifically got to  
17 dictate and do certain things and tell them how he wanted  
18 certain things.

19 THE COURT: In some sense was Mr. Steppan the  
20 Iliescus' architect? Was he, in a sense, designing their own  
21 condominium or is that taking it too far?

22 MS. KERN: I would defer to --

23 THE COURT: Was he just building the shell and the  
24 Iliescus would get their own architect and so on for the

1 interior or not?

2 MS. KERN: No. I think there's an addendum that  
3 specifically provided that they were going to actually  
4 provide him plans, he'd get to comment on them and get back  
5 to them.

6 THE COURT: The buyer would?

7 MS. KERN: No. The Iliescus would be able to get  
8 the plans for the penthouse, comment on them and --

9 THE COURT: But the plans that the buyer would have  
10 had done by Mr. Steppan's firm or somebody?

11 MS. KERN: Yes.

12 THE COURT: Okay. What other provisions should we  
13 look at? We've got 39-H. What is Metzger Johnson Group?

14 MR. SNYDER: It's the brokerage.

15 MS. KERN: I think we're at addendum number one.  
16 We already talked about 39-H additional terms. 39-M  
17 specifically stated "Buyer agrees to a deed restriction  
18 through sale of said property to include the property shall  
19 be developed for a mixed use of office, retail and  
20 predominantly condominium. Said property to be developed as  
21 quickly as possible."

22 THE COURT: Okay.

23 MS. KERN: Once again, demonstrating that it was  
24 not some nebulous project. It was pretty specific what they

1 were going to the table to do. Addendum number three was  
2 apparently the last shot everybody had and it was quite a  
3 long one. They, once again, in 1.2 reiterated that the buyer  
4 would be required and has exercised reasonable diligence in  
5 obtaining governmental approvals.

6 Addendum three, as I understand it, was the  
7 extension; that is, they had come up to the time when the  
8 escrow would normally have closed and, therefore, they were  
9 needing to extend the time within which to perform because  
10 they weren't quite ready.

11 THE COURT: They increased the cash deposit in  
12 consideration --

13 MS. KERN: Yes. And I think they did some  
14 additional things. So this is the one that took us, I  
15 believe, up to April 25th of 2007.

16 Once again, in paragraph 5 they address paragraph  
17 31 and discuss the paragraph that you and I tussled with and  
18 discussed with respect to indemnification and the  
19 professionals that would be coming on, the requirement of the  
20 buyer to keep the property free and clear from all liens and  
21 to indemnify if they failed to.

22 There was a paragraph 7 which, once again,  
23 discussed and talked about any required design approvals. In  
24 paragraph 8 they amended 39-H which, once again, discussed

1 the fact that it would be a number of condominium penthouses  
2 and the seller would have the first right to select the unit  
3 that the seller wanted, once again, identifying -- although  
4 now it's 3,750-plus or minus. In the last addendum it was  
5 just 3,750, and also for the four parking places.

6 The next page, subpart one, is the reference that I  
7 gave you just a moment ago; and that is, when the project had  
8 progressed to a point where the architect is designing the  
9 preliminary floor plans for the penthouses, seller shall meet  
10 with the architect and participate in the selection and  
11 design of seller's penthouse unit.

12 THE COURT: We're not there yet in the development.  
13 Right?

14 MS. KERN: That is correct. But it was  
15 specifically contemplated that there would be specific  
16 interaction between the two parties in order to make sure  
17 that the penthouse was designed to the liking of the seller.

18 THE COURT: That's after the structure is built and  
19 the seller has selected the 3,750 space?

20 MS. KERN: No, I don't think so. Because at the  
21 time that the design process is in effect, that's when  
22 they're designing these different penthouses. So he actually  
23 would be there before -- it would be in the design process,  
24 not in the --

1 THE COURT: Yeah. It says it right here.

2 MS. KERN: Yes. Paragraph 9, which amended 39-I,  
3 included a subpart three which provided for now 51 parking  
4 places that would be able to be used with respect to the  
5 contiguous properties, once again, evidencing that there's a  
6 property that I believe is on Island. It's referenced  
7 somewhere, I believe, in the agreement as the Island  
8 Property.

9 There was a contemplation, I believe, in the  
10 agreement that the seller would be independently developing  
11 that as a restaurant, or something of that nature, because it  
12 would go hand in hand and tie with the project that was being  
13 developed by the buyer.

14 And there was an agreement that on down the road  
15 when that was developed there would be a sharing or an  
16 easement for purposes of parking spaces that could be  
17 utilized in this development that the seller would actually  
18 be doing on the property that was not being conveyed or sold  
19 to the buyers.

20 THE COURT: Okay. So 51 parking spaces  
21 contemplates use by the seller for another project he had?

22 MS. KERN: That is my understanding from reading  
23 the agreement.

24 THE COURT: Okay.

1 MS. KERN: And I misspoke. Addendum number three  
2 wasn't the one that took us to April of 2007. That was  
3 addendum four. I apologize for that.

4 THE COURT: Three was another extension.

5 MS. KERN: Yes. Addendum four was apparently  
6 prepared in September of 2006 and this is where the extension  
7 went to April 25th of 2007. Once again, an additional  
8 consideration was provided with, it looks like, some funds  
9 and there was an increase in the purchase price from 7.5 up  
10 to 7.8, 7.6 million and that got us to April 25th.

11 THE COURT: And that's all that was, just  
12 additional consideration and additional time. Right?

13 MS. KERN: That's what I understand.

14 THE COURT: Incorporated all the terms of the  
15 addendum, okay. Could we take -- does that conclude all the  
16 materials we need to look at?

17 MS. KERN: The only other thing is I briefly  
18 referenced it in my argument, and that is with respect to the  
19 arguments as to the 15-day, I don't believe that that is even  
20 applicable here. I mean, I think that's really to protect  
21 owners of single-family residences, not a project of this  
22 magnitude. This had commercial and retail, which clearly the  
23 15-day doesn't apply to at all.

24 But even if it did, that defect has been cured. A



1 15-day was, in fact, served on the sellers and another lien  
2 was recorded to correct those technical defects, if you so  
3 found.

4 THE COURT: Okay. I'd like to take a brief recess  
5 and I'll look at the Fondren case. There is another matter  
6 before the court at 3:00.

7 MR. SNYDER: Your Honor, I have a couple of points  
8 to make. I don't mind if it's after the recess.

9 THE COURT: I just want to take a recess and look.  
10 I wasn't going to rule. Let me ask: There must have been a  
11 human being or a group of human beings on behalf of the buyer  
12 in charge of this project. Do they have evidence to give as  
13 to whether or not the trust was aware of the architectural  
14 services?

15 MS. KERN: That's what we assume. We assumed that  
16 that occurred. That's the discovery that we are we're  
17 prevented and have been prevented since we found out escrow  
18 wasn't going to close from doing. We absolutely assumed. In  
19 fact --

20 THE COURT: Well, because of that entity's  
21 bankruptcy, you can't take that person's deposition on this  
22 subject?

23 MS. KERN: I couldn't between April 25th and today.  
24 I most certainly can. I need to do what's called an

1 application for 2004 exam.

2 THE COURT: Okay. So to permit that testimony?

3 MS. KERN: Yes. You don't have jurisdiction to let  
4 me do it. I can't bring him into this court but I can do it  
5 through the bankruptcy proceeding.

6 THE COURT: Okay. Let's take a brief recess.

7 (Recess taken.).

8 THE COURT: Ms. Kern, did you have anything else to  
9 add?

10 MS. KERN: Not at the present time.

11 THE COURT: Mr. Snyder?

12 MR. SNYDER: Thank you, your Honor. Just to  
13 follow-up on some of Ms. Kern's points in no particular  
14 order, this -- and I think you've hit on this -- this notion  
15 that the contract has an indemnity provision that provides in  
16 the case there's a lien filed the owner can look to the  
17 buyer, is really neither here nor there. It's not a  
18 substitute for the rights the owner has under the lien  
19 statute.

20 THE COURT: It's not. It has some slight  
21 significance because it does -- it does appear the parties  
22 anticipated a construction project, that there may be liens  
23 and it shifted the risk for those liens to the buyer. But,  
24 otherwise, I don't think it really has anything to do with

1 the lien process.

2 MR. SNYDER: I think I conceded that Dr. Iliescu  
3 knew that there would be a construction project here, that he  
4 knew the general nature of it, but that doesn't mean he had  
5 the information he needed to record a notice of  
6 non-responsibility.

7 THE COURT: Let me ask you this: It's not really  
8 in evidence today. But if Dr. Iliescu attended these  
9 planning process sessions and was present when this  
10 architectural firm presented renderings and design  
11 information to the planning authority, what else did he need  
12 to know? He knew who they were, he knew what the project  
13 was, he knew they had provided services.

14 MR. SNYDER: Right.

15 THE COURT: It seems to me it's irrational for him  
16 not to file a notice of non-responsibility as it was for the  
17 architect not to file a notice of lien right.

18 MR. SNYDER: Well, the timing here, I think, is  
19 crucial. Dr. Iliescu -- the original agreement was signed in  
20 July of 2005. Fisher, Friedman and Mr. Steppan began work in  
21 April of 2006.

22 The first planning commission meeting that the  
23 subject, you know, in which this was discussed was in October  
24 of 2004. At that time -- I'm sorry. October 4th, 2006. At

1 that time I submit to the Court -- and we haven't done  
2 thorough discovery of this -- but I suspect most of the  
3 architect's work was done at the time of the planning  
4 commission report. So the --

5 THE COURT: Well, that cuts both ways. By that  
6 meeting, if he attended the meeting he, not only knows who  
7 the architect is, but he knows they've done a lot of work and  
8 incurred substantial expenses.

9 MR. SNYDER: Right. And the architect didn't rely  
10 on any notice of non-responsibility or any -- they did that  
11 work knowing that they could not inform Dr. Iliescu that they  
12 were potential lien claimants. So they took that risk.

13 Also, I have the draft planning commission minutes  
14 here. These were printed off of the -- from the city council  
15 website. If I may approach. They were attached to the  
16 minutes of the city council meeting, and these are the  
17 minutes of the planning commission report.

18 Nowhere in these minutes is Mr. Steppan or Fisher,  
19 Friedman mentioned at all. I am informed by Mr. Johnson that  
20 someone from Fisher, Friedman appeared and spoke briefly at  
21 these but I'm not sure if he identified himself. It appears  
22 from these minutes, if you look at page 368, that the  
23 presentation was made primarily by Gary Duhan, who introduced  
24 Dave Snowgrove of Wood, Rogers.

1           We also have the planning commission report. So  
2 I'm clear, these minutes were attached to -- this is printed  
3 from the agenda. The planning commission report was printed  
4 from the agenda of an 11/15/2006 city council meeting.

5           THE COURT: This was an exhibit to that later city  
6 council meeting?

7           MR. SNYDER: Yes, that's correct. In this planning  
8 commission report.

9           THE COURT: By the time of the city council meeting  
10 the lien had already been filed?

11          MR. SNYDER: Filed, yes. At the planning  
12 commission report there's a single Power Point slide that has  
13 the name Fisher, Friedman, at least in my initial review.  
14 There could be more. But I only saw a single Power Point  
15 slide that has the name Fisher, Friedman in the entire  
16 report. They're not mentioned in the agenda or in the  
17 minutes.

18          And the point I'm trying to make is not that they  
19 weren't present, I think they were present, but the point is  
20 they were not a dominant presence. They were not up there  
21 advertising we're Fisher, Friedman, this is our product and  
22 address and any notice should be sent to here.

23          The manner in which Ms. Kern would have this court  
24 read Fondren is to have Fondren -- I believe what Ms. Kern

1 said was Fondren requires that the burden be shifted. If the  
2 owner has any notion that there might be a construction  
3 project, the burden is shifted to him to inquire. That's not  
4 what Fondren says.

5 What Fondren says is that where the owner has  
6 actual notice of construction, the constructive notice by the  
7 pre-lien statute or the notice of right to lien statute is  
8 not required. And so in order for Fondren to obviate the  
9 need for a pre-lien notice, the actual notice has to have at  
10 least the information that would be required under the  
11 pre-lien notice, under the constructive pre-lien notice.

12 What the pre-lien notice has to have is the  
13 identity of the lien claimant, a general description of the  
14 work, materials, equipment or services, the identity of the  
15 general contractor or subcontractor under whom the lien  
16 claimant is with contract.

17 None of that information was provided to Dr.  
18 Iliescu. He did not know the identity of the lien claimant  
19 until at the earliest October of 2006 after virtually all of  
20 the work had been done. So this notion that, because he had  
21 some idea that an architect somewhere would be creating some  
22 plans, some design work or a work improvement to this  
23 property, that he was under an obligation to go dig out that  
24 information is simply untrue. That's reading Fondren so

1 broadly as to vitiate the specific requirements of NRS  
2 108.245, which explicitly says, if you don't file your  
3 pre-lien notice, you don't have a lien.

4           The -- the thing the Court needs to keep in mind  
5 here is the differing purposes of the notice of  
6 non-responsibility -- not the differing purposes but the  
7 manner in which the notice of non-responsibility and the  
8 pre-lien notice and the notice of intent to lien, notice of  
9 right to lien fit together. The purpose of the notice of  
10 right to lien is to let the owner, who might have to pay for  
11 work he never wanted done, is to let the owner know that some  
12 entity, some architect, some subcontractor is out here doing  
13 the work.

14           THE COURT: And that notice, by definition, doesn't  
15 include the amount of lien because presumably --

16           MR. SNYDER: It's at the outset.

17           THE COURT: -- the lienholder doesn't know that  
18 yet.

19           MR. SNYDER: Exactly.

20           THE COURT: And so the rationale of the Fondren  
21 case is that the actual knowledge of the owner substitutes  
22 for the knowledge that the owner would have acquired from the  
23 notice of lien.

24           MR. SNYDER: Exactly. Under Fondren, if the owner

1 has actual knowledge and he can go out and protect himself in  
2 the ways he would have if he had had constructive knowledge,  
3 in this case --

4 THE COURT: To put it simply, the person providing  
5 the service doesn't have to tell the owner what the owner  
6 already knows.

7 MR. SNYDER: Exactly. The notice of  
8 non-responsibility is really something that the owner does to  
9 protect himself but also to put the subcontractor, the lien  
10 claimant on notice that, you know, you can do this work if  
11 you want but I'm not going to be responsible.

12 And that, in turn, can allow the lien claimant the  
13 right to tell the person they're contracting with, okay, if  
14 we're going to do this work, we don't have lien rights, we  
15 need a bond to put up.

16 None of that can happen because Dr. Iliescu, the  
17 owner, was not informed of what was going to happen with his  
18 property of the identity of the lien claimant, of who he  
19 should tell, look, I'm not going to pay for this. He was not  
20 informed of any of that information, so he couldn't go to the  
21 lien claimant and say, look, you can do this work but, you  
22 know, don't look to me, don't look to this piece of property  
23 for payment. Look to your owner or if you -- look to your --  
24 the buyer, the person you're contracting with. Look to them



1 and secure yourself however you need to do perhaps under the  
2 bond allowance of 108.240(3). And here there was -- as I  
3 understand, there was -- that issue wasn't even broached.  
4 There was no bond posted, nothing happened.

5 In -- the reason for that -- or the reason that's  
6 important is because when Dr. Iliescu found out at the  
7 earliest -- if we're saying that as of the planning  
8 commission meeting he knew of the identity of these  
9 architects, well, at that point from the architect's  
10 perspective the water was under the bridge.

11 They couldn't -- even at that point they could not  
12 -- if they had informed Dr. Iliescu of the work being done, I  
13 suppose they would have a lien from that point forward and  
14 not -- or 31 days back from that point. But, in any event,  
15 all their work had been done and any additional notices,  
16 anything done after that point would have been sort of  
17 superfluous because the damage had been done. They had not  
18 given him the ability to protect himself prior to that time.

19 THE COURT: I don't follow what you're saying. If  
20 he knew what he needed to know to file a notice of  
21 responsibility, he could have done that, because in this case  
22 they didn't give him a notice of lien right so he would have  
23 had zero responsibility. He wouldn't even be here today.

24 MR. SNYDER: I'm not sure -- let's say at this

1 meeting he had been introduced to Mr. Steppan and Mr. Steppan  
2 had given him a card and said we're doing lots of work on  
3 this project, just if you have any questions or need to let  
4 us know anything, here's our address, that didn't happen.

5           Assuming something like that happened where there's  
6 no issue of whether he had notice, at that point, if he had  
7 filed a notice of non-responsibility, it would have already  
8 been late. Because under 108.234 the notice of  
9 non-responsibility filed by an optionor needs to be recorded  
10 within three days of the date the option is exercised. So at  
11 that point it was already too late to file a notice of  
12 non-responsibility.

13           THE COURT: He's not an optionor.

14           MR. SNYDER: This is 108.234, sub one. I think  
15 that this statute draws a distinction between lessor and  
16 optionor. And it says that the lessor has to file the notice  
17 of responsibility within three days of when the lease is  
18 executed.

19           THE COURT: He's not an optionor or a lessor. He's  
20 an owner, so what time does he file his notice of  
21 non-responsibility?

22           MR. SNYDER: Correct. Well, I think in that case  
23 he has --

24           THE COURT: You've got a situation where the

1 purported lienholder doesn't serve the notice of lien right,  
2 then the owner records the notice of non-responsibility. The  
3 lienholder is done. He has no rights. He loses.

4 MR. SNYDER: I agree.

5 THE COURT: And I think one thing, maybe, the three  
6 lawyers in the room agree on is the reason actual notice is  
7 an issue is because, if you have actual notice, legally that  
8 substitutes for the notice of lien right.

9 MR. SNYDER: Right.

10 THE COURT: The contractor doesn't have to give the  
11 notice of lien right because, in effect, the owner already  
12 knows it. They know what's going on. And so I think -- I  
13 think really this is a one-issue case, isn't it, as to actual  
14 notice.

15 MR. SNYDER: As to whether he had actual notice,  
16 but not actual notice that work was being done. Actual  
17 notice that was sufficient to allow him to record a valid  
18 notice of non-responsibility and provide it to the relevant  
19 parties. And here he never --

20 THE COURT: Well, the case doesn't quite say that.  
21 And, as Ms. Kerns pointed out, at the time the pre-lien  
22 notice was different. It was generic in form, so the case  
23 really doesn't quite answer that question.

24 But I think the question is, Did the owner have

1 sufficient actual knowledge of information -- did the owner  
2 have actual knowledge of information sufficient to put him on  
3 a duty -- to impose on him reasonably a legal duty to do  
4 something, get more information or sufficient information for  
5 the notice of non-responsibility.

6 I don't think it's really that difficult, because  
7 in this case I think either it's going to turn out that the  
8 information presented in these public proceedings would be  
9 obviously enough or obviously not enough.

10 Now, I wanted to ask about something else because  
11 there hasn't been any discussion of this. If you recall in  
12 the Supreme Court case, one of the interesting little  
13 features was that the owner's lawyer was showing up  
14 periodically to see how the construction was going.

15 MR. SNYDER: Right.

16 THE COURT: So to use Ms. Kern's favorite word, it  
17 would be ludicrous for the owner to say I don't know what's  
18 going on. You're paying some lawyer to check it out now and  
19 then. There's really been no discussion of that phase of it  
20 today.

21 Was Dr. Iliescu or the trust actively involved in  
22 this project? Were they consulting with people or was it  
23 completely in the hands of the buyer or somewhere in between?  
24 I don't know.

1           MR. SNYDER: It was completely in the hands of the  
2 buyer and Dr. Iliescu was --

3           DR. ILIESCU: I'm ready to testify under oath  
4 today, if I may.

5           THE COURT: Well, we don't need to do it at the  
6 moment.

7           MR. SNYDER: The buyer was represented by Gary  
8 Duhan who shepherded it through.

9           THE COURT: Well, in the little time I've looked at  
10 it, it seems the gist of the sales agreement is intended to  
11 put all the development responsibility and risk on the buyer.  
12 That doesn't necessarily mean that the seller is uninvolved.  
13 The seller has a stake in the successful outcome of the  
14 project.

15          MR. SNYDER: The other point that I think needs to  
16 be made -- and this is sort of the logical conflation of the  
17 notice of right to lien in Fondren -- is that if Fondren says  
18 okay, from the date you file your pre-lien notice you get to  
19 go back 31 days and collect for that amount of time, under  
20 that same logic if you find -- if the Court finds that Dr.  
21 Iliescu at some point had any knowledge of the lien  
22 sufficient to allow him to record a notice of  
23 non-responsibility, from the date he had actual notice we  
24 only get to go back 31 days for work performed during that

1 time and, you know, lien the property for that amount.

2 THE COURT: How do you get that from the Fondren  
3 case?

4 MR. SNYDER: Well, Fondren says that actual notice  
5 is a substitute for the record notice provided by the  
6 pre-lien notice. The pre-lien notice says you get to go back  
7 31 days so if -- even assuming -- and this is a point we are  
8 -- I hope it's clear -- vigorously contesting -- even  
9 assuming that Dr. Iliescu at some point had actual notice,  
10 the property could only be liened for work going back 31  
11 days.

12 Otherwise, the subcontractor in every case would --  
13 if they filed a pre-lien notice late it would just wait to  
14 the last -- you know, the completion of the job until the  
15 owner, oh, yeah, I never filed my pre-lien notice but, you  
16 know, here's a picture of my truck on the property so you had  
17 actual notice that I was working at it. It can't be in the  
18 actual notice requirements of Fondren give you broader rights  
19 than the requirements of 102.245. Do you follow?

20 THE COURT: No, I don't. I don't follow that.  
21 Tell me that again.

22 MR. SNYDER: 108.234 says that, once you file your  
23 pre-lien notice, you have to file it -- well, what it used to  
24 say is you have to file it within 31 days.

1 THE COURT: You're saying, if the actual notice  
2 substitutes for the record pre-lien notice, the actual notice  
3 on the part of the seller or the owner cannot give the  
4 lienholder any greater rights. So if the lienholder's rights  
5 start 31 days prior to the pre-lien notice, the owner's  
6 financial responsibility could only begin 31 days prior to  
7 his actual notice.

8 MR. SNYDER: Exactly.

9 THE COURT: It's logical, but I don't know if  
10 that's the case or not. There's probably no law on it.

11 MR. SNYDER: No, there's no law on it. But it has  
12 to be the case because, otherwise, you know -- take this  
13 instance: Let's suppose it's a standard construction job,  
14 owner, contractor --

15 THE COURT: It is interesting, though, because if  
16 -- let's say Dr. Iliescu had knowledge in April of 2006 and  
17 let's say his first knowledge was not in April but was in  
18 October, a million dollars worth of work might have been done  
19 in the meantime and so knowledge at one point rationally  
20 would have different consequences than knowledge at a  
21 different point.

22 MR. SNYDER: Right.

23 THE COURT: Of course, if he timely filed his  
24 notice of non-responsibility, it wouldn't make any

1 difference. The lienholder couldn't get anything out of him,  
2 wouldn't have a lien to hold.

3 MR. SNYDER: That's true. If -- and that's going  
4 back to the other point. Assuming he had the information he  
5 needed to have to file a notice of non-responsibility. And I  
6 don't think there's any evidence here that he did. There is  
7 evidence that he did not.

8 THE COURT: Well, he doesn't need much. He needs  
9 to know that architectural work is being done on the property  
10 by this firm. That's about it. Doesn't need to know much  
11 about the scope or value of it or anything.

12 MR. SNYDER: That's true. He needs to also know  
13 who this firm is contracted with.

14 THE COURT: Right, okay. Counsel, I have reviewed  
15 the Fondren case in the recess and I think that the issue  
16 presented by this motion is simply whether or not the  
17 applicants had actual knowledge that the respondent and the  
18 respondent's firm were performing architectural services for  
19 the benefit of the real property which is the subject of the  
20 land purchase agreement.

21 And I believe the request for discovery on this  
22 subject is reasonable and the Court will permit discovery on  
23 this issue for a period of 90 days commencing from today.  
24 I'll request counsel to reset this hearing to resume at that



1 time. Now, of course, I have no authority in the United  
2 States Bankruptcy Court and no knowledge of the course of  
3 proceedings in that jurisdiction but I will permit discovery  
4 for a period of 90 days on the subject of actual notice.

5 It is important for the Court to discern what Dr.  
6 Iliescu's knowledge was. His declaration sets forth that he  
7 was not aware of whether or not B.S.C. had retained a design  
8 team to perform work on this development. He was never  
9 notified of the identity of the B.S.C. team, but he did  
10 attend two public meetings at which the design team made a  
11 presentation. He said he was not introduced to any of the  
12 architects or engineers involved.

13 I think the respondent in this case is entitled to  
14 an opportunity to conduct discovery on that subject from the  
15 parties as well as third parties and, therefore, that is the  
16 order of the court. Thank you.

17 Court is in recess.

18 (Whereupon, proceedings were concluded at  
19 3:02 p.m.)

20 -o0o-  
21  
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24

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

4 I, CHRISTINA MARIE HERBERT, official reporter of the  
5 Second Judicial District Court of the State of Nevada, in and  
6 for the County of Washoe, do hereby certify:

7 That as such reporter, I was present in Department No. 6  
8 of the above court on Thursday, May 3rd, 2007 at the hour of  
9 1:30 p.m. of said day, and I then and there took verbatim  
10 stenotype notes of the proceedings had and testimony given  
11 therein.

12 That the foregoing transcript, consisting of pages  
13 numbered 1 to 59, both inclusive, is a true and correct  
14 transcript of my said stenotype notes so taken as aforesaid,  
15 and is a true and correct statement of the proceedings had  
16 and testimony given in the above-entitled action to the best  
17 of my knowledge, skill and ability.

18 DATED: At Reno, Nevada, this 29th day of June 2007.

19 

20 CHRISTINA HERBERT, CCR#641  
21  
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CV07-00341  
JOHN ILIESCU ETAL VS. MARK S. 3 Pages  
District Court 05/04/2007 10:17 AM  
Washoe County  
3370  
HR08

1 CODE NO. 3370

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MAY 03 2007  
RONALD A. L. JUSTIN, JR., CLERK  
By: [Signature]  
DEPUTY

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

\* \* \*

9  
10  
11 JOHN ILIESCU JR., SONNIA SANTEE  
12 ILIESCU, AND JOHN ILIESCU, JR. AND  
13 SONNIA ILIESCU AS TRUSTEES OF THE  
14 JOHN ILIESCU, JR. AND SONNIA ILIESCU  
15 1992 FAMILY TRUST,

Case No. CV07-00341  
Dept. No. 6

16 Plaintiffs,

17 vs.

18 MARK B. STEPPAN,

19 Defendant.  
20 \_\_\_\_\_ /

21 ORDER

22 For the reasons stated from the bench at the hearing this date, and good cause  
23 appearing, it is hereby ordered:

- 24 1. The parties may conduct discovery within 90 days of the entry of this order  
25 concerning whether applicants had actual knowledge of architectural services performed by  
26 respondent for the benefit of the subject property.  
27  
28

1           2. Counsel for the parties shall reset this matter for hearing no later than 120 days  
2 from the entry of this order.

3           Dated this 3<sup>rd</sup> day of May, 2007.  
4

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8 DISTRICT JUDGE  
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Gayle A. Kern, Esq.  
5421 Kietzke Lane, Suite 200  
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**JA0169**

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FILED

2007 MAY -4 PM 12:51

RONALD A. LONGTIN JR.

BY *[Signature]* DEPUTY

CODE \$1425

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Attorneys for MARK STEPPAN

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK STEPPAN,

CASE NO.: CV07 01021

Plaintiff,

DEPT. NO.: 1

vs.

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

Defendants.

**COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES**

Plaintiff, MARK STEPPAN ("Plaintiff"), by and through his attorney, Gayle A. Kern,  
Ltd., for his complaint against the defendants, above- named, does allege and aver as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff is, and at all times herein mentioned was, an individual licensed as an  
architect under the laws of the State of Nevada.

2. Plaintiff is informed and believes, and based thereon alleges, that Defendants

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CV07-01021  
MARK STEPPAN VS JOHN ILIESCU JR  
District Court Washoe County  
DC-9900000970-185  
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1 are, and at all times herein-mentioned, were residents of Washoe County, Nevada.

2  
3 3. Plaintiff is unaware of the true names and capacities of other defendants  
4 designated herein as DOES I-V, inclusive, and therefore sues these defendants under such  
5 fictitious names. Plaintiff will amend this complaint to allege their true names and capacities  
6 when ascertained. Plaintiff is informed and believes that each of these defendants designated  
7 herein as a DOE may have some liability in the debt at issue in this complaint.  
8

9 4. Defendants, ROE CORPORATIONS VI-X, were and are corporations doing  
10 business in the State of Nevada, and are sued herein, by their fictitious names for the reason  
11 that their respective true names are unknown to Plaintiff at this time; that when their true  
12 names are ascertained Plaintiff will amend this complaint to allege their true names and  
13 capacities when ascertained. Plaintiff is informed and believes that each of these defendants  
14 designated as a ROE CORPORATION may have some liability in the debt at issue in this  
15 complaint.  
16  
17

18 **FIRST CLAIM FOR RELIEF**  
19 **(FORECLOSURE OF MECHANIC'S LIEN)**

20 5. Plaintiff incorporates by reference each and every allegation contained in  
21 paragraphs 1 through 4 of Plaintiff's General Allegations, as if set forth herein.

22 6. On information and belief, Defendants are the owners or reputed  
23 owners of that certain real property situated in the City of Reno, County of Washoe, known  
24 as Assessor's Parcel Numbers: 011-112-03; 011-112-07; 011-112-12, and Defendant, John  
25 Iliescu, Jr. is the owner of 011-112-06 as his sole and separate property (collectively "the  
26 Real Property").  
27  
28

1           7.     On information and belief, Defendants entered into a Land Purchase  
2 Agreement to sell the Real Property, and that such Land Purchase Agreement provided that  
3 the purchasers had the right to develop and obtain improvements on the Real Property prior  
4 to the close of escrow.  
5

6           8.     On or about April 2006, Plaintiff entered into a contract with the purchaser of  
7 the Real Property to provide architectural services.  
8

9           9.     Pursuant to the contract with the purchaser, Plaintiff did supply the services  
10 required of him under contract, however, Plaintiff has not been paid in full for the services.  
11

12           10.    There is now due, owing and unpaid as of April 19, 2007, from the Defendants,  
13 for which demand has been made, the sum of \$1,939,347.51, together with interest until paid.  
14

15           11.    Plaintiff, in order to secure its claim, has perfected a mechanic's lien upon the  
16 property described above by complying with the statutory procedure pursuant to NRS §  
17 108.221 through NRS § 108.246 inclusive.  
18

19           12.    Plaintiff recorded its Notice of Lien on November 7, 2006, as Document No.  
20 3460499 in the Office of the County Recorder of Washoe County, Nevada; a 15-day Notice  
21 of Intent to Claim Lien was served on March 7, 2007; and Amended Notice and Claim of  
22 Lien was recorded on May 3, 2007, as Document No. 3528313.

23           13.    That pursuant to the provisions of NRS Chapter 108, Plaintiff is entitled to  
24 recover its costs of recording and perfecting its mechanic's lien, interest upon the unpaid  
25 balance at a rate of 24 percent per annum and reasonable attorney's fees and costs.  
26

27           **WHEREFORE**, Plaintiff prays for judgment against the Defendants, jointly and  
28



1 severally, as follows:

2 As to Plaintiff's First Claim For Relief:

3  
4 1. Judgment in a sum in excess of \$10,000.00, together with interest from April  
5 19, 2007, until paid at the per diem rate of \$955.82;

6 2. Costs of recording and perfecting Notice of Claim of Lien, costs of suit  
7 incurred herein, and a reasonable attorney's fee;

8  
9 3. That the sums set forth above be adjudged a lien upon the land and premises  
10 described herein, owned or reputedly owned by defendants and that the Court enter an order  
11 that the real property, land and improvements, or such as may be necessary, be sold pursuant  
12 to the laws of the State of Nevada, and that the proceeds of the sale be applied to the payment  
13 of sums due the Plaintiff;

14  
15 4. For such other and further relief as the Court may deem just and proper  
16 in the premises.

17  
18 Dated this 4<sup>th</sup> day of May, 2007.

19 GAYLE A. KERN, LTD.

20  
21 

22 GAYLE A. KERN, ESQ.

23 Attorneys for MARK STEPPAN  
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**VERIFICATION**

STATE OF CALIFORNIA)

: ss.

COUNTY OF \_\_\_\_\_)

I, MARK STEPPAN, am the Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are thereon alleged on information and belief, and as to those matters I believe them to be true.

---

MARK STEPPAN

Subscribed and sworn to before me

this \_\_\_\_\_ day of May, 2007.

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document,  
**COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES** filed in case  
number to be assigned.

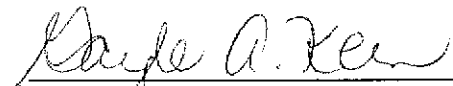
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☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

Dated this 4<sup>th</sup> day of May, 2007.



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CV07-01021  
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MARK STEPPAN VS JOHN ILIESCU 3 Pages  
District Court 05/08/2007 12:08 PM  
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RONALD A. LONGTIN, JR.

BY [Signature]  
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Attorneys for MARK STEPPAN

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK STEPPAN,

CASE NO.: CV07-01021

Plaintiff,

DEPT. NO.: 1

vs.

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

Defendants.

**ORIGINAL VERIFICATION OF**  
**COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES**

VERIFICATION

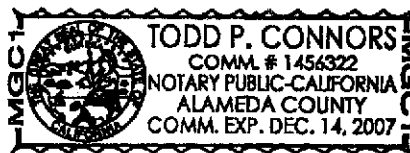
STATE OF CALIFORNIA)

COUNTY OF Alameda : SS.

I, MARK STEPPAN, am the Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are thereon alleged on information and belief, and as to those matters I believe them to be true.

  
 MARK STEPPAN

Subscribed and sworn to before me

this 4<sup>th</sup> day of May, 2007.
  
 NOTARY PUBLIC


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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, **ORIGINAL VERIFICATION OF COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES** filed in case number to be assigned.

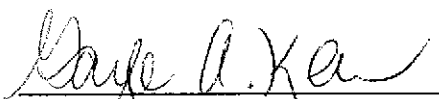
☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

Dated this 7<sup>th</sup> day of May, 2007.



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Reno, Nevada 89511

CV07-00341  
JOHN ILIESCU ETAL VS. MARK S. 6 Pages  
District Court 05/11/2007 03:34 PM  
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Jerry M. Snyder, Esq.  
Nevada Bar Number 6830  
Hale Lane Peek Dennison and Howard  
5441 Kietzke Lane, Second Floor  
Reno, Nevada 89511  
(775) 327-3000; (775) 786-6179 (fax)  
Attorney for Applicant

2007 MAY 11 PM 3:34

RONALD A. LINDEN, JR.

CLERK

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

JOHN ILIESCU JR., SONNIA SANTEE  
ILIESCU AND JOHN ILIESCU JR. AND  
SONNIA ILIESCU AS TRUSTEES OF THE  
JOHN ILIESCU, JR. AND SONNIA ILIESCU  
1992 FAMILY TRUST,

CASE NO. CV07-00341

DEPT. NO. 6

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

NOTICE OF ENTRY OF ORDER

TO: Respondent and his attorney of record:

PLEASE TAKE NOTICE that on May 3, 2007, this Court entered its Order in the above-entitled action. A copy of the Order is attached hereto as **Exhibit "A."**

DATED: This 11<sup>th</sup> day of May, 2007.

Jerry M. Snyder, Esq.  
Nevada Bar Number 6830  
Hale Lane Peek Dennison and Howard  
5441 Kietzke Lane, Second Floor  
Reno, Nevada 89511

Attorney for Applicants

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**PROOF OF SERVICE**

I, Gaylene Silva, declare:


I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Hale Lane Peek Dennison and Howard. My business address is 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

I am readily familiar with Hale Lane Peek Dennison and Howard's practice for collection and processing of its outgoing mail with the United States Postal Service. Such practice in the ordinary course of business provides for the deposit of all outgoing mail with the United States Postal Service on the same day it is collected and processed for mailing.

On May 11, 2007, I served the foregoing **NOTICE OF ENTRY OF ORDER** by placing a true copy thereof in Hale Lane Peek Dennison and Howard's outgoing mail in a sealed envelope, addressed as follows:

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

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on May 11, 2007.

  
\_\_\_\_\_  
Gaylene Silva



# **EXHIBIT A**

JA0181

1 CODE NO. 3370

FILED  
MAY 13 2007  
ROMANA A. SANTER, JR., CLERK  
By: [Signature]  
DEPUTY

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

9 \* \* \*

10 JOHN ILIESCU JR., SONNIA SANTEE  
11 ILIESCU, AND JOHN ILIESCU, JR. AND  
12 SONNIA ILIESCU AS TRUSTEES OF THE  
13 JOHN ILIESCU, JR. AND SONNIA ILIESCU  
14 1992 FAMILY TRUST,

Case No. CV07-00341

Dept. No. 6

15 Plaintiffs,

16 vs.

17 MARK B. STEPPAN,

18 Defendant.  
19 \_\_\_\_\_ /

20 ORDER

21 For the reasons stated from the bench at the hearing this date, and good cause  
22 appearing, it is hereby ordered:

23 1. The parties may conduct discovery within 90 days of the entry of this order  
24 concerning whether applicants had actual knowledge of architectural services performed by  
25 respondent for the benefit of the subject property.  
26  
27  
28

1           2. Counsel for the parties shall reset this matter for hearing no later than 120 days  
2 from the entry of this order.

3           Dated this 3<sup>rd</sup> day of May, 2007.  
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DISTRICT JUDGE

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

Heidi Boe  
Heidi Boe  
Administrative Assistant

ORIGINAL

FILED

07 JUL 20 PM 4:18

RENEALD A. DUNSTIN, JR.

BY *[Signature]*  
DEPUTY

1 CODE: 3880  
2 GAYLE A. KERN, ESQ.  
3 Nevada Bar No. 1620  
4 GAYLE A. KERN, LTD.  
5 5421 Kietzke Lane, Suite 200  
6 Reno, Nevada 89511  
7 Telephone: (775) 324-5930  
8 Facsimile: (775) 324-6173  
9 E-mail: gaylekern@kernltd.com

10 Attorneys for Respondent Mark B. Steppan

11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

12 IN AND FOR THE COUNTY OF WASHOE

13  
14  
15 JOHN ILIESCU JR., SONNIA SANTEE  
16 ILIESCU, AND JOHN ILIESCU JR. AND  
17 SONNIA ILIESCU AS TRUSTEES OF THE  
18 JOHN ILIESCU, JR. AND SONNIA  
19 ILIESCU 1992 FAMILY TRUST,

CASE NO.: CV07-00341

DEPT. NO.: 6

20 Applicants,

21 vs.

22 MARK B. STEPPAN,

23 Respondent.

24 **SUPPLEMENTAL RESPONSE TO APPLICATION FOR RELEASE OF MECHANIC'S**  
25 **LIEN**

26 Respondent Mark B. Steppan, by and through his attorneys, Gayle A. Kern, Ltd.,  
27 supplements its response to the Application for Release of Mechanic's Lien ("Application").

28 At the hearing conducted on May 3, 2007, the Court afforded the parties additional time to  
obtain evidence to support their respective positions regarding the Notice of Right to Lien. Without

GAYLE A. KERN, LTD.

5421 KIETZKE LANE, SUITE 200

RENO, NEVADA 89511

TELEPHONE: (775) 324-5930



CV07-00341 DC-9900001353-071  
JOHN ILIESCU ETAL VS. MARK 24 Pages  
District Court 07/30/2007 04:18 PM  
Washoe County 3880  
SDAVIS  
ncc

1 waiving his argument that the Applicants had all necessary information to file the notice of  
2 nonresponsibility as required by on *Fondren v. K/L Complex Ltd.*, 106 Nev. 705, 800 P.2d 719  
3 (1990) at the time of the execution of their contract to sell the property, the Respondent submits the  
4 attached evidence that conclusively establishes the Applicants' involvement in the process and the  
5 lack of merit to their position.  
6

7 Specifically, the Affidavit of David Snelgrove, attached hereto, establishes the Applicants  
8 had knowledge not only of the extent of the Project, but also the name of the design team. The  
9 Applicants executed two affidavits in connection with the process of obtaining the necessary  
10 governmental approvals for the Project that included the names of the architects. In addition, this  
11 Project was the subject of numerous meetings at which presentations were made that identified the  
12 architects on the Project. There were numerous meetings in the community at which significant  
13 presentations were made that included the names of the design team.  
14

15 Of course, despite the knowledge of the substantial work that was identified in the Land  
16 Purchase Agreement for the sale of the land, despite the knowledge that professionals would be  
17 retained to perform services for the Project and the land, despite knowledge of the plans and  
18 specifications for the Project that included the specific names of the architects, despite executing  
19 affidavits with the names of the architects, the Applicants took no action to disclaim responsibility  
20 for the work performed. Thus, not only were the Applicants absolutely aware of the significant  
21 amount of work of improvement that was to occur on the property by virtue of the Land Purchase  
22 Agreement, but the Applicants knew the name of the architects and participated in the application  
23 process by executing Affidavits in connection thereto. They knew of and attended meetings where  
24 information regarding the Project was presented. Accordingly, the Application for Release of  
25 Mechanic's Lien should be denied.  
26  
27  
28

1 DATED this 30<sup>th</sup> day of July, 2007.

2 GAYLE A. KERN, LTD.

3  
4 By Gayle A. Kern  
5 GAYLE A. KERN, ESQ.  
6 Attorneys for Respondent  
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GAYLE A. KERN, LTD.

5421 KIETZKE LANE, SUITE 200

RENO, NEVADA 89511

TELEPHONE: (775) 324-5930

1030  
GAYLE A. KERN, LTD.  
GAYLE A. KERN, ESQ.  
Nevada Bar No. 1620  
5421 Kietzke Lane, Suite 200  
Reno, NV 89511  
(775) 324-5930  
Fax (775) 324-6173  
E-mail: gaylekern@kernltd.com

Attorneys for Respondent Mark B. Steppan

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU JR., SONNIA SANTEE  
ILIESCU, AND JOHN ILIESCU JR. AND  
SONNIA ILIESCU AS TRUSTEES OF THE  
JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST,

CASE NO.: CV07-00341

DEPT. NO.: 6

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

**AFFIDAVIT OF DAVID SNELGROVE IN SUPPORT OF  
SUPPLEMENTAL RESPONSE TO APPLICATION FOR  
RELEASE OF MECHANIC'S LIEN**

STATE OF NEVADA )  
COUNTY OF WASHOE ) ss:

I, David Snelgrove, affiant herein, do hereby swear under penalty of perjury that the assertions of this Affidavit are true.

1. That I am employed by Wood Rogers and worked directly with the project design team inclusive of the project Architect and applicant regarding the Wingfield Towers development.

2. In connection with my work, I assisted in preparing the Special Use Permit Application dated January 17, 2006 and the Tentative Map and Special Use Permit Application dated February 7, 2006.

3. A true and correct copy of the Special Use Permit Application dated January 17, 2006 is attached hereto as Exhibit "A."



1           4.       A true and correct copy of the Tentative Map and Special Use Permit Application  
2       dated February 7, 2006 is attached hereto as Exhibit "B."

3           5.       Included with the Special Use Permit Application dated January 17, 2006 and  
4       Tentative Map and Special Use Permit Application dated February 7, 2006 are Owner Affidavits.  
5       Accordingly, the Owners of the Real Property, Dr. and Mrs. Iliescu executed the Owner Affidavits  
6       that were a part of the Applications.

7           6.       Both Applications include the name of Fisher Friedman Associates and Nathan  
8       Ogle, AIA, with an address of 1485 Park Avenue, Suite 103, Emeryville, CA 94608, phone number  
9       510-420-1666 and fax number of 510-420-0599.

10          7.       Both the January 17, 2006 and February 7, 2007 Applications contained building  
11       elevations and/or building floor plans containing the name of the project architect, Mark Steppan,  
12       AIA and the architectural design consultant Fisher Friedman Associates. It is my recollection that  
13       Dr. Iliescu saw the architectural drawings as provided in the two applications at or about the time  
14       of receipt of the Owner affidavits.

15          8.       In connection with the Wingfield Towers Project, I attended numerous  
16       neighborhood meetings. At some of these meetings, Dr. Iliescu was present. On information and  
17       belief, I attended the following meetings and Dr. Iliescu was present.

Meeting	Date	Present
Arlington Towers HOA	July 27, 2006	Myself, Dr. Iliescu
Downtown Improvement Association	August 3, 2006	Myself, Dr. Iliescu

18  
19  
20  
21  
22          9.       In connection with the Wingfield Towers Project, we made a concerted effort to  
23       provide information to as many people as possible. In furthering that goal, the entire team working  
24       on the Project produced a PowerPoint presentation and Fisher Friedman produced a 3-D Fly By.  
25       I would present the PowerPoint presentation and/or the 3-D Fly By to various groups. A copy of  
26       the PowerPoint presentation and the 3-D Fly By is attached hereto as Exhibits "C" and "D,"  
27       respectively. A copy of a list of various meetings that I presented at, including either or both of the  
28       PowerPoint and/or the 3-D Fly By is attached hereto as Exhibit "E."

GAYLE A. KERN, LTD.

5421 KIETZKE LANE, SUITE 200

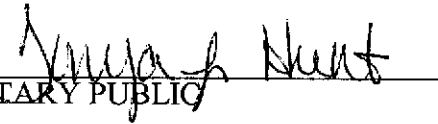
RENO, NEVADA 89511

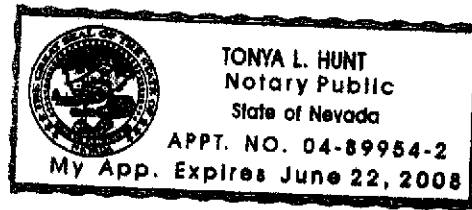
TELEPHONE: (775) 324-5930

1 DATED this 30<sup>th</sup> day of July, 2007.

2   
DAVID SNELGROVE

3  
4 SUBSCRIBED AND SWORN to  
5 before me this 30 day of July, 2007.

6   
7 NOTARY PUBLIC



# EXHIBIT “A”

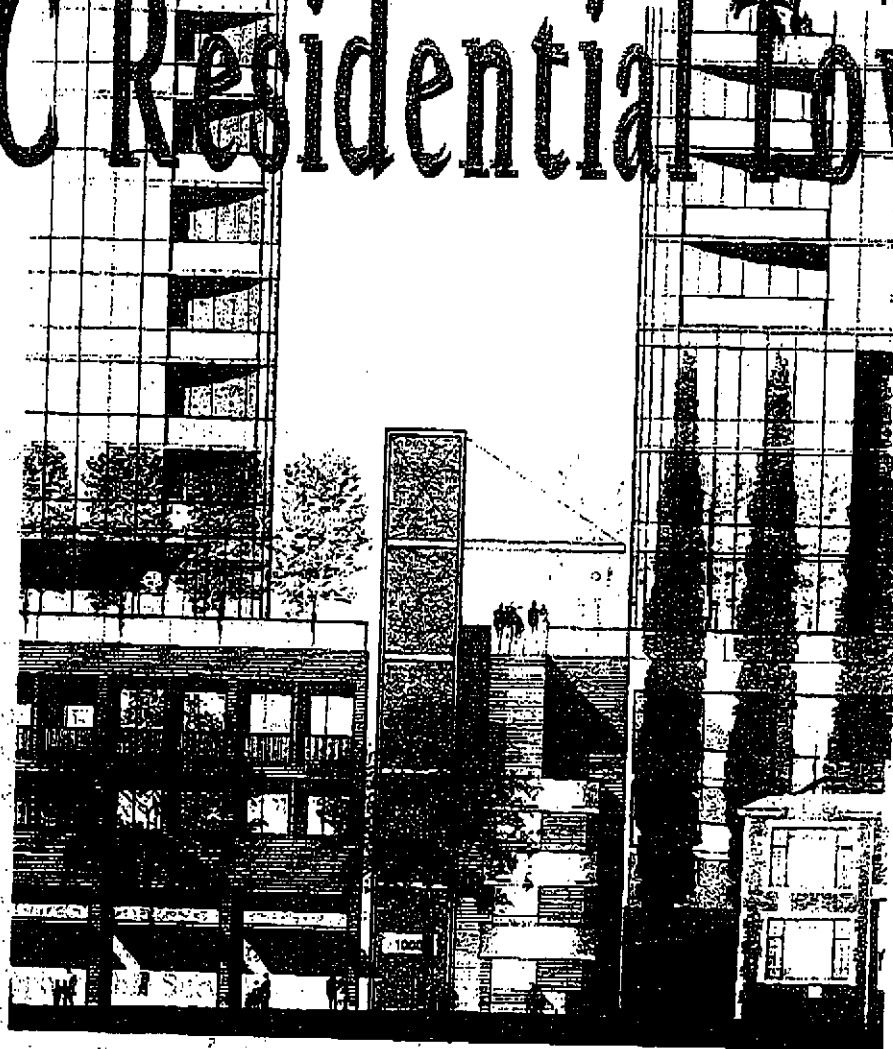
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FEB 07 2006

FISHER FRIEDMAN ASSOCIATES

# BSC Residential Towers



## Special Use Permit Application

Prepared for:

**Consolidated Pacific Development**  
932 Parker Street  
Berkeley, CA 94710

January 17, 2006

JA0192

## RENO DEVELOPMENT APPLICATION

## ACTION REQUESTED:

(Please Check)

- ☐ ABANDONMENT  
☐ ANNEXATION  
☐ BOUNDARY LINE ADJUSTMENT  
☐ MASTER PLAN AMENDMENT  
☐ MINOR DEVIATION  
☐ PARCEL MAP  
☐ REVERSION TO ACREAGE  
☐ SITE PLAN REVIEW  
☒ SPECIAL USE PERMIT  
☐ TENTATIVE MP  
☐ WITH MAINTENANCE DISTRICT  
☐ VARIANCE  
☐ ZONING MAP AMENDMENT  
☐ COOPERATIVE PLAN AMENDMENT

For Community Development Department Use Only:

CASE NUMBER:

Date Received \_\_\_\_\_

Time Received \_\_\_\_\_

PROJECT NAME: BSC Mixed-Use Residential TowersPROJECT DESCRIPTION: A mixed-use residential development.PROJECT ADDRESS: 260 Island Drive & 223 Court Street (2 additional parcels included, one on Island Drive and one on Court Street (address unavailable))PROPERTY SIZE: 1.36± acresASSESSOR'S PARCEL NO(S): 011-112-03, 06, 07 & 12ATTACH LEGAL DESCRIPTION OF PROPERTY.ZONING-EXISTING: CBPROPOSED: CBMASTER PLAN-EXISTING: TCPROPOSED: TCEXISTING LAND USE: VacantPROPERTY OWNER(S)NAME: John and Sonnia IliescuADDRESS: 219 Court Street  
Reno, Nevada 89501

PHONE:

APPLICANT/DEVELOPER (S)NAME: Consolidated Pacific Development E-MAIL ADDRESS: Nathan@fisherfriedman.com

ATTN:

ADDRESS: 932 Parker Street  
Berkley, CA 94710PHONE: (510) 548-6093PERSON TO CONTACTREGARDING APPLICATION:NAME: Fisher Friedman Associates.CONTACT: Nathan Ogle, AIAADDRESS: 1485 Park Avenue, Suite 103  
Emeryville, CA 94608PHONE: (510) 420-1666FAX NO: (510) 420-0599

ALL PRINCIPALS IN THE FIRM SHALL BE IDENTIFIED.

**OWNER AFFIDAVIT**

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

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

Name:

Title:

Signed:

Sonia Ilescu  
Sonia Ilescu  
OWNER  
Sonia Ilescu

## OWNER AFFIDAVIT

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

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

Name:

Title:

Signed:

JOHN ILIESCU  
John Iliescu  
Owner  
John Iliescu

**APPLICANT AFFIDAVIT**

I am the applicant involved in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 12, 2006, in Reno, Nevada.  
(date) (City)

Name: Consolidated Pacific Development, Inc. cs  
Sam A. Caniglia

Title: President

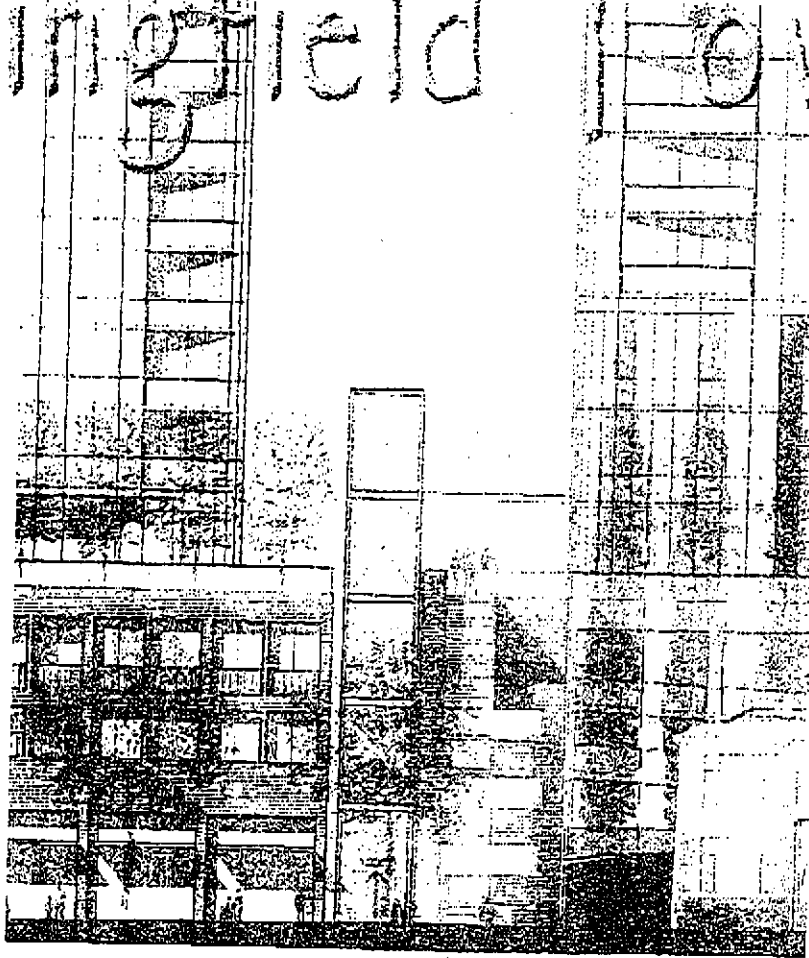
Signed: 



# EXHIBIT “B”

**URGENT 5/07**  
**CITY COUNCIL**  
**PLANNING** | **APPROVED**

# Wingfield Towers



## Tentative Map & Special Use Permit Application

Prepared for:

**Consolidated Pacific Development**  
932 Parker Street  
Berkeley, CA 94710

Prepared by:



**WOOD RODGERS**  
DEVELOPING INNOVATIVE DESIGN SOLUTIONS  
575 Double Eagle Court Tel: 775.823.4068  
Reno, NV 89521 Fax: 775.823.4066

February 7, 2006

## RENO DEVELOPMENT APPLICATION

## ACTION REQUESTED:

(Please Check)

- ☐ ABANDONMENT  
☐ ANNEXATION  
☐ BOUNDARY LINE ADJUSTMENT  
☐ MASTER PLAN AMENDMENT  
☐ MINOR DEVIATION  
☐ PARCEL MAP  
☐ REVERSION TO ACREAGE  
☐ SITE PLAN REVIEW  
☒ SPECIAL USE PERMIT  
☒ TENTATIVE MP  
☐ WITH MAINTENANCE DISTRICT  
☐ VARIANCE  
☐ ZONING MAP AMENDMENT  
☐ COOPERATIVE PLAN AMENDMENT

For Community Development Department Use Only:

CASE NUMBER:

Date Received \_\_\_\_\_

Time Received \_\_\_\_\_

PROJECT NAME: Wingfield TowersPROJECT DESCRIPTION: A mixed-use residential development.PROJECT ADDRESS: 260 Island Drive & 223 Court Street (2 additional parcels included, one on Island Drive and one on Court Street (address unavailable))PROPERTY SIZE: 1.36± acresASSESSOR'S PARCEL NO(S): 011-112-03, 06, 07 & 12ATTACH LEGAL DESCRIPTION OF PROPERTY.ZONING-EXISTING: CBMASTER PLAN-EXISTING: TCEXISTING LAND USE: VacantPROPOSED: CBPROPOSED: TCPROPERTY OWNER(S)NAME: John and Sonnia IliescuADDRESS: 219 Court Street  
Reno, Nevada 89501

PHONE:

APPLICANT/DEVELOPER (S)NAME: Consolidated Pacific Development E-MAIL ADDRESS: Nathan@fisherfriedman.com

ATTN:

ADDRESS: 932 Parker Street  
Berkley, CA 94710PHONE: (510) 548-6093PERSON TO CONTACTREGARDING APPLICATION:NAME: Fisher Friedman Associates.CONTACT: Nathan Ogle, AIAADDRESS: 1485 Park Avenue, Suite 103  
Emeryville, CA 94608PHONE: (510) 420-1666FAX NO: (510) 420-0599

ALL PRINCIPALS IN THE FIRM SHALL BE IDENTIFIED.

**OWNER AFFIDAVIT**

I am an owner of property/authorized agent involved in this petition and that I authorize Sam Campbell, LLC - 2007-2008 to request development related applications on my property. I declare under penalty of perjury that the foregoing is true and correct.

Executed on Jan 31, 2006, in RENO, Nevada.  
(date) (City)

Name:

John Ilesky

Title:

President

Signed:

John Ilesky

**OWNER AFFIDAVIT**

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

Executed on Jan 31, 2006, in Reed, Nevada.  
(date) (City)

Name:

Sara Grubbs

Title:

wife

Signed:

Sara Grubbs

## APPLICANT AFFIDAVIT

I am the applicant involved in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 14, 2006 in RENO, Nevada.  
(date) (City)

Name:

Thomas H. Murphy

Title:

PRESIDENT

Signed:

Thomas H. Murphy

# EXHIBIT “C” & “D”

**EXHIBIT "C" & "D"**  
**ARE ON A CD AND**  
**CANNOT BE SCANNED.**



# EXHIBIT “E”

**Wingfield Towers**  
**Meeting Schedule**

Assume that a Powerpoint Presentation will be necessary for all meetings

<b>City Council Member Meetings</b>	<b>Location</b>	<b>Date of Meeting</b>	<b>Time</b>
Mayor Cashell	City Hall, 15th Floor	05/26/06	10:30 AM
Pierre Haschel	City Hall, 15th Floor	07/25/06	2:30 PM
Dwight Dortch	IWStrategies, 4741 Caughlin Pkwy	05/25/06	10:00 AM
Dan Gustin	City Hall, 15th Floor		
Sharon Zadra	City Hall, 15th Floor	05/26/06	
Jessica Sterrazza	City Hall, 15th Floor	05/17/06	4:00 PM
<b>Agency Meetings</b>			
Redevelopment Agency Meeting - 1st	City Hall, 7th Floor	03/29/06	1:00 PM
Staff/Applicant Meeting	Reno Community Dev.	06/29/06	9:00 AM
City Staff Presentation of Flythrough	Reno Community Dev.	06/13/06	3:30 PM
City of Reno Redevelopment Agenday - 2nd	City Hall, 7th Floor	06/27/06	10:30 AM
Regional Transportation Commission	1105 Terminal Way, Suite 316	07/18/06	3:00 PM
Reno Parks and Recreation	City of Reno Parks and Rec Dept	07/20/06	3:00 PM
Additional City Staff Pres of Flythrough	Reno Community Dev.	07/26/06	10:00 AM
City Manager	City Hall, 15th Floor	08/02/06	11:00 AM
RTC Engineering	1105 Terminal Way	08/02/06	2:30 PM
City Manager's Round Table Meeting	City Hall, 7th Floor	08/18/06	7:30 AM
City of Reno Redevelopment Agenday - 3rd	City Hall, 7th Floor	09/25/06	10:30 AM
<b>Board Meetings</b>			
Ward 1 NAB - 1st	Lake Mansion	06/13/06	6:00 PM
Citizens Advisory Committee	City Hall, 7th Floor	07/11/06	3:00 PM
Trinity Episcopal Church	Trinity Parish Hall	08/01/06	
Ward 1 NAB - 2nd	Lake Mansion	07/11/06	6:00 PM
<b>Association Meetings</b>			
California Ave Business Association	Nevada Museum of Art	08/07/06	2:30 PM
Park Tower HOA	Park Tower Conference Room	06/06/06	5:00 PM
Building Trades Council	Heidis Restaurant on S. Virginia	08/17/06	9:30 AM
Riverwalk Business Owners Assoc	Sierra Tap House	09/27/06	6:30 PM
Downtown Improvement Assoc.	Stadium Club at Nat. Bowling Stad.	06/03/06	7:30 AM
Downtownmakeover.com	454 Holcomb Ave	06/20/06	11:00 AM
Park Tower HOA - Followup	DeCal Office	07/19/06	10:00 AM
Arlington Towers Association	Arlington Towers - 4th Floor	07/27/06	6:30 PM
<b>Planning Commissioner Meetings</b>			
Doug Coffman			
Todd Brabbin			
Liz Ford	DeCal Offices	09/28/06	5:30 PM
Dennis Romeo			
Darin Georgeson		10/02/06	4:30 PM
Lisa Foster	DeCal Office (I Think)	10/04/06	2:00 PM
Jim Newberg		06/09/06	1:00 PM
Planning Commission Hearing	Reno City Hall	10/04/06	6:00 PM
City Council Hearing (if Necessary)	Reno City Hall		

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify under penalty of perjury that I am an employee of the law offices of Gayle A. Kern, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and that on this date I served the foregoing document(s) described as follows:

**SUPPLEMENTAL RESPONSE TO APPLICATION FOR RELEASE OF MECHANIC'S LIEN**

on the party(s) set forth below by:

\_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

  X   Personal delivery.

\_\_\_\_\_ Facsimile (FAX).

\_\_\_\_\_ Federal Express or other overnight delivery.

\_\_\_\_\_ Reno/Carson Messenger Service.

addressed as follows:

Jerry M. Snyder, Esq.  
Hale Lane Peek Dennison and Howard  
5441 Kietzke Lane, Second Floor  
Reno, NV 89511

DATED this 30<sup>th</sup> day of July, 2007.

Megan Molinari

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, **SUPPLEMENTAL RESPONSE TO APPLICATION FOR RELEASE OF MECHANIC'S LIEN** filed in case number: CV07-00341

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

Dated this 30<sup>th</sup> day of July, 2007.



GAYLE A. KERN, ESQ.  
Nevada Bar No. 1620  
GAYLE A. KERN, LTD.  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
Telephone: (775) 324-5930  
Facsimile: (775) 324-6173  
E-mail: gaylekern@kernltd.com  
Attorneys for MARK B. STEPPAN

GAYLE A. KERN, LTD.

5421 KIETZKE LANE, SUITE 200

RENO, NEVADA 89511

TELEPHONE: (775) 324-5930

ORIGINAL

FILED

2007 AUG -3 AM 11:04

RONALD A. LONGTIN, JR.

BY

NEPUNY

4075

DOWNEY BRAND LLP  
SALLIE B. ARMSTRONG (Bar No. 1243)  
JAMIE P. DREHER (Bar No. 8794)  
427 West Plumb Lane  
Reno, NV 89509  
Telephone: (775) 329-5900  
Facsimile: (775) 786-5443

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU, JR., SONNIA SANTEE  
ILIESCU and JOHN ILIESCU JR. and  
SONIA ILIESCU, as Trustees of the JOHN  
ILIESCU, JR. AND SONNIA ILIESCU  
1992 FAMILY TRUST,

CASE NO. CV07-00341

DEPT. NO. 6

Applicants,

vs.

MARK B. STEPPAN,

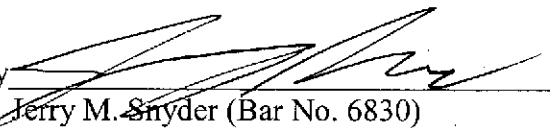
Respondent.

SUBSTITUTION OF COUNSEL

The law offices of HALE LANE PEEK DENNISON and HOWARD, attorneys of record  
for Applicants, do hereby consent to the substitution of SALLIE B. ARMSTRONG and the law  
firm of DOWNEY BRAND, in their place and stead.

DATED: 8/3/7, 2007. HALE LANE PEEK DENNISON and HOWARD

By

  
Jerry M. Snyder (Bar No. 6830)  
5441 Kietzke Lane, Second Floor  
Reno, Nevada 89511

DOWNEY BRAND LLP

CV07-00341  
DC-9500001370-136  
JOHN ILIESCU ETAL VS. MARK S. 3 Pages  
District Court 08/03/2007 11:04 AM  
Washoe County  
4075  
YLL0Yr  
DOC

1 SALLIE B. ARMSTRONG and the law firm of DOWNEY BRAND, do hereby agree to  
2 be substituted in the place and stead of HALE LANE PEEK DENNISON and HOWARD, as  
3 attorneys for Applicants in the above-captioned matter.

4 DATED: July 31, 2007. DOWNEY BRAND LLP

5  
6 By: Sallie B. Armstrong  
7 SALLIE B. ARMSTRONG (Bar No. 1243)  
8

9 JOHN ILIESCU, JR. and SONNIA ILIESCU, individually, and as Trustees of THE  
10 JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST, consent to the above  
11 substitution of attorneys.

12 DATED: July 31, 2007.

13 John Iliescu  
14 JOHN ILIESCU, JR., individually, and as  
15 Trustee THE JOHN ILIESCU, JR. AND  
16 SONNIA ILIESCU 1992 FAMILY TRUST

17 Sonia Iliescu  
18 SONNIA ILIESCU, individually, and as  
19 Trustee THE JOHN ILIESCU, JR. AND  
20 SONNIA ILIESCU 1992 FAMILY TRUST  
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**PROOF OF SERVICE**

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 427 West Plumb Lane, Reno, Nevada 89509. On August 3, 2007, I served the within document(s):

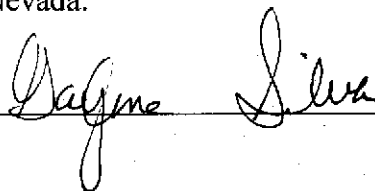
**SUBSTITUTION OF COUNSEL**

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ **BY HAND:** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by RENO/CARSON MESSENGER SERVICE of the document(s) listed above to the person(s) at the address(es) set forth below.

Gayle A. Kern, Esq.  
Kern & Associates  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

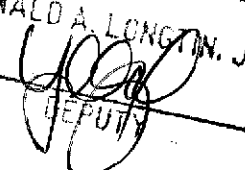
Executed on August 3, 2007, at Reno, Nevada.



ORIGINAL

FILED

2007 AUG 13 PM 3:28

RONALD A. LONGTIN, JR.  
BY  DEPUTY

CODE: 2610

DOWNEY BRAND LLP

SALLIE B. ARMSTRONG (BAR NO. 1243)

JAMIE P. DREHER (BAR NO. 8794)

427 West Plumb Lane

Reno, NV 89509

Telephone: (775) 329-5900

Facsimile: (775) 786-5443

PREZANT & MOLLATH

STEPHEN C. MOLLATH (BAR NO. 922)

6560 S. W. McCarran Boulevard, Suite A

Reno, NV 89509

Telephone: (775) 786-3011

Facsimile: (775) 786-1354

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU, JR., SONNIA SANTEE  
ILIESCU and JOHN ILIESCU JR. and  
SONIA ILIESCU, as Trustees of the JOHN  
ILIESCU, JR. AND SONNIA ILIESCU  
1992 FAMILY TRUST,

CASE NO. CV07-00341

DEPT. NO. 6

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

**NOTICE OF ASSOCIATION OF COUNSEL**

TO: Defendant MARK B. STEPPAN and his counsel of record, Gayle A. Kern, Esq.

**PLEASE TAKE NOTICE** that STEPHEN C. MOLLATH, of PREZANT &

MOLLATH; is hereby associated with DOWNEY BRAND LLP, as counsel for Plaintiffs in the

////

////



1 above-entitled matter.

2 DATED: August 8, 2007.

DOWNEY BRAND LLP

3 By: 

4 VONN J. JENKINS (Bar No. 507)

Attorneys for Plaintiff

5  
6 DATED: August 9, 2007.

PREZANT & MOLLATH

7 By: 

8 STEPHEN C. MOLLATH (Bar No. 922)

Attorneys for Plaintiff

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## PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 427 West Plumb Lane, Reno, NV 89509. On August 13, 2007, I served the attached document(s):

### NOTICE OF ASSOCIATION OF COUNSEL

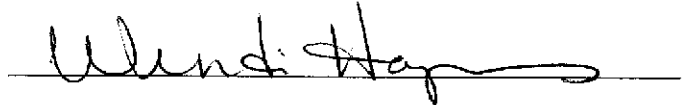
- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
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- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by **RENO/CARSON MESSENGER SERVICE** of the document(s) listed above to the person(s) at the address(es) set forth below.

Gayle A. Kern, Esq.  
Kern & Associates  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Executed on August 13, 2007, at Reno, Nevada.



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**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION  
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, **NOTICE OF ASSOCIATION OF COUNSEL**, filed in case number CV07-00341:

☒ Document does not contain the social security number of any person

- OR -

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

- or -

☐ For the administration of a public program

- or -

☐ For an application for a federal or state grant

Dated: August 8, 2007.

**DOWNEY BRAND LLP**  
427 West Plumb Lane  
Reno, NV 89509  
Telephone: (775) 329-5900  
Facsimile: (775) 786-5443

By:   
VONN J. JENKINS (SBN 0507)  
*Attorneys for Plaintiffs.*

CV07-00341  
JOHN ILIESCU ETAL VS. MARK S. 4 Pages  
District Court 09/24/2007 04:34 PM  
Washoe County  
4050  
RSMJH

1 **CODE** 4050  
2 GAYLE A. KERN, LTD.  
3 GAYLE A. KERN, ESQ.  
4 Nevada Bar No. 1620  
5 5421 Kietzke Lane, Suite 200  
6 Reno, NV 89511  
7 (775) 324-5930  
8 Fax (775) 324-6173  
9 E-mail: gaylekern@kernltd.com

**ORIGINAL**  
**FILED**

2007 SEP 24 PM 4:34

RONALD A. LONGTIN, JR.

BY [Signature] DEPUTY

**FILED**  
2007 SEP -7 PM 4:38  
**FILED IN ERROR**  
RONALD A. LONGTIN, JR.  
DEPUTY

Attorneys for Respondent Mark B. Steppan

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU JR., SONNIA SANTEE  
ILIESCU, AND JOHN ILIESCU JR. AND  
SONNIA ILIESCU AS TRUSTEES OF THE  
JOHN ILIESCU, JR. AND SONNIA  
ILIESCU 1992 FAMILY TRUST,

CASE NO.: CV07-00341

DEPT. NO.: 6

Applicants,

vs.

MARK B. STEPPAN,

Respondent.

MARK STEPPAN,

CASE NO.: CV07-01021

Plaintiff,

DEPT. NO.: 1

vs.

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

**STIPULATION TO CONSOLIDATE  
PROCEEDINGS; ORDER  
APPROVING STIPULATION**

Defendants.

JOHN ILIESCU JR., SONNIA SANTEE ILIESCU, AND JOHN ILIESCU JR. AND  
SONNIA ILIESCU AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992  
FAMILY TRUST (collectively "Iliescu"), by and through their counsel, Stephen C. Mollath, Esq.,  
Prezant & Mollath, and MARK B. STEPPAN ("Steppan"), by and through his counsel, Gayle A.

Kern, Esq., Gayle A. Kern, Ltd. hereby stipulate as follows:

1. Iliescu and Steppan are parties to Second Judicial District Court Case No. CV07-01021.

2. In the interests of judicial economy and convenience to the parties Iliescu and Steppan stipulate to consolidate Case No. CV07-01021 with pending Case No. CV07-00341 entitled *JOHN ILIESCU JR., SONNIA SANTEE ILIESCU, AND JOHN ILIESCU JR. AND SONNIA ILIESCU AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST, Applicants, vs. MARK B. STEPPAN, Respondent.*

3. Iliescu and Steppan stipulate that, for purposes of convenience only, the consolidated actions will proceed under the earlier case filed, namely, case number CV07-00341. Iliescu and Steppan stipulate that they will proceed on the Complaint to Foreclose Mechanic's Lien and for Damages filed in CV07-01021.

4. Iliescu hereby acknowledge service of the Complaint to Foreclose Mechanic's Lien and for Damages, and agrees that Iliescu is granted an open extension of time, with twenty (20) days notice of an answer.

5. In the event that the Court declines to approve the consolidation of the two actions, all other items of this Stipulation will remain in full force and effect.

DATED this 30th day of August, 2007.

GAYLE A. KERN, LTD.

By Gayle A. Kern  
GAYLE A. KERN, ESQ.  
Attorneys for Respondent/Plaintiff,  
Mark B. Steppan

DATED this 30th day of August, 2007.

PREZANT & MOLLATH

By Stephen C. Mollath  
STEPHEN C. MOLLATH, ESQ.  
Attorneys for Applicants/Defendants

\* \* \* \* \*

The court has reviewed the terms of the foregoing stipulation and finds that cause exists to grant its terms.

GAYLE A. KERN, LTD.

5421 KIETZKE LANE, SUITE 200

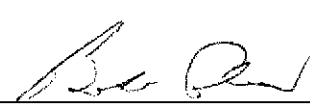
RENO, NEVADA 89511

TELEPHONE: (775) 324-5930

1 WHEREFORE,

2 IT IS HEREBY ORDERED that the terms of the foregoing stipulation are APPROVED  
3 in their entirety, and that Case Nos. 07-00341 and 07-01021 are consolidated, that the  
4 consolidated cases will proceed under the caption of Case No. CV07-00341, and on the  
5 Complaint to Foreclose Mechanic's Lien and for Damages filed in CV07-01021.

6 DATED this 7<sup>th</sup> day of August, 2007.

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10 DISTRICT JUDGE  
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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, **STIPULATION TO CONSOLIDATE PROCEEDINGS; ORDER APPROVING STIPULATION** filed in case number: CV07-01021

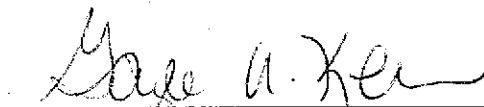
☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

Dated this 30<sup>th</sup> day of August, 2007.



GAYLE A. KERN, ESQ.  
Nevada Bar No. 1620  
GAYLE A. KERN, LTD.  
5421 Kietzke Lane, Suite 200  
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Attorneys for MARK B. STEPPAN