

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.

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Nov 21 2018 11:28 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 76146

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

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

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

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

801 South Rancho Drive, Suite D-4

Las Vegas, Nevada 89106

Tel: (702) 384-7111 / Fax: (702) 384-0605

gma@albrightstoddard.com / dca@albrightstoddard.com

Counsel for Appellants

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		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

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
		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

DOC.	FILE/HRG. DATE	DOCUMENT DESCRIPTION	VOL.	BATES NOS.
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 21st day of November, 2018, the foregoing **JOINT APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME II**, 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 / tra@lge.net
Attorneys for Third-Party Defendant
Hale Lane

A handwritten signature in blue ink, appearing to read "Christopher Gray", is written above a horizontal line.

An employee of Albright, Stoddard, Warnick & Albright

ORIGINAL

FILED

2007 SEP 27 PM 3:59

RONALD A. LONGSTON, JR.

BY

DEPUTY

1 CODE \$1130

CODE 4180

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

DOWNEY BRAND LLP

SALLIE ARMSTRONG (BAR NO. 1243)

427 W. Plumb Lane

Reno, NV 89509

Telephone: (775) 329-5900

Facsimile: (775) 786-5443

9 Attorneys for John Iliescu, Jr. and Sonnia Iliescu and The
10 John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust

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

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

13 MARK B. STEPPAN,

14 Plaintiff,

15 v.

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

20 Defendants.

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

28 Third-Party Plaintiffs,

v.

CONSOLIDATED PACIFIC
DEVELOPMENT, INC., a Nevada

Case No. ~~CV07-01021~~

Department No. B6

Consolidated with:

Case No. CV07-00341

Department No. B6

1 Corporation; DECAL OREGON, INC., an
2 Oregon Corporation; CALVIN BATY,
3 individually; JOHN SCHLEINING,
4 individually; HALE LANE PEEK
5 DENNISON AND HOWARD
6 PROFESSIONAL CORPORATION, a
7 Nevada professional corporation, dba
8 HALE LANE; KAREN D. DENNISON;
9 R. CRAIG HOWARD; JERRY M.
10 SNYDER; and DOES I thru X,

11 Third-Party Defendants.

12 **ANSWER AND THIRD PARTY COMPLAINT**

13 **ANSWER TO COMPLAINT TO FORECLOSE MECHANIC'S LIEN AND 14 FOR DAMAGES**

15 Defendants John Iliescu, Jr. and Sonnia Iliescu as Trustees of the John Iliescu, Jr. and
16 Sonnia Iliescu 1992 Family Trust Agreement, and John Iliescu individually, by and through their
17 attorneys Prezant & Mollath and Downey Brand LLP, hereby answer the COMPLAINT TO
18 FORECLOSE MECHANIC'S LIEN AND FOR DAMAGES ("Complaint")¹, filed by Plaintiff
19 Mark Steppan, on May 4, 2007, and in support thereof, states as follows:

20 **GENERAL ALLEGATIONS**

21 1. Defendants are without knowledge or information sufficient to form a belief as to
22 the truth of the allegations of Paragraph 1 of the Complaint, and they are therefore denied.

23 2. Admitted.

24 3. The allegations of Paragraph 3 are legal conclusions to which no response is
25 required and/or Defendants are without knowledge or information sufficient to form a belief as to
26 the truth of the allegations of Paragraph 3 of the Complaint, and they are therefore denied.

27 4. The allegations of Paragraph 4 are legal conclusions to which no response is
28 required and/or Defendants are without knowledge or information sufficient to form a belief as to
the truth of the allegations of Paragraph 4 of the Complaint, and they are therefore denied.

¹ Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Complaint.

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1 limit the legal basis upon which any affirmative defense to the allegations of the Complaint is
2 asserted.)

3 **FIRST AFFIRMATIVE DEFENSE**

4 (Failure to State Any Claim For Relief)

5 As an affirmative defense to each and every claim for relief, Defendants are informed and
6 believe and on that basis allege that the claim for relief fails to constitute any claim for relief.

7 **SECOND AFFIRMATIVE DEFENSE**

8 (Lack of Standing)

9 As an affirmative defense to each and every claim for relief, Defendants are informed and
10 believe and on that basis allege that the Plaintiff lacks standing, because he failed to comply with
11 the provisions of NRS 108.221 et seq.

12 **THIRD AFFIRMATIVE DEFENSE**

13 (Statute of Limitations and Statutory Requirements)

14 As an affirmative defense to each and every claim for relief, Defendants are informed and
15 believe and on that basis allege that each and every claim for relief is barred by the statute of
16 limitations in that Plaintiff failed to follow statutory requirements in connection with his
17 mechanic's lien.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 (Laches)

20 As an affirmative defense to each and every claim for relief, Defendants are informed and
21 believes and on that basis allege that each and every claim for relief is barred, in whole or in part,
22 by the equitable doctrine of laches.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 (Privilege)

25 As an affirmative defense to each and every claim for relief, Defendants are informed and
26 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
27 in part, by the doctrines of privilege.

28 **SIXTH AFFIRMATIVE DEFENSE**

(Justification)

As an affirmative defense to each and every claim for relief, Defendants are informed and

1 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
2 in part, by the doctrines of justification.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 (Equity)

5 As an affirmative defense to each and every claim for relief, Defendants are informed and
6 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
7 in part, by principles of equity and fairness.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 (Unclean Hands)

10 As an affirmative defense to each and every claim for relief, Defendants are informed and
11 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
12 in part, by the doctrine of unclean hands.

13 **NINTH AFFIRMATIVE DEFENSE**

14 (Consent)

15 As an affirmative defense to each and every claim for relief, Defendants are informed and
16 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
17 in part, by the doctrine of consent and/or acquiescence.

18 **TENTH AFFIRMATIVE DEFENSE**

19 (Estoppel)

20 As an affirmative defense to each and every claim for relief, Defendants are informed and
21 believe and on that basis allege that each and every claim for relief thereof is barred, in whole or
22 in part, by the doctrine of estoppel.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 (Failure to Mitigate)

25 As an affirmative defense to each and every claim for relief, and while denying that
26 Plaintiff has incurred any damages, Defendants are informed and believe and thereon allege that
27 Plaintiff has failed to act reasonably to mitigate, minimize or avoid damages, if any there be. As
28 a result, Plaintiff's recovery, if any, should be barred or reduced.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 (Failure to Join Indispensable Parties)

3 As an affirmative defense to each and every claim for relief, Defendants are informed and
4 believe and on that basis allege that Plaintiff has failed to join indispensable parties.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 (Waiver)

7 As an affirmative defense to each and every claim for relief, Defendants allege that each
8 and every claim for relief thereof is barred, in whole or in part, by waiver.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 (Uncertainty)

11 As an affirmative defense to each and every claim for relief thereof, Defendants allege
12 that each and every claim for relief thereof is barred, in whole or in part, as the allegations of the
13 Complaint are uncertain to include the amount claimed as Plaintiff's lien.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 (Intentional Acts)

16 As an affirmative defense to each and every claim for relief, Defendants are informed and
17 believe and on that basis allege that each and every claim for relief is barred, in whole or in part,
18 by the intentional acts, omissions, commissions and/or intentional conduct of the Plaintiff, and/or
19 his respective agents, representatives, attorneys and employees, if any.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 (Failure To Do Equity)

22 As an affirmative defense to each and every claim for relief, Defendants are informed and
23 believe and on that basis allege that each and every claim for relief is barred, in whole or in part,
24 by reason of the Plaintiff's failure to do equity.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 (Attorneys' Fees and Costs)

27 As an affirmative defense to each and every claim for relief, Defendants are informed and
28 believe and on that basis allege that Plaintiff is not entitled to any attorney fees or costs of suit.

CONCLUDING PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. Plaintiff takes nothing by way of his Complaint;
2. Plaintiff's Complaint be dismissed in its entirety with prejudice;
3. Defendants be awarded his costs of this suit;
4. Defendants be awarded attorneys' fees; and
5. For such other and further relief as the Court deems just and proper.

THIRD PARTY COMPLAINT

Third Party Plaintiffs, by and through counsel, Prezant & Mollath and Downey Brand, LLP, allege:

The Parties

1. Third Party Plaintiffs John Iliescu, Jr. and Sonnia Iliescu (hereinafter referred to as Iliescu or Third Party Plaintiffs) are residents of Washoe County, Nevada, and are the Trustees of the John Iliescu, Jr., and Sonnia Iliescu 1992 Family Trust Agreement.

2. Third Party Plaintiff John Iliescu, Jr. is an individual and a resident of Washoe County, Nevada.

3. Third Party Plaintiff Sonnia Iliescu is an individual and a resident of Washoe County, Nevada.

4. Third Party Defendant Consolidated Pacific Development, Inc. is a Nevada corporation.

5. Third Party Defendant DeCal Oregon, Inc. is an Oregon corporation and the successor, by name, to DeCal Custom Homes and Construction, Inc.

6. Third Party Defendant Indemnitor Calvin Baty is an individual and a resident of Oregon.

7. Third Party Defendant Indemnitor John Schleining is an individual and a resident of Oregon.

8. Third Party Defendant Hale Lane Peek Dennison and Howard, a Nevada professional corporation, dba Hale Lane, are attorneys licensed to practice law in the State of Nevada (hereinafter referred to as the "Hale Lane law firm").

1 and executed by Iliescu on August 3, 2005. Addendum No. 2 specifically provided, and the
2 parties contemplated, that the Purchase Agreement would be reviewed, "fine tuned" and clarified
3 by legal counsel retained by Iliescu before finalization.

4 17. On or about August 11, 2005, unbeknownst to Iliescu, CPD had unilaterally
5 purported to assign and transfer all of its interests in the Purchase Agreement to an entity known
6 as DeCal Custom Homes and Construction ("DeCal").

7 18. On or before September 22, 2005, pursuant to Addendum No. 3, Iliescu retained
8 the Hale Lane law firm to review, "fine tune", clarify and, in all respects, advise Iliescu relative to
9 the Purchase Agreement.

10 19. An Addendum No. 3 to the Purchase Agreement was thereafter prepared by Karen
11 D. Dennison of the Hale Lane law firm. Addendum No. 3 was executed by Iliescu and CPD on
12 or about October 8, 2005 and provided that, in certain circumstances, CPD could assign its
13 interests in the Purchase Agreement to another entity. The assignment referred to in Paragraph 17
14 above, however, was not addressed, disclosed or contained in Addendum No. 3.

15 20. On or before December 14, 2005, the Hale Lane law firm undertook to represent
16 both Iliescu and Purchasers Calvin Baty and Consolidated Pacific Development, Inc. in relation to
17 obtaining the necessary entitlements on the property as contemplated by the Purchase Agreement.
18 A copy of the December 14, 2005 Waiver of Conflict letter is attached hereto and marked Exhibit
19 "A". A major component of the entitlement was the work and drawings of an architect.

20 21. The Hale Lane law firm never discussed with or advised Iliescu at any time to
21 record a Notice of Non-Responsibility with the Washoe County Recorder to ensure the Property
22 would not be encumbered by mechanics or architect's liens recorded by individuals hired by CPD
23 as contemplated by the Purchase Agreement. On October 31, 2005, unbeknownst to Iliescu, an
24 architect, Mark Steppan, AIA, entered into a contract with BSC Financial, LLC in relation to the
25 property subject to the Purchase Agreement.

26 22. Despite being aware and/or involved in the purported assignment to DeCal and
27 representing the purchaser in connection with the entitlement process, the Hale Lane law firm
28 never advised or discussed with Iliescu the assignment, whether DeCal was an appropriate

1 assignee and purchaser of the Property, whether it had the means and financial viability to close
2 the sale, whether or how the purported assignment to DeCal affected Iliescu's interests under the
3 Purchase Agreement and the existence of BSC Financial, LLC as it may relate to the property and
4 Purchase Agreement and the October 31, 2005 contract with Mark Steppan, AIA..

5 23. Iliescu first became aware of the DeCal assignment on or about October 2, 2006 in
6 connection with a TMWA consent form related to the development application for the property
7 with the City of Reno (Case No. LDC06-00321, Wingfield Towers). The original Owner's
8 Affidavit of Iliescu that accompanied the City of Reno application made reference to only CPD
9 and Sam Caniglia.

10 24. On November 7, 2006, Mark Steppan, AIA recorded a mechanic's lien on the
11 property in the sum of \$1,783,548.00. A copy of said Notice and Claim of Lien is attached hereto
12 and marked Exhibit "B". The Hale Lane law firm never informed Iliescu that there was a dispute
13 with the project architect over non-payment for his services.

14 25. On November 28, 2006, the Wingfield Towers project (Case No. LDC06-00321)
15 was approved by the Reno City Council. The Clerk's Letter of Approval was issued November
16 30, 2006.

17 26. The Mechanic's Lien recorded by Mark Steppan, AIA on November 7, 2006 made
18 reference, at its Paragraph 2, to BSC Financial, LLC, as the entity that employed Mark Steppan,
19 AIA and who furnished the work and services in connection with Iliescu's property. Prior to said
20 date, Iliescu had no knowledge of the existence of or involvement of BSC Financial, LLC relative
21 to the property.

22 27. At some point subsequent to August 10, 2005, without the knowledge and/or
23 consent of Iliescu, Consolidated Pacific Development, Inc. and DeCal Custom Homes &
24 Construction transferred or assigned their interest in the Land Purchase Agreement to BSC
25 Financial, LLC. The Hale Lane law firm never informed Iliescu of any such assignment or even
26 the existence of BSC Financial, LLC.

27 28. As of December 14, 2005, and at all times thereafter, BSC Financial, LLC,
28 Consolidated Pacific Development, Inc., DeCal Custom Homes & Construction, Calvin Baty and

1 John Schleining (all related entities or persons) were represented in connection with the property
2 and project referred to in this litigation by the Hale Lane law firm. At the same time, the Hale
3 Lane law firm represented Iliescu.

4 29. An Addendum No. 4 to the Purchase Agreement was prepared by the Hale Lane
5 law firm on or about September 18, 2006, and executed by Iliescu and CPD on or about
6 September 19, 2006. Again, in said Addendum, there was no disclosure of or reference to DeCal
7 or BSC Financial, LLC.

8 30. The Hale Lane law firm also represented Iliescu in regard to a) the Mechanic's
9 Lien recorded by Mark Steppan, AIA, and b) closing the Land Purchase Agreement. During said
10 time, the Hale Lane law firm did not advise Iliescu of the nature and extent of the problems that
11 existed relative to the transaction, the Purchase Agreements, the Mechanic's Lien filed by Mark
12 Steppan, AIA, the inherent conflicts that now existed between Iliescu, the inter-related Buyers as
13 referred to above, and the complications of the transaction.

14 31. On or about December 8, 2006, as a result of the recordation of the Mechanic's
15 Lien by Mark Steppan, AIA, the Hale Lane law firm and R. Craig Howard prepared an Indemnity
16 Agreement for their clients referred to in Paragraph 28 above. A copy of said Indemnity
17 Agreement is attached hereto and marked Exhibit "C". Said Indemnity Agreement was submitted
18 to Iliescu on December 12, 2006. Again, the Hale Lane law firm did not advise Iliescu of the
19 problems that existed as set forth in the above paragraphs.

20 32. On or about December 26, 2006, the Hale Lane law firm drafted a Conflict of
21 Interest Waiver Agreement and submitted it to Iliescu and BSC Financial, LLC for signature.
22 The Agreement was executed by the parties. A copy of said Agreement is attached hereto and
23 marked Exhibit "D". The Hale Lane law firm never advised Iliescu that the conflict of interest
24 that existed might not be waivable, nor did it advise Iliescu of the problems that now existed as
25 set forth in the above paragraphs.

26 33. Thereafter, the Hale Lane law firm embarked upon a course of advising Iliescu and
27 preparing documents so as to allow the Purchase Agreement to close with BSC Financial, LLC.
28 Such conduct included dealing with the Mechanic's Lien of Mark Steppan, AIA, recommending

1 to and obtaining Iliescu's consent to the assignment of the Land Purchase Agreement to BSC
2 Financial, LLC. Such consent was not in the best legal interests of Iliescu, given the existence of
3 the Mechanic's Lien and other problems as set forth in the above paragraphs.

4 34. On February 14, 2007, Jerry M. Snyder and the Hale Lane law firm, on behalf of
5 Iliescu, filed an Application for Release of the Mark Steppan, AIA Mechanic's Lien in Case No.
6 CV07-00341. Said Application is still pending. On May 4, 2007, Mark Steppan, AIA filed a
7 Complaint to Foreclose Mechanic's Lien and Damages in Case No. CV07-01021.

8 35. BSC Financial, LLC filed for Chapter 11 bankruptcy protection on April 25, 2007.

9 36. The Architect's Lien remains a cloud on Iliescu's title, Steppan has filed suit for
10 foreclosure of the Architect's Lien and seeks judicial foreclosure of his purported Architect's Lien
11 upon Iliescu's real property.

12 **FIRST CLAIM FOR RELIEF**

13 (Declaratory Relief—Against the Indemnitors Baty and Schleining)

14 37. Iliescu realleges and incorporates by reference Paragraphs 1 through 36 of this
15 Complaint, as if fully set forth herein.

16 38. A dispute and actual controversy has arisen and now exists between Iliescu and
17 Defendants regarding the rights, duties, and obligations of the parties.

18 39. Specifically, Iliescu is informed and believes, and based thereon allege, that the
19 Indemnitors, both pursuant to the Indemnity Agreement and an implied indemnity, owe Iliescu a
20 duty to defend this action and make Iliescu whole for any and all costs, damages, claims, or losses
21 suffered as a result of the Architect's Lien and the BSC Financial, LLC contract or agreement
22 with Steppan and its bankruptcy filing.

23 40. Iliescu is informed and believes, and based thereon allege, that the Indemnitors
24 dispute Iliescu's interpretation and assertion of rights.

25 41. In view of the actual conflict and controversy between the parties, Iliescu desires a
26 judicial determination of the respective rights, duties, and obligations of Iliescu, and the
27 Indemnitors.
28

1 **SECOND CLAIM FOR RELIEF**

2 (Indemnification—Against the Indemnitors Batty and Schleining)

3 42. Iliescu realleges and incorporates by reference Paragraphs 1 through 41 of this
4 Complaint, as if fully set forth herein.

5 43. To the extent Iliescu is held liable for any and all costs or damages incurred as a
6 result of the Architect's Lien, and/or the loss of the Property to foreclosure, the bankruptcy filing,
7 and the acts and omissions of the Indemnitors, Iliescu is entitled to be completely indemnified by
8 the Indemnitors for any and all damages, including consequential, suffered by Iliescu.

9 **THIRD CLAIM FOR RELIEF**

10 (Breach of Contract – Against CPD and DeCal)

11 44. Iliescu realleges and incorporates by reference Paragraphs 1 through 43 of this
12 Complaint, as if fully set forth herein.

13 45. The Purchase Agreement is a valid and binding contract.

14 46. CPD is obligated under the terms of the contract as the original contracting party.

15 47. DeCal is obligated under the terms of the contract by virtue of the assignment to
16 DeCal.

17 48. Iliescu has performed, stands ready to perform, and has the ability to perform as
18 required under the terms of the Purchase Agreement.

19 49. Both CPD and DeCal have failed to, among other things, tender the remainder of
20 the purchase price for the Property due under the terms of the Purchase Agreement.

21 50. Iliescu has been harmed by CPD and DeCal's breaches of the Purchase Agreement
22 because they have been unable to obtain the benefit of their bargain, which includes, among other
23 things, consequential damages, interest on, and the principal of, the remainder of the purchase
24 price for the Property due under the terms of the Purchase Agreement and CPD and DeCal's
25 actions causing recordation of the Steppan Mechanic's Lien and their failure to indemnify Iliescu
26 therefrom.

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51. Iliescu realleges and incorporates by reference Paragraphs 1 through 50 of this Complaint, as if fully set forth herein.

53. CPD and DeCal have failed to satisfy their obligations under the Purchase Agreement.

FIFTH CLAIM FOR RELIEF

55. Iliescu realleges and incorporates by reference Paragraphs 1 through 54 of this Complaint, as if fully set forth herein.

57. The Hale Lane law firm breached the duties enumerated above, and failed to perform these duties, as addressed herein.

(Against the Hale Lane law firm – Negligence)

14

1 59. The Hale Lane law firm, Dennison, Howard and Snyder were negligent because,
2 among other things, they failed to advise Iliescu to record a Notice of Non-Responsibility, failed
3 to properly advise Iliescu of the consequence of their conflict of interest in representing Iliescu in
4 the transaction addressed herein, and continued to represent Iliescu in the face of a non-waivable
5 conflict of interest.

6 60. The Hale Lane law firm's negligence has damaged Iliescu, has caused them to
7 incur attorneys fees, and has resulted in the Mechanic's Lien and potential loss of the Property
8 through foreclosure.

9 61. The Hale Lane law firm owed a duty to Iliescu to exercise reasonable care in how
10 they handled the sale transaction, the Purchase Agreement, and their advice to Iliescu regarding
11 the Property, and breached that duty by way of the breaches and omissions set forth above.

12 WHEREFORE, Iliescu prays for judgment as follows:

13 1. For damages in an amount in excess of \$10,000.00 to compensate for the losses,
14 damages, and expenses incurred by Iliescu;

15 2. For a declaration that the Indemnitors are fully responsible for any and all costs or
16 damages suffered by Iliescu arising out of the Architect's Lien and/or the BSC Financial, LLC
17 contract or agreement with Steppan;

18 3. For a decree of specific performance requiring CPD and DeCal to perform as
19 required under the terms of the Purchase Agreement, to include damages and indemnification
20 from the Steppan Mechanic's Lien.

21 5. For attorneys' fees incurred in the prosecution of this action;

22 ///

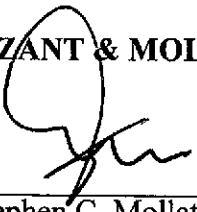
23 ///

1 6. For costs of suit; and,

2 7. For such other and further relief as the court deems proper.

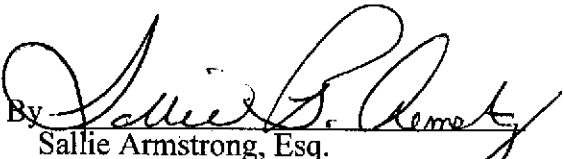
3 DATED this 27th day of September, 2007.

4 **PREZANT & MOLLATH**

5 
6 By _____
7 Stephen C. Mollath, Esq.

8 and

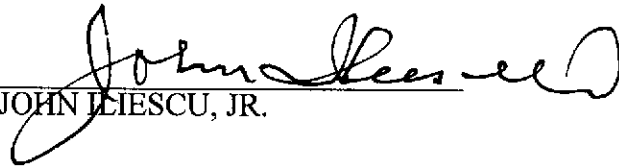
9 **DOWNEY BRAND LLP**

10 
11 By _____
12 Sallie Armstrong, Esq.
13 Attorneys for John Iliescu, Jr. and Sonnia Iliescu
14 and The John Iliescu, Jr. and Sonnia Iliescu
15 1992 Family Trust

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

3
4 JOHN ILIESCU, JR., being duly sworn, deposes and says:

5 That he is a Third Party Plaintiff herein; that he has read the foregoing Third Party
6 Complaint and knows the contents thereof, and that the same is true of his own knowledge,
7 except as to the matters therein stated to be alleged upon information and belief, and as to those
8 matters, he believes it to be true.

9
10 
11 JOHN ILIESCU, JR.

12
13 SUBSCRIBED AND SWORN to before me,
14 this 21st day of September, 2007.

15
16 
17 NOTARY PUBLIC



EXHIBIT A

HALE LANE

ATTORNEYS AT LAW

544 1/2 Kietzka Lane | Second Floor | Reno, Nevada 89511
Telephone: (775) 327-3000 | Facsimile: (775) 786-6179
www.halelane.com

December 14, 2005

Edward Everett Hale
(1929-1993)

Steve Lane

J. Stephen Peck

Karen D. Dennison

R. Craig Howard

Stephen V. Novacek

Richard L. Elmore

Richard Bennett

Robert C. Anderson

Alex J. Flanagan

James L. Kelly

Kelly Tarnalin

N. Patrick Flanagan

Matthew E. Woodhead

Michelle D. Mullins

Roger W. Jeppson

Lance C. Earl

Jeremy J. Nork

David A. Garcia

Elissa F. Cadish

Timothy A. Lukac

Frederick J. Schmidt

James Newman

Terry R. Sances

Patrick J. Kelly

Scott D. Fleming

Scott Schorer

Anthony L. Hall

Jerry M. Snyder

Brent C. Eckertsky

Frederick R. Raichler

Patricia C. Halstead

Matthew J. Kreuzer

Matthew B. Hippler

Bred M. Johnston

Bryce K. Kuntz

Douglas C. Phipps

Justin C. Jones

Nicole M. Vance

Kimberlee Rotzky

Dora V. Djilava

Simon Johnson*

Sarah E. L. Cina

Heleen E. Mardirovian

Of Counsel

Roy Farrow

Pauline Ng Lee

Andrew Pearl

*Admitted to New York
and New Jersey only

John Iliescu, Jr., an individual

Sonnia Santee Iliescu, an individual

John Iliescu, Jr. and Sonnia Iliescu,

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

200 Court Street

Reno, Nevada 89501

Calvin Baty, an individual

c/o Consolidated Pacific Development, Inc.

932 Parker Street

Berkeley, California 94710-2524

Consolidated Pacific Development, Inc.

932 Parker Street

Berkeley, California 94710-2524

Re: Court Street/Island Avenue Condominium Project

Lady and Gentlemen:

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

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

HALE LANE PECK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone (702) 232-2500 | Facsimile (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Facsimile (775) 684-6001

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JA0238

December 14, 2005
Page 2

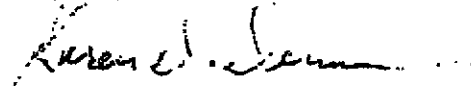
HALE LANE
ATTORNEYS AT LAW

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

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

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

Very truly yours,



Karen D. Dennison

KDD:csr

Acknowledgement

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

Iliescu:

Date: _____

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

Date: _____

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

BSC Financial LLC:

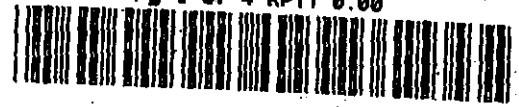
BSC Financial LLC, a limited liability company

Date: _____

By: _____
Calvin Baty, Manager

EXHIBIT B

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



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



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

APN: 011-112-03

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

APN: 011-112-06

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

APN: 011-112-07

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

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

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

APN: 011-112-12



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

DATED: This 7th day of November, 2006.

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

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

Gayle A. Kern
Gayle A. Kern, Esq.

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

Amber A. Garrell
Notary Public

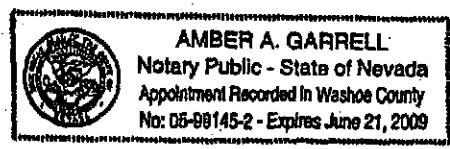


EXHIBIT C

INDEMNITY

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

RECITALS:

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

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

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

D. Baty and Schleining are principals of BSC.

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

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

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

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

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

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

BSC FINANCIAL, LLC, a limited liability
company

Dated: December 8, 2006

By: 

Calvin Baty
Manager

Dated: December 8, 2006


CALVIN BATY, individually

Dated: December 8, 2006


JOHN SCHLEINING, individually

EXHIBIT D

HALE LANE

ATTORNEYS AT LAW

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

December 26, 2006

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

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

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

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

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

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

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

HALE LANE PEEK DENNISON AND HOWARD

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

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JA0250

December 26, 2006

Page 2

HALE LANE
ATTORNEYS AT LAW

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

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

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

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

Sincerely,

R. Craig Howard

RCH:dyt

1 **CERTIFICATE OF SERVICE**

2 I am a resident of the State of Nevada, over the age of eighteen years, and not a party to
3 the within action. My business address is Downey Brand LLP, 427 West Plumb Lane, Reno, NV
89509. On September 27, 2007, I served the attached document(s):

4 **ANSWER AND THIRD PARTY COMPLAINT**

- 5 ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax
6 number(s) set forth below on this date before 5:00 p.m.
- 7 ☐ **BY HAND:** by personally delivering the document(s) listed above to the person(s)
8 at the address(es) set forth below.
- 9 ☒ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with
10 postage thereon fully prepaid, in the United States mail at Reno, Nevada addressed
11 as set forth below.
- 12 ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an
13 overnight delivery service company for delivery to the addressee(s) on the next
business day.
- 14 ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by _____ of
15 the document(s) listed above to the person(s) at the address(es) set forth below.

16 *Gayle Kern, Esq.*
17 *5421 Kietzke Lane, Suite 200*
18 *Reno, NV 89511*

19 I am readily familiar with the firm's practice of collection and processing correspondence
20 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
21 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
22 motion of the party served, service is presumed invalid if postal cancellation date or postage
23 meter date is more than one day after date of deposit for mailing in affidavit.

24 I declare under penalty of perjury under the laws of the State of Nevada that the above is
25 true and correct.

26 Executed on September 27, 2007, at Reno, Nevada.

27 

28 Kim Kakunes

1
2 **SECOND JUDICIAL DISTRICT COURT**
3 **COUNTY OF WASHOE, STATE OF NEVADA**
4

5 **AFFIRMATION**
6 **Pursuant to NRS 239B.030**

7 The undersigned does hereby affirm that the preceding document, **ANSWER AND**
8 **THIRD PARTY COMPLAINT**, filed in Case No. CV07-01021, consolidated with CV07-
9 00341.

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

11 **-OR-**

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

13 ☐ A specific state or federal law, to wit:
14

15 **-or-**

16 ☐ For the administration of a public program

17 **-or-**


18 ☐ For an application for a federal or state grant

19 **-or-**

20 ☐ Confidential Family Court Information Sheet (NRS 125-130, NRS 125.230 and
21 NRS 125B.055)

22 DATED this 24th day of September, 2007.

23 **PREZANT & MOLLATH**
24

25 
26 By _____
27 Stephen C. Mollath, Esq.
28 Attorney for Iliescu

4050

David R. Grundy, Esq., NSB #864
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Telephone: (775) 786-6868
Attorneys for Third-Party Defendants

Sallie B. Armstrong, Esq., NSB #1243
Downey Brand, LLP
427 West Plumb Lane
Reno, Nevada 89509
(775) 329-5900

Attorney for Third Party Plaintiffs

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

MARK B. STEPPAN,

Plaintiff,

v.

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

Defendants.

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

Third-Party Plaintiffs,

Case No. CV07-01021

Dept. No. B6

Consolidated with

Case No. CV07-00341

Dept. No. B6

v.

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

Third-Party Defendants.

**STIPULATION TO STAY PROCEEDINGS AGAINST DEFENDANT
HALE LANE AND TO DISMISS CLAIMS AGAINST DEFENDANTS
DENNISON, HOWARD AND SNYDER WITHOUT PREJUDICE**

Third-party plaintiffs John Iliescu, Jr. and Sonia Iliescu, individually and as trustees of the John Iliescu Jr. and Sonia Iliescu Family Trust, hereby stipulate with the following Third-party defendants: Hale Lane Peek Dennison & Howard, a Professional Corporation, dba "Hale Lane," Karen D. Dennison, R. Craig Howard and Jerry M. Snyder as follows:

RECITALS

A. Third-Party Plaintiffs have commenced a third-party action in this matter against the above named attorneys and their law firm employer asserting claims arising out of an attorney/client relationship between third-party plaintiffs and these third-party defendants, including claims of legal malpractice arising from both litigation and transactional issues.

B. Questions have arisen regarding whether any of these claims have "accrued" so as to allow this present filing, or rather, whether the claims are premature in light of the uncertainty of the outcome of claims by and between plaintiffs and defendants who have asserted these third-party claims.

C. Guided by the law as established under Nevada Medical Liability Insurance

Co. v. Semenza, 104 Nev. 666, 668, K.J.B., Inc. v. Drakulich, 107 Nev. 367 (1991) and Kopicko v. Young, 114 Nev. 1333 (1998), and having agreed that the claims have not yet "accrued", the parties have agreed to the terms of this stipulation and urge the court to enter an order consistent herewith.

STIPULATION

1. All claims asserted against the individually named third-party defendants, Karen D. Dennison, R. Craig Howard and Jerry M. Snyder, shall be dismissed, without prejudice. Third-party plaintiffs may, but need not, refile the claims currently asserted or any other claims against these individual third-party defendants only upon the entry of final judgment regarding plaintiff's claims.

2. All claims asserted against Hale Lane shall be stayed for all purposes, including discovery and trial, pending the final resolution of all claims asserted by plaintiffs against defendants.

3. Notwithstanding the imposition of this stay, Hale Lane shall participate in any settlement conference if ordered to do so by the court, may file dispositive motions and points and authorities in support of or in response thereto, and may participate in court hearings consistent herewith.

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

Dated: March 6, 2008

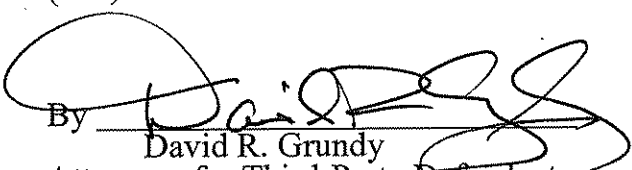
Prezant & Mollath
6560 S.W. McCarran Blvd., Suite A
Reno, Nevada 89509
(775) 786-3011

Downey Brand LLP
427 West Plumb Lane
Reno, Nevada 89509
(775) 329-5900

By 
Sallie B. Armstrong
Attorney for Third-Party Plaintiffs

Dated: March 6, 2008

Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
(775) 786-6868

By 
David R. Grundy
Attorneys for Third-Party Defendants
Hale Lane, Dennison, Howard and Snyder

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PREZANT & MOLLATH
STEPHEN C. MOLLATH (Bar No. 922)
6560 S.W. McCarran Blvd., Suite A
Reno, NV 89509
Telephone: (775) 786-3011
Facsimile: (775) 786-1354

DOWNEY BRAND LLP
SALLIE B. ARMSTRONG (Bar No. 1243)
JAMIE P. DREHER (Bar No. 8794)
MICHELLE N. KAZMAR (Bar No. 10098)
427 West Plumb Lane
Reno, NV 89509
Telephone: (775) 329-5900
Facsimile: (775) 786-5443

Attorneys for John Iliescu Jr., 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
SONNIA ILIESCU AS TRUSTEES OF
THE JOHN ILIESCU, JR. AND SONNIA
ILIESCU 1992 FAMILY TRUST,

Applicant,

v.

MARK B. STEPPAN,

Respondent.

CASE NO. CV07-00341
(Consolidated with CV07-01021)

DEPT NO. 6

AND RELATED ACTIONS.

**APPLICANTS/DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON
MARK B. STEPPAN'S CLAIM FOR FORECLOSURE OF MECHANICS LIEN**

Applicants/Defendants John Iliescu, Jr. and Sonnia Iliescu as Trustees of the John Iliescu,
Jr. and Sonnia Iliescu 1992 Family Trust, and John Iliescu, individually, (collectively
"Defendants"), by and through their attorneys, Prezant & Mollath and Downey Brand LLP,

1 hereby move this Court to enter an order granting partial summary judgment on
2 Respondent/Plaintiff Mark B. Stepan's (hereinafter "Plaintiff") claim for foreclosure of his
3 mechanics lien as no genuine issue of material fact remains that Defendants did not have actual
4 notice of Plaintiff's lien and, therefore, judgment as a matter of law is proper. This motion is
5 based on the following memorandum of points and authorities, the exhibits attached hereto, the
6 pleadings and papers on file herein and any oral argument the Court may entertain.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I.**
9 **UNDISPUTED FACTS**

10 On July 29, 2005, Dr. Iliescu entered into a sales contract with Consolidated Pacific
11 Development for the sale of a piece of property in downtown Reno. The sales contract was
12 subsequently amended by four addendums.¹ See Land Purchase Agreement and Addendums,
13 attached hereto as Exhibit 1. Pursuant to the sales contract, Dr. Iliescu agreed to sell four parcels
14 of land to Consolidated Pacific Development Inc. for \$7,500,000.00. *Id.* This amount was later
15 increased to \$7,876,000.00. *Id.* at ¶ B(1) (as amended by Addendum No. 4). As part of the
16 agreement, Dr. Iliescu was also to receive a credit toward the ultimate purchase price of a new
17 penthouse in the condominium project that Consolidated Pacific Development proposed to build.
18 *Id.* at ¶ 39(H). The sales contract was contingent on Consolidated Pacific Development obtaining
19 certain government approvals. *Id.* at ¶ 39(F).

20 Dr. Iliescu understood that the buyer of his property intended to construct residential
21 condominium units.² See Declaration of Dr. Iliescu attached hereto as Exhibit 2, ¶ 4. However,
22 while Dr. Iliescu had the right to review floor plans related to his proposed penthouse, Dr. Iliescu
23 did not contract to review all plans associated with the proposed condominium project. In fact, as
24 paragraph 39(H)(1), as amended by Addendum No. 3, makes clear:

25 *When the Project has progressed to a point where the architect is designing
26 preliminary floor plans for the penthouses, Seller shall meet with the architect and*

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

28 ² Clearly, the purchaser did not agree to pay over \$7,000,000 with the intention of not developing the property into
something which justified the sales price.

1 participate in the selection and design of Seller's Penthouse Unit.

2 Ex. 1. (emphasis added). While the sales contract references the buyer's possible need to retain
3 professionals in connection with the buyer's activity on the project,³ nowhere in the contract is
4 there a mention of a specific architect retained on this project. Ex. 1. In fact, Plaintiff admits that
5 at the point the contract was entered into, neither the buyer nor Defendants would have been
6 aware of Plaintiff. See May 3, 2007 Hearing Transcript attached hereto as Exhibit 3 at 27:5-
7 27:17. Moreover, Dr. Iliescu's only involvement with the architect was to take place when the
8 project was at the point of designing the penthouse floors—a point that was never realized.

9 Consolidated Pacific continued to enter into the Addendums with Dr. Iliescu, despite the
10 fact that, without the knowledge or consent of Dr. Iliescu, the sales contract was assigned to BSC
11 Investments, LLC ("BSC"). Ex. 2 at ¶ 3. It is BSC, and not Dr. Iliescu or Consolidated Pacific,
12 which entered into a contract with Plaintiff and Fisher Friedman Associates for architectural
13 services. See AIA Contract attached hereto as Exhibit 4. According to the lien filed by Plaintiff,
14 Plaintiff first provided services to BSC on April 21, 2006.⁴ See Lien of Mark Steppan attached
15 hereto as Exhibit 5. While Dr. Iliescu was present at two public meetings at which BSC's design
16 consultant (not the Plaintiff) made a presentation regarding the condominium project (and
17 submitted a statement card in support of the project), Dr. Iliescu was never personally introduced
18 to any of the architects or engineers involved and had no direct information of them. Ex. 2 at ¶¶
19 4, 6.⁵ In fact, the only knowledge that can possibly be attributed to Dr. Iliescu is one line on an
20 introductory slide to the public presentation, which identifies Plaintiff as an architect but provides
21 no other information (no address nor license number). See Power Point Presentation printout
22 attached hereto as Exhibit 7.

23 ³ One of the conditions that had to be met prior to buyer being obligated to purchase the property is that architectural
24 and design review and approval had to be obtained. Ex. 1, ¶39(F). Such fees were to be incurred at the sole expense
of the buyer and do not mention the name of a specific architect or the work to be performed. See Id.

25 ⁴ The lien filed by Plaintiff does not reveal his affiliation with Fisher Friedman Associates.

26 ⁵ Plaintiff relies on a presentation made at the October 4, 2006 Reno City Planning Commission. However, as with
27 other presentations, Plaintiff and Fisher Friedman did not take an active role in the presentation. There is one
28 mention in the minutes that a Rodney Friedman made a statement at the presentation, but the minutes do not indicate
that he revealed his affiliation with the project. Rather, David Snelgrove and Gary Duhon actively presented the
power-point presentation and 3-D fly by. See Reno City Planning Commission October 4, 2006 minutes attached
hereto as Exhibit 6. Mr. Friedman, Mr. Snelgrove and Mr. Duhon are not the lien claimants in this case.

1 Plaintiff ultimately recorded a mechanic's lien for over \$1,700,000.00, which Defendants
2 believe is for the profits contemplated under the contract.⁶ Ex. 5. Plaintiff never served Dr.
3 Iliescu a notice of right to lien as required by NRS 108.245. Ex. 2 at ¶ 6. BSC filed for Chapter
4 11 Bankruptcy protection in April of 2007. Dr. Iliescu obtained an Order from the Bankruptcy
5 Court terminating the sales contract, and on February 21, 2008, the case was formally dismissed.
6 Exhibit 8.

7 II. 8 LEGAL ARGUMENT

9 A. Summary Judgment Standard

10 Pursuant to NRCP 56, "[s]ummary judgment is appropriate...when the pleadings,
11 depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before
12 the court demonstrate that no genuine issue of material fact exists, and the moving party is
13 entitled to judgment as a matter of law." Wood v. Safeway, 121 Nev. 724, 731, 121 P.3d 1026,
14 1031 (2005). Summary judgment should not be viewed as a "disfavored procedural shortcut," but
15 rather as an integral part of the judicial process which is "designed 'to secure the just, speedy and
16 inexpensive determination of every action.'" Id. at 730, 1030.

17 "While the pleadings and other proof must be construed in a light most favorable to the
18 nonmoving party, that party bears the burden to 'do more than simply show that there is some
19 metaphysical doubt' as to the operative facts to avoid summary judgment..." Id. at 732, 1031
20 (quoting Matusushita Electrical Industrial Co. v. Zenith Radio, 475 U.S. 574, 586, 106 S.Ct. 1348
21 (1986)). Thus, the non-moving party may not rest upon the allegations contained in the
22 complaint, "but must, by affidavit or otherwise, set forth specific facts demonstrating a genuine
23 factual issue." Wood, 121 Nev. at 731, 121 P.3d at 1030. "The nonmoving party is not entitled
24 to build a case on the gossamer threads of whimsy, speculation and conjecture." Id. 732, 1032

25
26 ⁶ It appears that Plaintiff was paid roughly \$460,000.00 for his services. However, despite this, Plaintiff recorded a
27 mechanic's lien for the entire amount of profits contemplated in his contract with BSC. "[A] lien is regulated by the
28 amount and value of the work done, and not by any supposed profits contracted for. No lien may be allowed for
profits or commissions not earned, as on labor not done or material not furnished, or on that portion of the contract
which is not completed." Fortune v. Superior Court, 768 P.2d 1194 (Ariz.Ct.App. 1989) (quoting 57 C.J.S.
Mechanics' Liens § 49 at 540).

1 (internal quotation marks and citations omitted).

2 **B. Summary Judgment is Appropriate at this Stage in the Proceedings.**

3 Defendants initially filed an Application for Release of Mechanic's Lien on February 14,
4 2007. Plaintiff filed a Response to that Application and a hearing was held by this Court on the
5 Application on May 3, 2007 (the "Application Hearing"). Plaintiff asserted that discovery was
6 needed prior to the Court ruling on the Application. This Court ordered Plaintiff to conduct
7 discovery within a ninety day period following the Application Hearing. The Court further
8 indicated that the hearing on the Application could be reset after completion of discovery.

9 On May 4, 2007, Plaintiff filed his Complaint To Foreclose Mechanic's Lien and For
10 Damages, which received a new case number. That case was subsequently consolidated with the
11 case pending on Defendants' Application for Release of Mechanic's Lien.

12 Prior to the cases being consolidated and after the ninety day period during which Plaintiff
13 was afforded an opportunity to conduct discovery, Plaintiff filed a Supplemental Response to
14 Defendants' Application. However, because the cases were consolidated and it appeared (after
15 consolidation) that the proper way to resolve this issue was through summary judgment, the
16 hearing on Defendants' application was never reset.

17 This Court held a mandatory pre-trial conference on February 22, 2008. At that time, both
18 Plaintiff and Defendants indicated that they believed the issue of whether Defendants had actual
19 notice could be resolved by summary judgment.⁷

20 **C. Summary Judgment Is Proper Because It Has Been Established That Plaintiff Failed**
21 **To Serve A Notice Of Right To Lien As Required By NRS 108.245(1).**

22 NRS 108.245(1) provides that a lien claimant must "deliver in person or by certified mail
23 to the owner of the property a notice of right to lien" in a form substantially similar to that set
24 forth in the statute. Moreover, if such notice is not given, "[n]o lien for materials or equipment
25 furnished or for work or services performed, ..., may be perfected or enforced..." NRS
26 108.245(3). It is undisputed that Plaintiff did not serve Dr. Iliescu, the owner of the property, a

27 _____
28 ⁷ If Plaintiff introduces evidence in addition to the evidence presented in his Supplemental Response, then
Defendants may need to do limited deposition discovery.

1 notice of right to lien. Dr. Iliescu was never personally served with a notice of right to lien, nor
2 did Dr. Iliescu receive such notice by certified mail. Ex. 2 at ¶¶ 6-7. Moreover, Plaintiff has
3 admitted to this Court that no such notice was ever given. Ex. 3 at 15:3-15:4. Thus, unless
4 Plaintiff can establish that Dr. Iliescu had actual notice under what should be the very limited
5 exception set forth in Fondren v. K/L Complex Ltd., 106 Nev. 705, 800 P.2d 719 (1990),
6 Plaintiff's lien claim fails as a matter of law.

7 **D. Summary Judgment Is Proper Because Dr. Iliescu Did Not Have Actual Knowledge**
8 **Sufficient for Plaintiff to Establish the Narrow Exception of *Fondren*.**

9 Despite failing to serve the statutorily required notice of right to lien, Plaintiff asserts that
10 his lien is valid because no such notice was required pursuant to Fondren v. K/L Complex Ltd.,
11 106 Nev. 705, 800 P.2d 719 (1990). "[T]he purpose of the pre-lien statute is to put the owner on
12 notice of work and materials furnished by third persons with whom he has no direct contact."
13 Matter of Stanfield, 6 B.R. 265, 269 (Bankr.D.Nev. 1980) (emphasis in original omitted). The
14 Court in Fondren recognized that the "failure to serve the pre-lien notice does not invalidate a
15 mechanics' or materialman's lien where the owner received *actual notice*." Fondren 106 Nev. at
16 710, 800 P.2d at 721 (emphasis added). Thus, where the owner of the property has actual notice
17 of the work being performed on his or her property, the purpose of NRS 108.245 is served, and
18 the owner has the burden to file a notice of non-responsibility. Id. at 709, 721 n. 2.

19 Notably, Fondren was decided in 1990 under a different statutory scheme than the one
20 which existed when the architect allegedly provided his services in this case. Specifically, the
21 statute governing the filing of a notice of non-responsibility dramatically changed in 2005, and,
22 while Fondren has not been expressly overruled by this change, Fondren and the actual notice it
23 requires must be interpreted in light of the more onerous notice of non-responsibility
24 requirements placed on the owner.

25 **1. The Actual Notice Required By *Fondren* Must Enable the Owner to Record a**
26 **Valid Notice of Non-Responsibility.**

27 The actual notice required under Fondren must be sufficient to place the burden upon the
28 owner to file a notice of non-responsibility. Despite having notice that construction was
underway on her property, Fondren attempted to argue that she did not have sufficient notice of

1 the subcontractors employed in order to defeat the lien claim. *Id.* at 707, 721 n.2. In affirming
2 the lower court, the Supreme Court specifically references the findings of the district court.
3 Specifically, the lower court noted that Fondren's notice that *construction was underway* was
4 sufficient to impose upon her the burden to file a notice of non-responsibility. *Id.*

5 This footnote by the Court is significant. NRS 108.234 as it existed at the time Fondren
6 was decided provided:

7 Every building or other improvement..., constructed upon any lands with the
8 knowledge of the owner or the person having or claiming any interest therein,
9 shall be held to have been constructed at the instance of such owner or person
10 having or claiming any interest therein, and the interest owned or claim shall be
11 subject to any lien recorded...*unless such owner or person having or claiming
interest therein shall, within 3 days after he has obtained knowledge of the
construction, alteration or repair, or the intended construction, alteration or
repair, gives notice that he will not be responsible for such improvement by filing
a notice in writing to that effect...*

12 NRS 108.234 (1991)⁸ (attached hereto as Exhibit 9). This statute does not require the owner to
13 specifically identify the person providing the services or to specifically identify that person's
14 address.

15 Significantly, NRS 108.234 was amended in 2005 and now provides:

16 2. The interest of a disinterested owner in any improvement and the property
17 upon which improvement is constructed, altered or repaired is not subject to a
18 notice of lien if the disinterested owner, within 3 days after he first obtains
19 knowledge of the construction, alteration or repair, or the intended construction,
20 alteration or repair, gives notice that he will not be responsible for the
21 improvement by recording a notice in writing to that effect...

22 3. *To be effective and valid*, each notice of nonresponsibility recorded pursuant to
23 this section *must* identify:

24 (a) The names and addresses of the disinterested owner's and the person
25 who is causing the work of improvements to be constructed, altered or repaired;

26 (b) The location of the improvement and the address and legal description
27 of the property upon which the improvement is or will be constructed, altered or
28 repaired;

(c) The nature and extent of the disinterested owner's interest in the
improvement and the property upon which the improvement is or will be
constructed, altered or repaired;

(d) The date on which the disinterested owner first learned of the
construction, alteration or repair of the improvement that is the subject of the
notice of nonresponsibility; ...

⁸ This history of NRS 108.234 reveals that prior to 1991, the statute remained the same since 1965.

1 6. *An owner who does not comply with the provisions of this section may not*
2 *assert any claim that his interest in any improvement and the property upon*
3 *which the improvement is constructed, altered or repaired is not subject to or is*
4 *immune from the attachment of a lien...*(Emphasis added).

5 As provided in NRS 108.234(6), an owner must strictly comply with the provisions of that
6 section in order to be provided any protection against a subsequent lien. See also Peccole v. Luce
7 & Goodfellow, Inc., 66 Nev. 360, 374, 212 P.2d 718, 726 (1949) (finding that there must be strict
8 compliance with the requirements for filing a notice of nonresponsibility).

9 The actual notice exception in Fondren is simply that—an exception. It is not intended to
10 impose upon an owner of land an affirmative duty to investigate any and all potential lien
11 claimants. Rather, the actual notice exception is intended to allow an otherwise invalid lien, due
12 to the failure to serve the required notice, to be upheld and enforced. As noted above, the purpose
13 of NRS 108.245 is to place the owner on notice of materials or services provided by third parties
14 with whom the owner has not directly contracted. Such notice would then trigger the three-day
15 requirement within which the owner is required to file a notice of non-responsibility. Thus, the
16 actual notice provided in Fondren must provide sufficient knowledge for the owner to meet the
17 requirements imposed by NRS 108.234.

18 Such notice was not provided to Dr. Iliescu and the general notice relied upon by Plaintiff
19 is not sufficient to relieve Plaintiff of the burden of serving a notice of right to lien.

20 **2. Defendants Did Not have Actual Notice as Required by Fondren.**

21 The facts of Fondren are significant. In Fondren, the trial court found, among other
22 things, that:

- 23 1. Fondren was apprised of the progress of construction (direct personal knowledge);
- 24 2. Fondren approved specific construction activities (direct personal involvement);
- 25 and
- 26 3. Fondren had her attorney perform regular inspections of the property on her behalf
27 (direct personal knowledge).

28 Fondren, 106 Nev. at 709, 721 n. 2. (parentheticals added).

By virtue of her direct personal knowledge and involvement (she approved construction

1 plans and had her attorney perform regular inspections of the *active* construction project), the land
2 owner in Fondren relieved the lien claimant of its duty to provide any pre-lien notice. Facts
3 comparable to these do not exist in this case. Moreover, those facts which do exist indisputably
4 did not (and could not) provide Defendants with the actual notice they needed in order to comply
5 with NRS 108.234. Such actual notice is required in order for this Court to determine that
6 Plaintiff's lien is valid despite its failure to serve the pre-lien notice as required by NRS
7 108.245(1).

8 Plaintiff would have this Court believe that Fondren imposes upon an owner of property
9 the duty to investigate who may be performing work or providing services on behalf of the
10 property.⁹ Plaintiff is incorrect, and, his theory, if adopted, would impermissibly undercut the
11 statutory protections provided to owners of property. Actual notice is intended to relieve the lien
12 claimant of the formal requirement of NRS 108.245—not to impose an affirmative duty of
13 inquiry upon the owner. Fondren should be limited to the unusual facts of that case, which do not
14 exist here, and it must be interpreted in conjunction with the current, more onerous requirements
15 involved in filing a notice of nonresponsibility.

16 Defendants and Dr. Iliescu are not on the same footing as the land owner in Fondren.
17 Admittedly, the sales contract contains language referencing the possible use of architects,¹⁰ but
18 the contract does not provide Dr. Iliescu any right to oversee the ultimate construction of the
19 project.¹¹ Dr. Iliescu was never introduced to BSC's design team or Plaintiff—a fact that has
20 not been disputed by Plaintiff. Ex. 2. Further, the proposed condominium project was not being
21 actively constructed such that it would have been easy for Dr. Iliescu to observe work being

22 ⁹ Plaintiff claims that because the sales contract contained references to architectural services, Dr. Iliescu should have
23 investigated any potential architects to be used and was on notice that Plaintiff was a potential lien claimant. Taken
24 to its logical extreme, any sales contract which references that the buyer may hire inspectors, architects or other such
25 persons to possibly perform services prior to the close of escrow would relieve any potential lien claimant from
26 complying with NRS 108.245. If adopted by this Court, Plaintiff's position would completely eviscerate the
27 protections provided to land owners by NRS 108.245.

28 ¹⁰ The sales contract references the need for an architectural and design review and approval, See Exhibit 1, ¶ 39(F),
but Plaintiff admits that at the time that particular contractual language was entered into "the name Mark Steppan or
Fisher, Friedman or any of the other design professionals would not have been known by either the buyer or the
seller." See Ex. 3 at 27:5-27:17.

¹¹ Dr. Iliescu was to have a right to oversee the design of his penthouse floorplan once the project reached that point.
Obviously, that point in the project was never reached.

1 performed. This project never even got past the design phase.

2 In short, even after this Court gave Plaintiff almost three months to develop his evidence,
3 Plaintiff cannot show that Dr. Iliescu had actual notice (or should have had actual notice) of the
4 work being performed by Plaintiff nor the identity of Plaintiff. Plaintiff has attempted to show
5 that Dr. Iliescu had notice of his work by an affidavit of David Snelgrove, an employee of Wood
6 Rodgers one of the project's design consultants.¹² But, interestingly, this affidavit establishes that
7 Dr. Iliescu did not have actual notice that Plaintiff was performing work in connection with the
8 property.¹³

9 Mr. Snelgrove's assertion that it is his "recollection that Dr. Iliescu saw the architectural
10 drawings as provided in the two applications at or about the time of receipt of the Owner
11 affidavits[,]” which contained the name of Mark Stepan and the design consultant Fisher
12 Friedman Associates, is patently false. Ex. 10 at ¶ 7. A close review of the plans and drawings
13 submitted with the applications reveals that the plans and drawings were prepared in April, May
14 and June of 2006—well after Dr. Iliescu signed the Owner affidavits. See Ex. 12. In addition,
15 while Plaintiff attempts to argue that Dr. Iliescu was involved in the application process relating
16 to the approval of the condominium project, the documents do not support that conclusion. Dr.
17 Iliescu executed Owner Affidavits to allow Sam Caniglia of Consolidated Pacific to apply for
18 applications as it related to Dr. Iliescu's property, documents required for Consolidated Pacific to
19 obtain appropriate approvals. See Owner Affidavits attached hereto as Exhibit 11. However,
20 those affidavits in no way acknowledge that Dr. Iliescu reviewed the contents of the application
21 nor do the affidavits acknowledge that Plaintiff was the architect performing any architectural
22 work required.¹⁴

23 ¹² Notably absent is a declaration or affidavit from Plaintiff himself or any architect from his firm—something
24 presumably easily obtainable. Plaintiff's counsel told this Court in no uncertain terms that she was absolutely certain
25 Dr. Iliescu knew of Plaintiff and of other architects in his firm, even though Dr. Iliescu had testified to the contrary.
Any attempt of Plaintiff to now establish by affidavit or declaration that Plaintiff was actively involved in the
presentations and met Dr. Iliescu should be viewed with skepticism.

26 ¹³ In fact, Mr. Snelgrove does not even state that he was introduced to Dr. Iliescu. See Affidavit of David Snelgrove
attached hereto as Exhibit 10.

27 ¹⁴ According to the lien recorded by Plaintiff, he did not begin providing services to BSC until April 21, 2006, almost
28 four months after the Owner Affidavits were executed. See Ex. 5. In addition, while the Reno Development
Application contains the name of Fisher Friedman Associates and its address, it does not identify that Fisher

1 Moreover, as Mr. Snelgrove's affidavit makes clear, it was Mr. Snelgrove, and not
2 Plaintiff or Fisher Friedman, who made the relevant presentations where Dr. Iliescu was present.
3 Exhibit 10, ¶ 9. In fact, it appears that the only public disclosure of Plaintiff and Fisher
4 Friedman's involvement in the project was the appearance of their names on one slide of a multi-
5 slide power-point presentation. See Ex. 7.¹⁵ The single mention in the power-point presentation
6 does not include the address of Plaintiff or Fisher Friedman—an element that is clearly required
7 to record a valid notice of non-responsibility.

8 Plaintiff simply cannot rely on the mere hope that Dr. Iliescu would notice a name on a
9 plan or single slide of a presentation in order to prevail on his almost \$2,000,000.00 lien claim.
10 Plaintiff was not actively involved in any of the presentations where the plans may have been
11 presented and it is clear that when Dr. Iliescu signed the owner affidavits Plaintiff's plans and
12 drawings were not available. It is inequitable to impose an affirmative duty on a land owner to
13 investigate any potential lien claimants, when NRS 108.245 clearly places the duty of notice on
14 the potential lien claimant, absent *actual notice* as provided in Fondren. Dr. Iliescu simply did
15 not have actual notice sufficient to enable him to record a valid notice of non-responsibility
16 necessary to comply with NRS 108.234¹⁶. He should not now be penalized because Plaintiff
17 utterly neglected to follow the statutory procedures.

18 III. 19 CONCLUSION

20 No genuine issue of material fact exists as to whether Plaintiff served a pre-lien notice.
21 Plaintiff has been candid with this Court from the beginning that such notice was not given.
22 Nevertheless, Plaintiff has asked this Court to rely upon mere conjecture and obscure references

23
24 Friedman was providing any type of service in connection with the development of the property. See Reno
25 Development Application attached hereto as Exhibit 12. Thus, even if Defendants had reviewed the application, it
26 would not support Plaintiff's theory that Defendants had actual notice of the services provided by Plaintiff. Fisher
27 Friedman (and Nathan Ogle, not Plaintiff) is simply listed as a contact person regarding the application. See Ex. 11.

28 ¹⁵ As mentioned earlier, Rodney Friedman may have been present at the October 4, 2006 Reno City Planning
Commission, but the minutes from that meeting clearly indicate that Mr. Snelgrove and Gary Duhon made the
relevant presentations. See Ex. 6.

¹⁶ Dr. Iliescu simply did not have sufficient information to record a notice of nonresponsibility which included
Plaintiff's name, Plaintiff's address, and the date when Dr. Iliescu first learned of Plaintiff's work.

1 to architectural services in the land sales contract to establish that Dr. Iliescu had notice of the
2 services Plaintiff provided. Plaintiff also attempts to establish that Dr. Iliescu knew of the work
3 he was doing based on presentations made at public meetings, albeit presentations that were not
4 made by him, at which Dr. Iliescu was a mere spectator.

5 As this Court previously recognized, "the issue presented [in this case] is simply whether
6 or not the applicants had actual knowledge that the respondent and the respondent's firm were
7 performing architectural services for the benefit of the real property which is the subject of the
8 land purchase agreement." Ex. 3 at 58:14-58:20. This Court previously permitted Plaintiff to
9 conduct discovery on this very issue. What resulted was an affidavit of a design consultant
10 employed by a design firm separate and apart from Plaintiff's firm, which contains nothing but
11 vague references to Plaintiff's involvement in the project. The evidence previously presented by
12 Plaintiff is not sufficient to establish that Dr. Iliescu had actual knowledge or notice that Plaintiff
13 was providing architectural services for the benefit of the property. Therefore, based on the
14 above and foregoing, Defendants respectfully request that this Court find that Plaintiff's lien is
15 not enforceable and enter summary judgment in favor of Defendants on Plaintiffs sole cause of
16 action—foreclosure on his mechanic's lien.

1 DATED: April ^{Don} 2008

PREZANT & MOLLATH

2
3 By: 
4 STEPHEN C. MOLLATH

5 DOWNEY BRAND LLP

6
7 By:  #10098 for
8 SALLIE B. ARMSTRONG

9 Attorneys for John Iliescu Jr., Sonnia Santee
10 Iliescu, and the John Iliescu, Jr., and Sonnia
11 Iliescu 1992 Family Trust
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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,
APPLICANTS/DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON
MARK B. STEPPAN'S CLAIM FOR FORECLOSURE OF MECHANICS LIEN in case
number CV-07-00341,

☒ 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: April 17, 2008

Chwal82

1 **PROOF OF SERVICE**

2 I am a resident of the State of Nevada, over the age of eighteen years, and not a party to
3 the within action. My business address is Downey Brand LLP, 427 West Plumb Lane, Reno, NV
89509. On April 17, 2008, I served the attached document(s):

4 **APPLICANTS/DEFENDANTS' MOTION FOR PARTIAL**
5 **SUMMARY JUDGMENT ON MARK B. STEPPAN'S CLAIM**
6 **FOR FORECLOSURE OF MECHANICS LIEN**

7 ☐

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.

8 ☒

BY HAND: by personally delivering the document(s) listed above to the person(s)
at the address(es) set forth below.

9 ☒

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.

10 ☐

BY OVERNIGHT MAIL: by causing document(s) to be picked up by an ^{entity to}
overnight delivery service company for delivery to the addressee(s) on the next
business day.

11 ☐

BY PERSONAL DELIVERY: by causing personal delivery by _____ of
the document(s) listed above to the person(s) at the address(es) set forth below.

12 By hand:

13 By mail:

14 By mail:

15 Gayle A. Kern, Esq.
16 Kern & Associates
17 5421 Kietzke Lane
Suite 200
18 Reno, NV 89511

David R. Grundy, Esq.
Lemons Grundy & Eisenberg
6005 Plumas Street
Third Floor
Reno, NV 89519

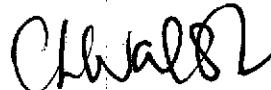
Gregory Wilson, Esq.
655 Montgomery St., 12th Floor
San Francisco, CA 94111-2632

Judith A. Otto, Esq.
1610 Montclair Ave. Suite B
Reno, NV 89509

19 I am readily familiar with the firm's practice of collection and processing correspondence
20 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
21 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
22 motion of the party served, service is presumed invalid if postal cancellation date or postage
23 meter date is more than one day after date of deposit for mailing in affidavit.

24 I declare under penalty of perjury under the laws of the State of Nevada that the above is
25 true and correct.

26 Executed on April 17, 2008, at Reno, Nevada.

27 

28 Christi Walsh

EXHIBIT INDEX

Applicants/Defendants' Motion for Partial Summary Judgment on Mark B. Steppan's Claim for Foreclosure of Mechanics Lien

Exhibit Number	Description	Number of Pages
1	Land Purchase Agreement and Addendums	68
2	Declaration of John Iliescu in Support of Application for Release Mechanic's Lien dated February 13, '2007	2
3	Transcript of Proceedings, Motion for Release of Mechanic's Lien, May 3, 2007	60
4	AIA Contract dated October 31, 2005, between BSC Financial and Mark Steppan	25
5	Notice and Claim of Lien dated November 7, 2006, Mark B. Steppan, Grantee	4
6	Reno City Planning Commission October 4, 2006 Minutes (Request for Judicial Notice Pursuant to NRS 47.130)	15
7	Power Point Presentation: Wingfield Towers, Reno, Nevada	178
8	Stipulation and Order to Dismiss Voluntary Chapter 11 Petition, In Re: BSC Investments, LLC, filed February 20, 2008 (Request for Judicial Notice Pursuant to NRS 47.130)	8
9	NRS 108.234 (1991) (Request for Judicial Notice Pursuant to NRS 47.140)	3
10	Affidavit of David Snelgrove in Support of Supplemental Response to Application for Release of Mechanic's Lien dated July 30, 2007	3
11	Owner Affidavits of Sonnia Iliescu and John Iliescu dated January 17, 2006	2
12	Reno Development Tentative Map & Special Use Permit Application dated February 7, 2006	56

EXHIBIT 1

EXHIBIT 1

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 AGREEMENTDate Prepared First Amendment: July 21, 2005Property Address: APN: 011-112-06, 011-112-07, 011-112-12, 011-112-02, 011-112-03

RECEIVED from CONSOLIDATED PACIFIC DEVELOPMENT INC., a Nevada Corporation and/or assignees (hereinafter designated as "BUYER"), the sum of \$25,000.00 (Twenty Five Thousand and no/100 Dollars) evidenced by ☐ Cash, ☒ Check, ☐ Other, n/a on account of the PURCHASE PRICE of \$6,800,000.00 (Six Million Eight Hundred Thousand and no/100 Dollars) for that certain land, improvements, and personal property, if any, (hereinafter collectively referred to as the "Property") situated in the City of Reno, County of Washoe, State of Nevada, and more particularly described as follows: (the "Property") 219 Court Street (APN 011-112-12 John Jr. and Sonnia Iliescu Trust, Seller), 0 Court Street (APN 011-112-07 John Jr. and Sonnia Iliescu Trust, Seller), and 273 Court Street (APN 011-112-06 John Iliescu, Seller) (APN 011-112-03 John Jr. and Sonnia Iliescu Trust, Seller) 260 Island Ave. (APN 011-112-02 John Jr. and Sonnia Iliescu Trust, Seller) consisting of approximately 64,641 square feet of land, water rights defined in Paragraph 39(F) below, and that certain vacant building of approximately square feet, upon the following TERMS and CONDITIONS:

1. FINANCE TERMS:**1.1 DEPOSIT:**\$25,000.00

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

1.2 ADDITIONAL CASH DEPOSIT:\$475,000.00

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

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

☒ if through no fault of the Buyer, additional time is required for governmental approvals of the project, Seller agrees to extend the close of escrow, as needed to obtain approvals. Buyer to pay an additional

1

Buyer MS**METZKER JOHNSON GROUP**Seller /

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ADDRESS: Iliescu Land at Court St and Island Street

\$50,000.00 deposit within each 30 days extension from the 270 day payment due date. All extension deposits shall be credited to the purchase price upon close of escrow. Buyers shall have a 15 day grace period to make any of the aforesaid deposits.

- 1.3 BALANCE OF CASH PAYMENT: \$6,300,000.00
To be paid at Close of Escrow, as needed to close but not including closing costs.
- 1.4 EXISTING FINANCING: \$ n/a
Per Terms and Conditions as specified below.
- 1.5 OWNER FINANCING: \$ n/a
Per Terms and Conditions as specified below
- 1.6 NEW LOAN: \$ n/a
Contingent upon the Terms and Conditions as specified below
- 1.7 TOTAL PURCHASE PRICE: \$6,800,000.00
(Not including closing costs)

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

2. SUBORDINATION AND PARTIAL RECONVEYANCE:

2.1 SUBORDINATION CLAUSE: N/A

2.2 PARTIAL RECONVEYANCE:

Buyer does intend to subdivide the property and improve the property in stages over a period of time.

DEFINITIONS

2

Buyer [Signature]

METZKER JOHNSON GROUP

Seller /

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JA0275

ILIESCU000021

ADDRESS: Niescu Land at Court Street Island Street

(Unless stated otherwise in this document)

BROKER OR AGENT includes cooperating brokers, brokers, all sales persons and agents. **DAYS** means calendar days unless otherwise specified. If the (a) stated Closing date or (b) last day for the performance of an act falls upon a day during which normal business is not performed then the Closing date or such last day, as the case may be, will be the next following regular business day. **DATE OF ACCEPTANCE (EFFECTIVE DATE)** means the date the Seller accepts the offer or counter offer is accepted by both parties. **DELIVERED** means personally delivered to Principals or respective licensees, transmitted by the facsimile machine, or mailed by registered carrier, next business day delivery with receipt requested. In the event of fax transmission, delivery shall be deemed to be complete at the time noted on the sender's fax confirmation sheet. **DATE OF CLOSING** means the date title is transferred. The **SINGULAR** includes the plural and the **MASCULINE** includes the feminine. **TERMINATING THE AGREEMENT** means that both parties are relieved of their obligations and all deposits will be returned to the Buyer less expenses incurred by or on account of the Buyer to the date of termination. **PROPERTY**, unless the context indicates otherwise, means all easements and rights appurtenant thereto and all improvements thereon, including all building thereon and any rights appurtenant thereto; all other improvements, all personal property owned by Seller and used in the operation or maintenance and management of the real property, and all contract or lease rights, agreements, water rights, mineral rights, utility contracts or other rights relating to the ownership, use and operation of the real property. **DATE PREPARED** is for reference only.

3. ADDENDUM:

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

☒ Duties Owed by a Nevada Real Estate Licensee,☐ Consent to Act,☒ Plot map-Exhibit A ,☒ Legal Description -Exhibit B , to be supplied to Buyer within 15 days of the execution of this agreement.☒ Form 110.61, HAZARDOUS MATERIALS DISCLOSURE to Buyer within 15 days of the execution of this agreement.☐ Other: n/a

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

4. CLOSING AND ESCROW:

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

3

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

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ADDRESS: Iliescu Land at Court St and Island Street

at close of escrow. Title shall be conveyed to Buyer by properly executed and duly recorded Grant Deed.
Buyer shall have the right to close escrow anytime prior to the Closing designated in this agreement.

5. EVIDENCE OF TITLE:

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

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

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

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

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

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

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

6. BONDS:

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

7. EXPIRATION:

This offer shall expire, and be rendered null and void, unless a copy with Seller's written acceptance (facsimile copy acceptable) is delivered to the Buyer or the Buyer's agent on or before 1:00 o'clock, ☐ AM, ☒ PM, Pacific Standard Time, on (Day) July 29 (Year) 2005.

8. PROVISIONS AS FURTHER DEFINED:

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

BUYER BUYER

4

Buyer Alia METZKER JOHNSON GROUP Seller 1

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ADDRESS: Iliescu Land at Court St and Island StreetINCLUDED: ☒ WAIVED: ☐☒ N/A 8-A. SOIL TESTS:Soil Tests, within 30 days of acceptance, paid by ☒ Buyer ☐ Seller.

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

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

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

BUYER 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 BUYER

5

Buyer [Signature] METZKER JOHNSON GROUP Seller [Signature]

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ADD/RESS: Iliescu Land at Court St and Island Street

INCLUDED: ☒ WAIVED: ☐ N/A **8-E. SINGLE AGENCY**

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

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒ **8-F. CONTINGENCY RELEASE CLAUSE:**

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

BUYER INCLUDED: ☒ BUYER WAIVED: ☐ N/A **8-G. TAX DEFERRED EXCHANGE (INVESTMENT PROPERTY):**

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

 Buyer may elect to do a 1031 Tax Deferred Exchange

 Seller ☒ does ☐ does not intend to do a 1031 Tax Deferred Exchange

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒ **8-G. OWNER'S ASSOCIATION DISCLOSURE:**

At time of acceptance, Seller shall deliver to Buyer an Addendum to Purchase Agreement for Common Ownership Interest Properties, which by this reference shall be incorporated into this Agreement. Association transfer fees of \$ N/A, to be paid by ☐ Buyer ☐ Seller ☐ Other N/A. The amount of any delinquent assessments including penalties, attorney's fees, and other charges provided for in the management documents shall be paid current by the Seller at close of escrow. Seller represents that there

6

Buyer [Signature]

METZKER JOHNSON GROUP

Seller /

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ADDRESS: Iliescu Land at Court St and Island Street

are no Common Ownership Associations or Agreements related to the Property.

BUYER INCLUDED: ☒ BUYER WAIVED: ☐ N/A

6.21 ADDITIONAL INSPECTIONS:

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

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

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

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

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

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

9. CHANGES DURING TRANSACTION:

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

10. PRORATIONS:

10.1 TAXES: Real property taxes payable by the owner of the Property shall be prorated through Escrow as of the date of the recordation of the deed, based upon the latest tax bill available. Buyer shall pay supplemental tax bill levied by the transfer of the Property to the Buyer Payment shall be

7

Buyer 

METZKER JOHNSON GROUP

Seller 

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ADDRESS: Nissen Land at Court Street Island Street

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 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

8

Buyer 

METZKER JOHNSON GROUP

Seller 1

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ADDRESS: Iliescu Land at Court St and Island Street

16. TIME:

Time is of the essence as to each and every provision of this agreement. If after a good faith effort, any condition stated in this contract has not been eliminated or satisfied within the time limits and pursuant to the provisions of this contract, then this contract may be deemed null and void, the deposit shall be returned to Purchaser, and the escrow shall be canceled. Either party may resort to such remedies as it may have in law or equity, subject to the liquidated damages provision set forth in Paragraph 42 below.

17. HAZARDOUS MATERIALS:

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

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

18. AGENT(S) DISCLAIMER:

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

19. CORRESPONDENCE:

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

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

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

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

9

Buyer

METZKER JOHNSON GROUP

Seller

/

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ADDRESS: Iliescu Land at Court St and Island Street

Copies to: Richard K. Johnson Fax: 775-823-8848
6490 S. McCarran Blvd. Phone: 775-823-8877
Reno, Nevada 89509

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

20. SEVERABILITY:

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

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

21. GOVERNING LAW:

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

22. NO ONE DEEMED DRAFTER:

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

23. COUNTERPARTS:

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

24. EFFECTIVE DATE OF THIS AGREEMENT:

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

25. AUTHORITY OF INDIVIDUALS SIGNING ON BEHALF OF ENTITY:

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

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Buyer

METZKER JOHNSON GROUP

Seller

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organized to transact business in the State of Nevada. This Agreement shall continue and be binding on the heirs, successors, and assigns of the parties hereto.

26. EXHIBITS AND ADDENDUM:

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

27. BUSINESS DAYS:

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

28. LAND USE RESTRICTIONS:

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

29. VERIFICATION OF INFORMATION:

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

30. ATTORNEYS FEES:

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

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Buyer [Signature]

METZKER JOHNSON GROUP

Seller [Signature]

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

31. ACCESS TO PROPERTY:

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

32. PREPAYMENT:

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

33. DUE ON SALE CLAUSE:

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

34. REAL ESTATE BROKERS AND FEES:

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

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

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

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Buyer [Signature]

METZKER JOHNSON GROUP

Seller [Signature]

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reason of any dealings or act of the indemnifying Party.

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

36. IMPACT FEES:

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

37. DEFERRED AGRICULTURAL TAX:

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

38. EXISTING CONDITION:

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

39. ADDITIONAL TERMS AND CONDITIONS:

- A. Subject to the Terms and Conditions of this agreement, the Seller hereby grants to Buyer, an irrevocable, exclusive right to purchase the Property consisting of the parcel(s) of land along with all buildings and structures (IF ANY), easements and rights appurtenant (including, without limitations, all development rights, all mineral, oil, gas, and other hydrocarbon substances on or under the land, air rights, water, and water rights (if any). Seller shall not solicit or accept any other offers during the term of this Agreement.
- B. To the best of Seller's knowledge the property is not in violation of any federal, state, or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on or 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. Except as expressly stated herein, Purchaser agrees to purchase the Premises "AS-IS, WHERE IS, IN CURRENT CONDITION WITH ALL FAULTS".

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Buyer

MB

METZKER JOHNSON GROUP

Seller

L

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

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

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

claim no. _____

☐ Yes ☐ No, in the amount of _____ acre feet of surface water

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

- F. This offer is conditioned upon Buyer, at ☒ Buyer's ☐ Seller's expense, obtaining the following governmental approvals within 270 days of acceptance of this agreement, as may be extended pursuant to Paragraph 1.2 above:
- | | | |
|--|---|-------------------------------------|
| <input checked="" type="checkbox"/> Variance | <input checked="" type="checkbox"/> Special Use Permits | <input type="checkbox"/> Parcel Map |
| <input checked="" type="checkbox"/> Tentative Map | <input checked="" type="checkbox"/> Zone Change & Land Use Designations | |
| <input type="checkbox"/> X Other: _____ architectural and _____ design review and _____ approval | | |

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

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Buyer [Signature]

METZKER JOHNSON GROUP

Seller /

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- H. It is agreed to and understood that as part of the purchase price of this property, the Buyer shall deliver to Seller one of the penthouses in the new condominium project, subject to the following terms and conditions. Buyer shall provide Seller with detailed floor plans of each penthouse, and the listing price for each penthouse, at which time Seller shall have thirty (30) days to choose the penthouse to be transferred to Seller. Seller shall receive credit in the amount of Two Million, Two Hundred Thousand Dollars ("Penthouse Credit") toward the listing price of the penthouse so chosen. In the event the listing price of the penthouse so chosen more than the is Penthouse Credit, Seller shall pay the difference in cash at the time of the transfer. In the event the penthouse so chosen is less than the Penthouse Credit, Buyer shall reimburse Seller the difference at the time of transfer. Buyer and Seller shall also agree, on or before the close of escrow and as a condition thereof, upon specific language and form of legal documentation of the right to receive such condominium unit, which shall be free of all liens and encumbrances except taxes paid current, assessments and C,C & R's uniformly applicable to such building and unit.
- I. The Seller warrants that there are no leases or other contractual use agreements on said property.
- J. Seller authorizes Buyer and Seller's agent to place signage on said properties promoting identification of the Buyer, Seller's agent, and/or future use of said property.
- K.
- L. All deposits, upon receipt, shall become immediately non-refundable and fully disbursed.

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

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

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

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

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

41. **ARBITRATION OF DISPUTES:**

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

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Buyer ME **METZKER JOHNSON GROUP** Seller L

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

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

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

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

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

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

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

42. LIQUIDATED DAMAGES:

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

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Buyer *ALL*

METZKER JOHNSON GROUP

Seller */*

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BUYER TO SELLER. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST THE BUYER WHICH SELLER MIGHT OTHERWISE HAVE IN LAW OR EQUITY BY REASON OF SUCH DEFAULT BY BUYER.

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

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

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

43. HOLD HARMLESS:

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

44. CODE OF ETHICS:

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

45. CONSULT YOUR ADVISORS:

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

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

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

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

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Buyer

METZKER JOHNSON GROUP

Seller

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

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

SELLING OFFICE: NONE

REPRESENTED BY: NONE

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

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

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

Buyers Broker: NONE Dated: _____

By: None

Buyer: [Signature] Dated: 7/25/05 Time: 12:15 PM
Authorized Signee, Print Name: Sam Cariglia, for Consolidated Pacific Development, Inc.

ACCEPTANCE

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

COMMISSION:

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

Listing Broker's commission shall be 6% of the accepted purchase price, and n/a% of the accepted price, or \$ n/a, to n/a, the Selling Broker, irrespective of the agency relationship. Escrow instruction with respect to commissions may not be amended or revoked without the written consent of the Broker herein. Commissions shall

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Buyer: [Signature] **METZKER JOHNSON GROUP** Seller: 1

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

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

(Foreign Investment and Real Property Tax Act).

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

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

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

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

SELLING OFFICE: Metzker Johnson Group

REPRESENTED BY: Richard K. Johnson

Is the licensee acting for (check one):

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

The State of Nevada form titled, "DUTIES OWED BY A NEVADA LICENSEE"

is hereby incorporated as an addendum to this agreement.

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

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

Sellers Broker Metzker Johnson Group

Dated: _____

By (agent) Richard K. Johnson

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Buyer [Signature]

METZKER JOHNSON GROUP

Seller [Signature]

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

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

Seller: _____ Dated: _____ Time: _____
Authorized Signee, John Iliescu Jr.

Seller: _____ Dated: _____ Time: _____
Authorized Signee, Sonnia Iliescu

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 *[Signature]*

METZKER JOHNSON GROUP

Seller *[Signature]*

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21

Buyer _____

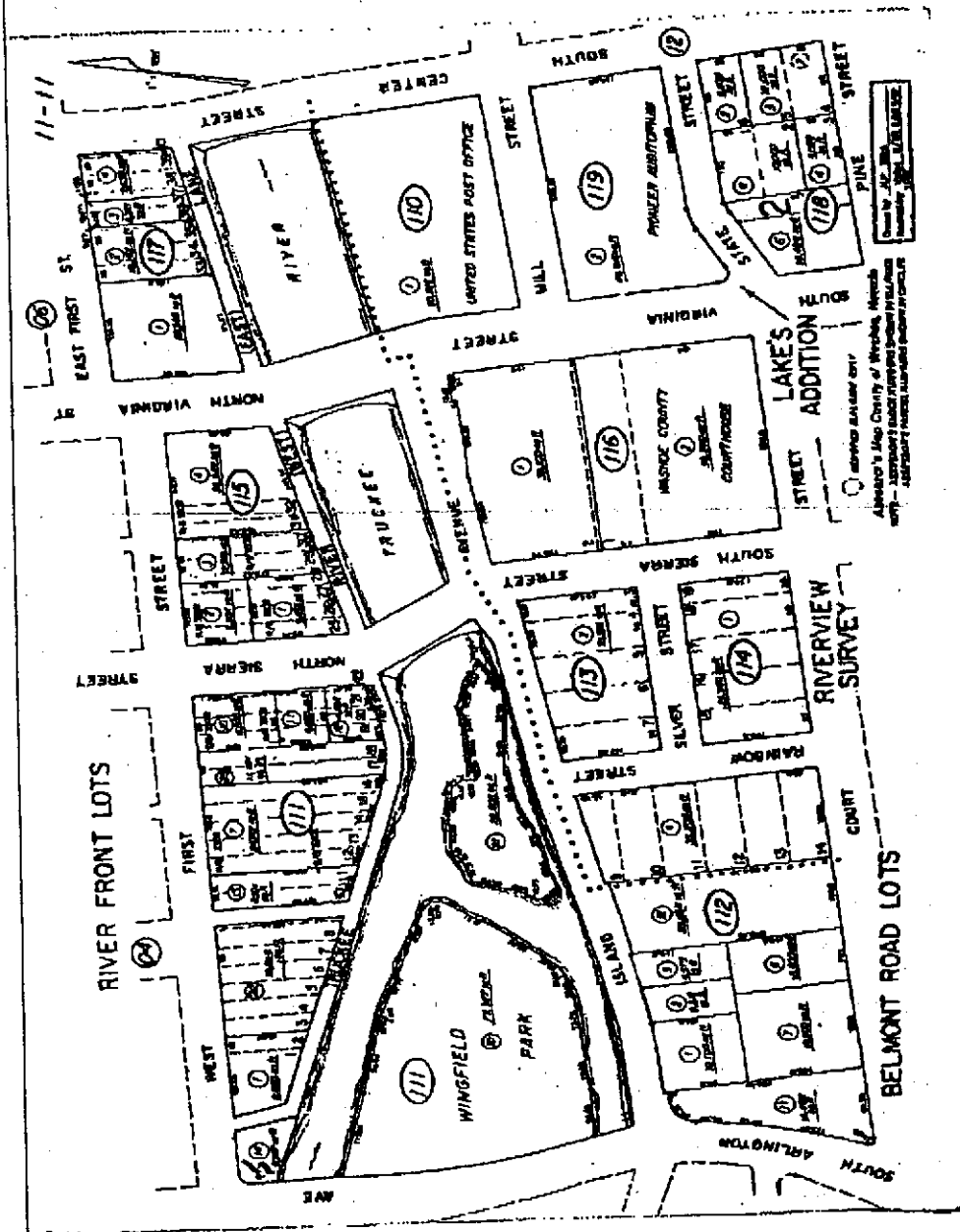
METZKER JOHNSON GROUP

Seller _____

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ILIESCU000040

JA0294

ADDRESS: Parcel Land at Court St and Island Street

22

Buyer

*[Signature]***METZKER JOHNSON GROUP**

Seller

[Signature]

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ILIESCU000041

JA0295

ADDRESS: 1800 S. McCarran Blvd., Reno, NV 89509

METZKER JOHNSON GROUP
 COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY
 4190 S. McCarran Blvd., RENO, NEVADA 89509 PHONE: (775) 823-9871 FAX: (775) 823-9843

LAND PURCHASE AGREEMENT

Date Prepared: July 29, 2005

Property Address: APNs 011-112-06, 011-112-07, 011-112-13, 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 wa 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 011-112-13 John Jr. and Sonnie Hickey Trust, Seller), 9 Court Street (APN 011-112-07 John Jr. and Sonnie Hickey Trust, Seller), and 223 Court Street (APN 011-112-06 John Hickey, Seller) (APN 011-112-03 John Jr. and Sonnie Hickey Trust, Seller) consisting of approximately 52,414 square feet of land, water rights defined in Paragraph 39(7) 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 cashier's 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 \$ 25,000.00 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 approval 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 day 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.

Buyer

METZKER JOHNSON GROUP

Seller

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K. Johnson

775-823-8848

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All amounts shown in parentheses are in US dollars.

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

METZKER JOHNSON GROUP

Seller

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ADDRESS: Higgin Lane, in Court Rd. and Island Street

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 Principal or respective licensee, 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 on 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:

☒ Notice Given by a Nevada Real Estate Licensee.

☐ Consent to Act.

☒ Plot map-Exhibit A.

☒ Legal Description-Exhibit B, on 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 Commercial Title Company (Escrow Officer) Mary Ann Letourneau. 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 property abstract and duly recorded Grant Deed.

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

3

Buyer

METZGER JOHNSON GROUP

Seller *[Signature]*

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(9)

ATTENTION: Please forward to the title company.

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 7 (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 upon the property to conduct soil tests, including percolation tests, to determine whether the property is suitable for

Buyer

MEYER JOHNSON GROUP

Seller John Johnson

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Rpt K. Johnson

775-823-8846

P.6

ADDRESS: 18000 1st St, Court 3, and 1st St

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

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

BUYER INCLUDED: 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 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 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.

5

Buyer

METZGER JOHNSON GROUP

Solely

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WARRANTY: (See (b) (1) (ii) and (b) (3) (ii))

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

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒ 3-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 payments including penalties, attorney's fees, and other charges provided for in the organizational 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: ☐ 4.21 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

Buyer METZGER JOHNSON GROUP Seller

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Rich K. Johnson

775-823-6640

P.6

ADDRESS: [illegible]

to, engineers, geologists, architects, contractors, surveyors, and structural pest control operators to inspect the property for any structural and non-structural conditions, including matters concerning, but not limited to, roofing, electrical, plumbing, heating, cooling, appliances, pool boundaries, structural inspection report, roof inspection, Phase I Environmental Report on Hazardous Waste and Materials, A.D.A. (Americans Disabilities Act) Report, Asbestos testing report, lead based paint report, radon report, mold inspection, wood stove inspection, seismology report and/or earth quake fault information, electromagnetic field report, water quality / quantity report, septic system inspection, shall be ordered and must 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 THIRTY (30) 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 Buyer's expense. However, if repair expenses are considered excessive by Buyer, then Buyer may terminate this agreement at Buyer's discretion unless Seller agrees to repair at Seller's expense by written addendum.

If not completed by close of escrow, funds shall be held in escrow, if not disbursed 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 prorated through Escrow on 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 prorated through Escrow on the date of Closing.

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Buyer

METZGER JOHNSON GROUP

Seller

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K. Johnson

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p. 8

ADDRESS: Howard Road at Cheyenne and Elmer Street

10.3 RENTALS, INTEREST AND EXPENSES: Expenses, such as, but not limited to, utilities and operating expenses, shall be prorated as of the date of Closing. Such items shall be supplied by Seller within ☒ two (2) days or ☐ N/A (N/A) days prior to close of escrow. The Parties agree to promptly advise 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 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 limits and pursuant to the provisions of this contract, then this contract may be deemed null and void, the deposit shall be returned to Purchaser, and the escrow shall be canceled. Either party may resort to such remedies as it may have in law or equity, subject to the liquidated damages provision set forth in Paragraph 4.2 below.

Buyer

METZGER JOHNSON GROUP

Seller

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Rto:

K. Johnson

775-823-8848

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UNUSUAL: [unclear] [unclear] [unclear] [unclear]

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 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 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 on address 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
6420 E. McCarran Blvd. Phone: 775-823-8877
Reno Nevada 89502

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

9

Buyer _____

MEIZKER JOHNSON GROUPSeller [Signature]

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WITNESSES: _____

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

20. SEVERABILITY:

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

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

21. GOVERNING LAW:

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

22. NO ONE DEEMED DRAFTER:

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

23. COUNTERPARTS:

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

24. EFFECTIVE DATE OF THIS AGREEMENT:

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

25. AUTHORITY OF INDIVIDUALS SIGNING ON BEHALF OF ENTITY:

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

26. EXHIBITS AND ADDENDUM:

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

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Buyer

MEIZNER JOHNSON GROUP

Sofia R. Johnson

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Aug 03 05 11:40a

Rich

K. Johnson

775-823-8848

P. 12

ADDRESS: 11000 E. 1st St., Suite 100, Island Street

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 course of information, other than the principal 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 have 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 guarantees its accuracy. Any oral or written representations by Seller or Broker regarding age of improvements, size, and square footages 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 imparting information, within uncertainty, 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 claim, demand, action or proceedings resulting from any omission or alleged omission by Seller in his statements.

30. ATTORNEY'S FEES:

If this Agreement gives rise to any litigation, arbitration, or other legal proceeding between any of the parties herein, 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, Metzger Johnson Group, and Broker's Agent, Richard K. Johnson harmless from and against any and all damages, costs and expenses, including attorneys' fees, arising from any disputes between Buyer and/or Seller and/or Agent 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.

11

Buyer _____

METZGER JOHNSON GROUPSeller R. K. Johnson

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Ric

K. Johnson

775-823-8848

p. 13

ADDRESS: 10000 1st St. N. and 1st St. N.

loss, claim, liability, or expense, including (without limitation) reasonable attorneys' fees and costs, arising out of or in connection with its activities (including, without limitation, Buyer's agents and employees, and independent contractors retained by or acting on behalf of Buyer (collectively, "Buyer's Agents") on the Property. Buyer shall have no liability to Seller for any loss, claim, 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 as close of escrow.

33. DUE ON SALE CLAUSE:

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

34. REAL ESTATE BROKERS AND FEES:

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

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

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

12

Buyer _____

METZKER JOHNSON GROUPSeller [Signature]

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K. Johnson

775-823-8848

P.14

.107/0188: (Agreement) (Agreement) (Agreement)

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. 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, read 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 limitation, all development rights, all mineral, oil, gas, and other hydrocarbon subterranean 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 and/or above 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. Except as expressly stated herein, Purchaser agrees to purchase the Property "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 _____

MEYER JOHNSON GROUPSeller [Signature]

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ATTENTION: Please read all terms and conditions.

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.

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.

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 Rule 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.

Buyer

MARKER JOHNSON GROUP

Seller

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ADDRESS: [illegible]

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.

☐ (s/s Y n/a) Buyer agrees

☒ (s/s Y) Buyer does not agree

☐ (s/s Y n/a) Seller agrees

☒ (s/s Y) Seller does not agree

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

42. LIQUIDATED DAMAGES:

If BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED BY THE AGREEMENT, 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 IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH 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 THE 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 _____

MEITZER JOHNSON GROUP

Seller [initials]

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ATTENTION: [illegible]

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

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

43. HOLD HARMLESS:

Metzger 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 Metzger Johnson Group. By the execution of this agreement, Buyer/Seller hereby releases and agrees to hold Metzger 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.net.

45. CONSULT YOUR ADVISORS:

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

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

Buyer and Seller acknowledge 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 _____ **METZGER JOHNSON GROUP** Seller [Signature]
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K. Johnson

775-829-8048

P. 10

ADDRESS: _____

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 tax consequences of this document or the transaction in 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 OFFICE: NONEREPRESENTED BY: NONEIs 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 addenda/attachments hereto and hereby acknowledges receipt of a copy hereof. Buyer's signature hereon constitutes an offer to Seller to purchase the Property on the terms and conditions set forth herein. Buyer acknowledges further that he has not relied upon statements or representations by the undersigned Agent which are not herein expressed.

Buyer's Broker: NONE Dated: _____By: None

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

ACCEPTANCE

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

COMMISSION:

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

Listing Broker's commission shall be 6 % of the accepted purchase price, and

0 % of the accepted price, or \$ 0 to \$ 0, the Selling Broker,

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

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Buyer

MEYER JOHNSON GROUPSeton R. A.

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Rich. K. Johnson

775-823-8840

p.20

WITNESSES: _____

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.E.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: Metzger Johnson GroupREPRESENTED BY: Richard K. Johnson

Is the Broker acting for (check one):

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

The State of Nevada form titled, "DUTIES OWED BY A NEVADA LICENSEE"

is hereby incorporated as an addendum to this agreement.

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

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

Sellers Broker Metzger Johnson Group

Dated: _____

By (agent) Richard K. Johnson

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Buyer _____

METZGER JOHNSON GROUPSeller Richard K. Johnson

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Rict. K. Johnson

775-623-8840

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ADDRESS: Please Print Full Name, Street and Postal Address

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* *SP.*

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

Seller: Yvonne Ilescu, Jr. Dated: 8-5-05 Time: 7:50 PM
 Authorized Signee, Yvonne Ilescu

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

Seller: RI

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Rich

K. Johnson

778-623-8848

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Buyer **METZGER JOHNSON GROUP** *St/John*
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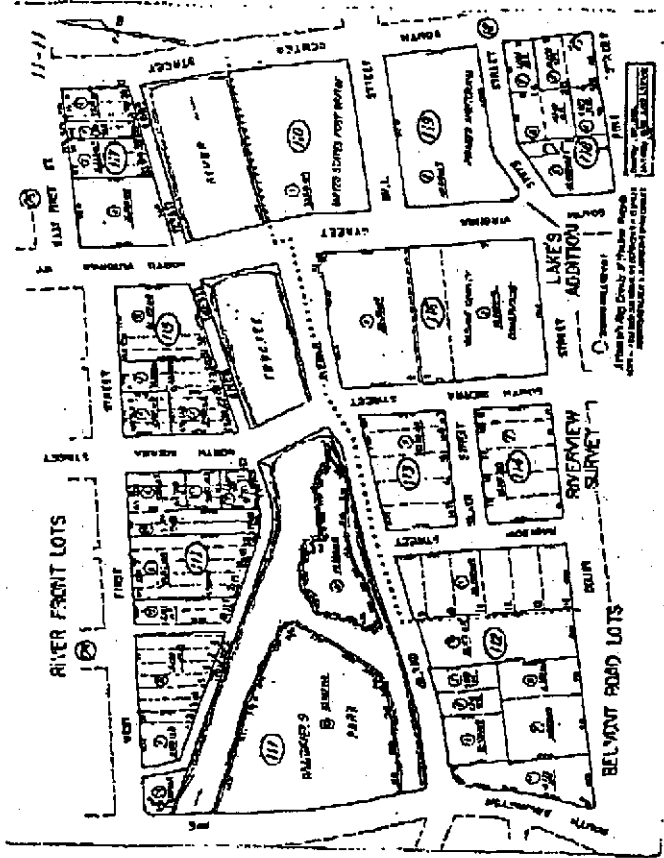
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Ric: K. Johnson

775-823-8848

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ATTENTION: Please Land at Court St. (at) Lakeview Street



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Buyer _____ **MEYER JOHNSON GROUP** Seller *[Signature]*
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METZKER JOHNSON GROUP
COMMERCIAL * RESIDENTIAL * INVESTMENT * REALTY

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

ADDENDUM NO. 1

Date Prepared: August 1, 2005.

Property address APN: 011-112-06, 011-112-07, 011-112-12, 011-112-03

In reference to the offer made by CONSOLIDATED PACIFIC DEVELOPMENT INC., a Nevada Corporation, Buyer, and Iliescu, John Jr. and 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 agrees to the current height of the building is 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 _____

MEYER JOHNSON GROUP
COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY

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

ADDENDUM NO. 1

Date Prepared: August 1, 2003

Property address: APNs: 011-112-06, 011-112-07, 011-112-12, 011-112-03

In reference to the offer made by CONSOLIDATED PACIFIC DEVELOPMENT INC., Nevada Corporation, Buyer, and Blair, John Jr. and Sonela Trust, Seller, dated 7/29/2003, 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) car parking assigned in a location of Seller choice. Five Hundred (500) square feet storage is to be provided to Seller in the building for their personal use. Ceiling height in this unit is to be Nine (9) feet or better. Multiple build-outs 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 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.

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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 3:00 ☐ AM ☒ PM, on August 3, 2005.

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

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

Buyer/Tenant: _____ Date: _____ Time: _____
Sam Caraglia, 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. 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 Iliescu, 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 Iliescu, (Iliescu, John Jr. and Sonnia, Trust)

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

Buyer/Tenant: Sam Caniglia Date 8/3/05 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 _____

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COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY

4490 S. McCarran Blvd., Reno, Nevada 89509 Phone: (775) 823-8877 Fax: (775) 823-9888

ADDENDUM NO. 2

Date Prepared: August 2, 2005

Property address APNs 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 Miesca, 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 Miesca Date: 8-2-05 Time: 7:20 PM
Dr. John Miesca, (Miesca, John Jr. and Sandra, Trust)

Seller/Landlord: Sandra Miesca Date: 8-2-05 Time: 7:20 PM
Sandra Miesca, (Miesca, John Jr. and Sandra, Trust)

Buyer/Tenant: _____ Date _____ Time _____
Sam Craiglin, 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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Addendum No. 3

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

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

1.2 Additional Cash Deposit: \$475,000.00

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

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

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

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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 Iliescu Jr.
John Iliescu Jr.

Sonia Santee Iliescu
Sonia Santee Iliescu

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

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

Buyer:

Consolidated Pacific Development, Inc.,
a Nevada corporation

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

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Exhibit "A"
Preliminary Title Report

(See attached.)

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FIRST CENTENNIAL TITLE COMPANY OF NEVADA

- ☐ 1150 KUDGEVIEW DR. SUITE 100 * RENO, NV 89509 (775) 663-8510
- ☐ 300 DAMONTE RANCH PARKWAY, SUITE 800 * RENO, NV 89521 (775) 630-2333
- ☐ 716 NORTH CARSON STREET, #100 * CARSON CITY, NV 89701 (775) 687-8560
- ☐ 5121 LAKESIDE DR. SUITE 150 * RENO, NV 89511 (775) 689-8530
- ☐ 339 TAIJOE BLVD. SUITE 300 * P.O. BOX 8026, INCLINE VILLAGE, NV 89450 (775) 531-8200
- ☐ 1025 ROBERTA LANE * SPARKS, NV 89431 (775) 693-2121
- ☐ 3748 LAKESIDE DR. SUITE 100 * RENO, NV 89509 (775) 689-8235
- ☐ 6190 MAEANNE 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

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

Escrow Officer: Maryann Infantino

Our No.: 145279-MI

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

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

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

Julie Moreno

by: Julie Moreno, Title Officer

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Richa K. Johnson

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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 Santee 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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Rich: K. Johnson

SCHEDULE B

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

1. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$1,501.77
First Installment: \$376.77, Unpaid
Said Installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$375.00, each. Unpaid
Assessors Parcel No.: 011-112-03
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
2. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$2,010.02
First Installment: \$504.02, Unpaid
Said Installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$502.00, each. Unpaid
Assessors Parcel No.: 011-112-06
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
3. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$3,541.47
First Installment: \$886.47, Unpaid
Said Installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$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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J. J. [Signature]
10/9/05

[Signature]
10/8/05

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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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Rich K. Johnson

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P. 14

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°58' Northerly 148 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°5' Easterly a distance of 30 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°58' 140 feet; thence running Easterly at an angle of 90°05' 75 feet; thence running Southerly at an angle 80°55', 140 feet to the place of beginning, comprising a parcel of land 75 by 140 feet.

APN: 011-112-06

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Richa K. Johnson

775-823-8848

P. 13

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, 314 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, 1903, 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 288, 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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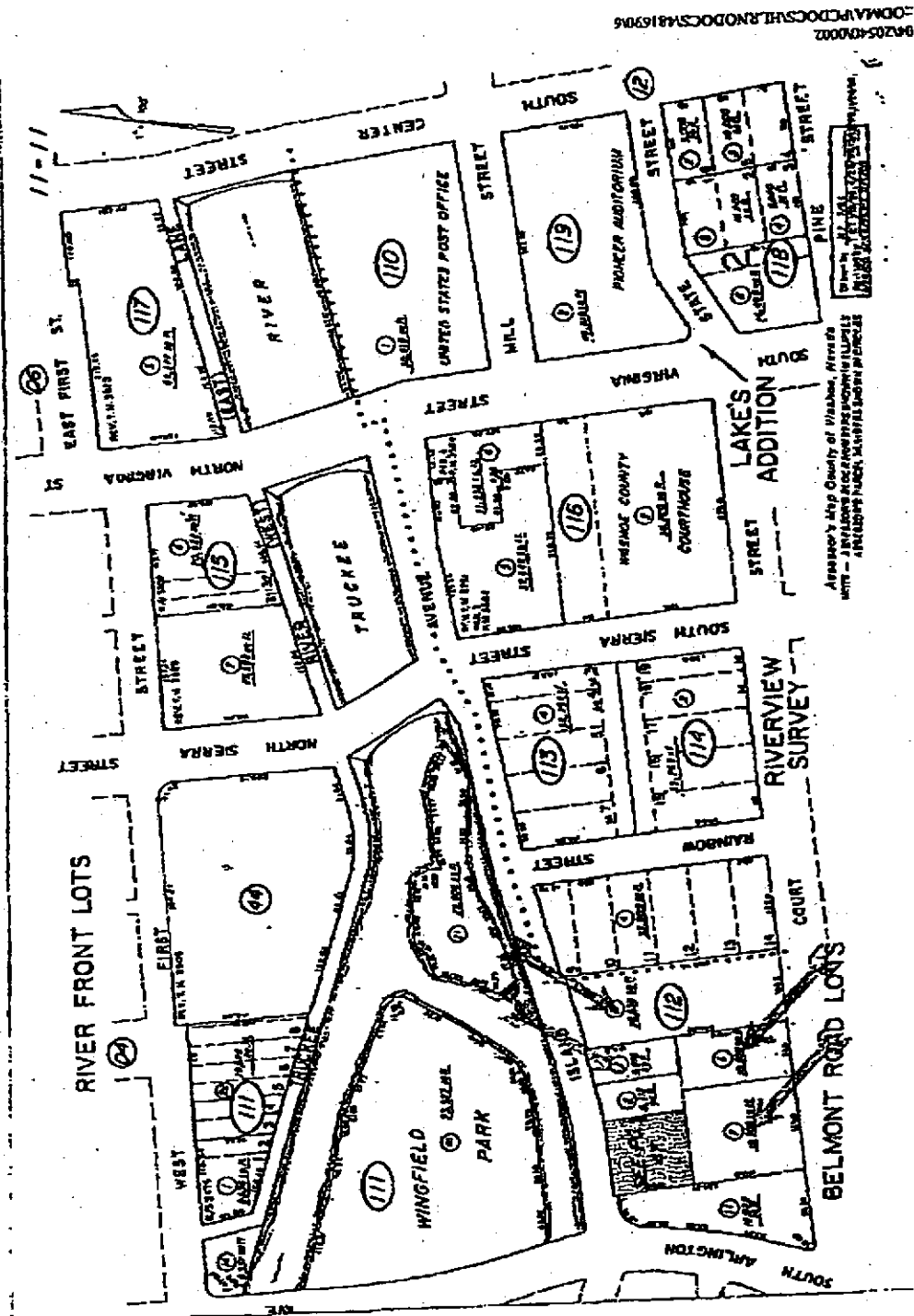
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Richard K. Johnson

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METZKER JOHNSON GROUP®

COMMERCIAL * RESIDENTIAL * INVESTMENT * REALTY

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

ADDENDUM No. 4.

Date Prepared: September 18, 2006

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

RECITALS:

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

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

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

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

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

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

Seller:

John Iliescu
John Iliescu Jr.

Sonia Santee Iliescu
Sonia Santee Iliescu

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

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

Buyer:

Consolidated Pacific Development, Inc.,
a Nevada corporation

By: Sam A Caniglia
Sam A Caniglia, President

EXHIBIT 2

EXHIBIT 2

FILED

2007 FEB 14 PM 2:08

RONALD A. LONGTIN, JR.
J. Ames

BY _____
DEPUTY

1 1030
2 Jerry M. Snyder, Esq.
3 Nevada Bar Number 6830
4 Hale Lane Peek Dennison and Howard
5 5441 Kietzke Lane, Second Floor
6 Reno, Nevada 89511
7 (775) 327-3000; (775) 786-6179 (fax)
8 Attorney for Applicant

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

11 IN AND FOR THE COUNTY OF WASHOE

12 CV07 00341

13 JOHN ILIESCU JR., SONNIA SANTEE
14 ILIESCU AND JOHN ILIESCU JR. AND
15 SONNIA ILIESCU AS TRUSTEES OF THE
16 JOHN ILIESCU, JR. AND SONNIA ILIESCU
17 1992 FAMILY TRUST,

CASE NO.

DEPT. NO. 6

18 Applicants,

19 vs.

20 MARK B. STEPPAN,

21 Respondent.

22 DECLARATION OF JOHN ILIESCU IN SUPPORT OF APPLICATION FOR RELEASE
23 MECHANIC'S LIEN

24 I, JOHN ILIESCU, hereby declare:

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

29 2. Along with Sonnia Santee Iliescu and the John Iliescu, Jr. and Sonnia Iliescu 1992
30 Family Trust, I am the owner of the property located in downtown Reno, Nevada APNs 011-112-05,
31 07, 07, and 12. (the "Property").

32 3. On July 29, 2005, I entered into a contract with Consolidated Pacific Development, Inc.
33 ("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.

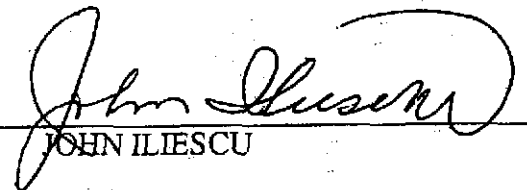
10 5. On November 7, 2006, an architect named Mark Steppan recorded a mechanics lien
11 against the Property. Through this lien, Steppan claims to be owed in an amount exceeding 1.8
12 million dollars. A true and correct copy of this recorded Notice of Lien is attached hereto as Exhibit
13 1.

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 
JOHN ILIESCU

25
26
27
28 ILIESCU000507

EXHIBIT 3

EXHIBIT 3

CERTIFIED COPY

4185

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

ILIESCU000508

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

2 -oOo-

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. Stepan 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. Stepan 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. Stepan 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. Stepan'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. Steppan 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. Stepan 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 -oOo-

1 STATE OF NEVADA)
2 COUNTY OF WASHOE))SS.

3 I, CHRISTINA MARIE HERBERT, official reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify:

6 That as such reporter, I was present in Department No. 6
7 of the above court on Thursday, May 3rd, 2007 at the hour of
8 1:30 p.m. of said day, and I then and there took verbatim
9 stenotype notes of the proceedings had and testimony given
10 therein.

11 That the foregoing transcript, consisting of pages
12 numbered 1 to 59, both inclusive, is a true and correct
13 transcript of my said stenotype notes so taken as aforesaid,
14 and is a true and correct statement of the proceedings had
15 and testimony given in the above-entitled action to the best
16 of my knowledge, skill and ability.

17 DATED: At Reno, Nevada, this 29th day of June 2007.

18 
19

20 CHRISTINA HERBERT, CCR#641
21
22
23
24

EXHIBIT 4

EXHIBIT 4



AIA Document B141™ – 1997 Part 1

COPY
SENT 4/24/06

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

TABLE OF ARTICLES

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

ADDITIONS AND DELETIONS:

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

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

AGREEMENT made as of the thirty-first day of October in the year 2005
(In words, indicate day, month and year)

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

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

and the Architect:
(Name, address and other information)

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

For the following Project:
(Include detailed description of Project)

Residential Project Reno, Nevada
Site bounded by North Arlington Avenue, Island Avenue and Court Street in Reno, Nevada.

A mixed-use development including for-sale residential, retail and parking. Approximately 400 residential units, landscaped podium, and indoor pool are anticipated in two Type I construction high-rise towers. The estimated project's gross square footage is one million square feet.

The Owner and Architect agree as follows:

ARTICLE 1.1 INITIAL INFORMATION

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

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

§ 1.1.2 PROJECT PARAMETERS

§ 1.1.2.1 The objective or use is:

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

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

§ 1.1.2.2 The physical parameters are:

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

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

§ 1.1.2.3 The Owner's Program is:

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

As outlined in Exhibit B.

§ 1.1.2.4 The legal parameters are:

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

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

§ 1.1.2.5 The financial parameters are as follows.

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

§ 1.1.2.6 The time parameters are:

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

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

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

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

Negotiated contract to be determined later by mutual agreement

§ 1.1.2.8 Other parameters are:

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

To be determined later by mutual agreement

§ 1.1.3 PROJECT TEAM

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

Sam Caniglia, BSC Financial, LLC

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

Sam Caniglia BSC Financial, LLC

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

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

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

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

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

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

§ 1.1.4 Other important initial information is:

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

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

ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES

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

§ 1.2.2 OWNER

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

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

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

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

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

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

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

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

§ 1.2.3 ARCHITECT

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

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

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

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

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

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

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

ARTICLE 1.3 TERMS AND CONDITIONS

§ 1.3.1 COST OF THE WORK

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

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

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

§ 1.3.2 INSTRUMENTS OF SERVICE

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

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

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

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

§ 1.3.3 CHANGE IN SERVICES

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

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

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

§ 1.3.4 MEDIATION

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

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

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

§ 1.3.5 ARBITRATION

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

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

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

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

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

§ 1.3.8 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

§ 1.3.7 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

§ 1.3.8 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

§ 1.3.9 PAYMENTS TO THE ARCHITECT

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

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

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

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

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

ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

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

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

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

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

§ 1.4.1.3 Other documents as follows:

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

Exhibit A Master Fee Schedule & Reimbursable Expenses
Exhibit B Concept Design Plans and Model Images

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

ARTICLE 1.5 COMPENSATION

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

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

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

amount under the original estimated Total Construction Cost of approximately \$160,000,000 shall be credited for architectural services based on the agreed upon 5.75% fee. Total Construction Cost is defined but not limited to the final total dollar amount cost for Labor and Materials, Additions to project building scope, Value Additions, Substitutions, Changes, General Conditions, Contractor Insurance and Bonding Provisions, Tests and Inspection Costs and General Contractor's Profit or Fee.

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.

(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)

See Exhibit A

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of One and fifteen hundredths (1.15) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of One and fifteen hundredths (1.15) times the expenses incurred by the Architect, and the Architect's employees and consultants.

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

See Exhibit A

§ 1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

§ 1.5.7 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§ 1.5.8 Payments are due and payable Fifteen (15) days from the date of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of interest agreed upon.)

1 & 1/2% monthly

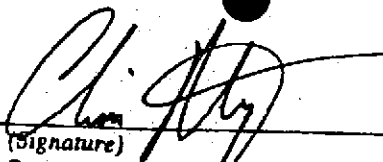
(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 1.5.9 If the services covered by this Agreement have not been completed within Thirty-two (32) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

This Agreement entered into as of the day and year first written above.

OWNER

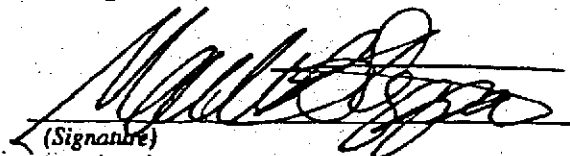
ARCHITECT



(Signature)

Sam Caniglia BSC Financial, LLC

(Printed name and title)



(Signature)

Mark Steppan, AIA, CSI, NCARB

(Printed name and title)

Addendum: No.1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.

AIA Contract Review between BSC Financial, LLC and Mark B. Steppan, AIA and Fisher Friedman Associates, Design Consultants

The following Addendum has been assembled to provide clarification of specific contractual items as specified in the attached standard AIA agreement. Terms and conditions provided herein shall be accepted as the substitution or in addition to and shall be in effect, and shall take precedence over items as specified in the attached standard AIA agreement.

Both parties are aware of this Contract Addendum and do hereby elect and agree to said terms and conditions as stated below.

- ss. 1.1.2.1 The project is to create an urban mixed use high rise residential development with approximately 499 living units for BSC Financial, LLC.
- ss. 1.1.2.3 To obtain entitlements and approvals for the property and proposed buildings as shown in exhibit B as attached to the AIA B141 agreement as part of the design services in the Schematic Design/Entitlements Phase.
- ss. 1.1.2.5.2 Replace ' \$160,000,000' with approximately '\$180,000,000'.
- ss. 1.3.2.2 Replace text to read beginning with the sentence 'If and upon' as follows:
If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license, including Architects consent, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

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

any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of either party.

ss. 1.3.5.4 See the language at ss. 4.6.4 of AIA Form 201.

ss. 1.3.7.1 This agreement shall be governed by the State of Nevada, without regards to the conflicts of state of operation of the principal architect or it's consultants.

ss. 1.3.7.6 Unless otherwise provided in this agreement, the architect and the architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or the exposure of persons to hazardous materials or toxic substances in any form at the project site, unless the architect or the architect's consultants specify the use of hazardous materials, that cause the creation of said instance and can be directly attributed to the architect or it's consultants.

ss. 1.3.7.9 The owner and architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this agreement. The Architect and the Owner shall not assign this agreement without the written consent of the other party, or assignment thereof shall be void. The owner may assign this agreement to any party, provided that such assignment shall not materially prejudice the Architect and also with the written consent of the Architect. The architect shall execute all consents reasonably required to facilitate such assignment.

ss. 1.5 Section 1.5 – The abbreviated terms used in the first paragraph are as follows:

- ☐ Schematic Design (Includes City of Reno Entitlements Process)
- ☐ Design Development
- ☐ Construction Documents
- ☐ Construction Administration

The definitions can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of these sections shall be provided upon request.

ss. 1.5.1 Replace ' \$160,000,000' with approximately '\$180,000,000'.

ss. 1.5.1

All existing text in this section shall remain with the addition of the following:

In the event that the Owner chooses not to proceed with construction of the project, the fees associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architects scope of work and estimated value.

ss. 1.5.9

The extent of the work as defined by this agreement is estimated at thirty two months (32) from the effective date of this agreement. If through no fault of either party, the time frame is extended beyond the 32 months, then neither party Owner nor Architect, shall be held liable for additional sums or compensation. The architectural work product as defined to obtain the required entitlements and the respective budgets will remain as fact without respect to an estimated time line.

ss. 2.4.1

All existing text in this section shall remain with the addition of the following:

In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagant systems are required by the Owner which would trigger an increase in consultants fees as well as Architects. Currently the MEP work will be done as a modified design build process.

Agreed this Day, 21 day of April, 2006.

BSC Financial, LLC.

Owner: [Signature], Title Mgr.
Signature

Mark B. Steppan, AIA, CSI, NCARB

Architect: [Signature]
Signature

AIA Document B141™ – 1997 Part 2

Standard Form of Architect's Services: Design and Contract Administration

TABLE OF ARTICLES

- 2.1 PROJECT ADMINISTRATION SERVICES
- 2.2 SUPPORTING SERVICES
- 2.3 EVALUATION AND PLANNING SERVICES
- 2.4 DESIGN SERVICES
- 2.5 CONSTRUCTION PROCUREMENT SERVICES
- 2.6 CONTRACT ADMINISTRATION SERVICES
- 2.7 FACILITY OPERATION SERVICES
- 2.8 SCHEDULE OF SERVICES
- 2.9 MODIFICATIONS

ARTICLE 2.1 PROJECT ADMINISTRATION SERVICES

§ 2.1.1 The Architect shall manage the Architect's services and administer the Project. The Architect shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Owner and the Owner's consultants.

§ 2.1.2 When Project requirements have been sufficiently identified, the Architect shall prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the Owner, design services furnished by the Architect, completion of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

§ 2.1.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

§ 2.1.4 Upon request of the Owner, the Architect shall make a presentation to explain the design of the Project to representatives of the Owner.

§ 2.1.5 The Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on approvals received from the Owner in the further development of the design.

§ 2.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

ADDITIONS AND DELETIONS:

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

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

§ 21.7 EVALUATION OF BUDGET AND COST OF THE WORK

§ 21.7.1 The Owner or Contractor shall provide cost planning, estimating and construction schedule information during the design and construction of the project.

ARTICLE 23 EVALUATION AND PLANNING SERVICES

§ 23.1 The Architect shall provide a preliminary evaluation of the information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

§ 23.2 The Architect shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

§ 23.3 The Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

ARTICLE 24 DESIGN SERVICES

§ 24.1 The Architect's design services shall include normal structural, mechanical and electrical engineering services. See Article 1.1.3.5 for additional consultants.

§ 24.2 SCHEMATIC DESIGN DOCUMENTS

§ 24.2.1 The Architect shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 24.3 DESIGN DEVELOPMENT DOCUMENTS

§ 24.3.1 The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

§ 24.4 CONSTRUCTION DOCUMENTS

§ 24.4.1 The Architect shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

§ 24.4.2 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the Owner and the Contractor, and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

ARTICLE 25 CONSTRUCTION PROCUREMENT SERVICES

§ 25.1 The Architect shall assist the Owner in obtaining either competitive bids or negotiated proposals and shall assist the Owner in awarding and preparing contracts for construction.

§ 2.5.2 The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.

(Paragraph deleted)

§ 2.5.4 COMPETITIVE BIDDING

§ 2.5.4.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

(Paragraph deleted)

§ 2.5.5 NEGOTIATED PROPOSALS

§ 2.5.5.1 Proposal Documents shall consist of proposal requirements; proposed contract forms; General Conditions and Supplementary Conditions, Specifications and Drawings.

§ 2.5.5.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

(Paragraph deleted)

ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES

§ 2.6.1 GENERAL ADMINISTRATION

§ 2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 2.6.1.2 The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Architect shall be entitled to a Change in Services in accordance with Section 2.8.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

§ 2.6.1.3 The Architect shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.1.4 Duties, responsibilities and limitations of authority of the Architect under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

§ 2.6.1.5 The Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

§ 2.6.1.6 If deemed appropriate by the Architect, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

§ 2.6.1.7 The Architect shall interpret and recommend matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The

Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 2.6.1.8 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.

§ 2.6.1.9 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 2.6.2 EVALUATIONS OF THE WORK

§ 2.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 2.8, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 2.6.2.2 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.2.3 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.2.4 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.2.5 The Architect shall recommend to the owner the rejection of any Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend to the owner the inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. The Architect retains the right to immediately reject and halt any Work that is deemed to be hazardous, in violation of code, or otherwise involving a health or safety issue that jeopardizes workers or the public at large.

§ 2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

§ 2.6.3.1 The Architect shall review and recommend the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to

correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 2.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 2.6.3.3 The Architect shall maintain a record of the Contractor's Applications for Payment.

§ 2.6.4 SUBMITTALS

§ 2.6.4.1 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.6.4.2 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 2.6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 2.6.5 CHANGES IN THE WORK

§ 2.6.5.1 The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 2.8.2.

§ 2.6.5.2 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 2.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the

Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

§ 2.6.5.4 The Architect shall maintain records relative to changes in the Work.

§ 2.6.6 PROJECT COMPLETION

§ 2.6.6.1 The Architect shall conduct site reviews to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.6.2 The Architect's site review shall be conducted with the Owner's Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 2.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

§ 2.6.6.4 The Architect shall receive from the Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

ARTICLE 2.7 FACILITY OPERATION SERVICES

§ 2.7.1 The Architect shall meet with the Owner or the Owner's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

§ 2.7.2 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the Owner.

ARTICLE 2.8 SCHEDULE OF SERVICES

§ 2.8.1 Design and Contract Administration Services beyond the following limits shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- 1 up to Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.
- 2 up to One (1) visit per week to the site by the Architect over the duration of the Project during construction.
- 3 up to One (1) site review for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
- 4 up to One (1) site review for any portion of the Work to determine final completion.

§ 2.8.2 The following Design and Contract Administration Services shall be provided by the Architect as a Change in Services in accordance with Section 1.3.3:

- 1 review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- 2 responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- 3 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Service;
- 4 providing consultation concerning replacement of Work resulting from fire or other cause during construction;
- 5 evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;

- .6 evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to Instruments of Service resulting therefrom;
- .7 preparation of design and documentation for alternate bid or proposal requests proposed by the Owner, or
- .8 Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.
- .9 Construction Administration over 24 months.

§ 2.8.3 The Architect shall furnish or provide the following services only if specifically designated:

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description
.1 Programming	— O —	
.2 Land Survey Services	— O —	
.3 Geotechnical Services	— O —	
.4 Space Schematics/Flow Diagrams	— A —	
.5 Existing Facilities Surveys	— NP —	
.6 Economic Feasibility Studies	— O —	
.7 Site Analysis and Selection	— NP —	
.8 Environmental Studies and Reports	— O —	
.9 Owner-Supplied Data Coordination	— A —	
.10 Schedule Development and Monitoring	— O —	
.11 Civil Design	— O —	
.12 Landscape Design	— A —	
.13 Interior Design	— O —	
.14 Special Bidding or Negotiation	— NP —	
.15 Value Analysis	— O —	
.16 Detailed Cost Estimating	— O —	
.17 On-Site Project Representation	— NP —	
.18 Construction Management	— O —	
.19 Start-up Assistance	— NP —	
.20 Record Drawings	— NP —	
.21 Post-Contract Evaluation	— NP —	
.22 Tenant-Related Services	— NP —	
.23		
.24		
.25		

Description of Services.
(Insert descriptions of the services designated.)

ARTICLE 2.9 MODIFICATIONS

§ 2.9.1 Modifications to this Standard Form of Architect's Services: Design and Contract Administration, if any, are as follows:

Architect and Consultants Errors and Omissions requirements shall be amended into this Standard Form of Architect's Services Agreement to be determined later by mutual agreement.

By its execution, this Standard Form of Architect's Services: Design and Contract Administration and modifications hereto are incorporated into the Standard Form of Agreement Between the Owner and Architect, AIA Document B141-1997, that was entered into by the parties as of the date: October 31, 2005

OWNER

(Signature)

Sam Caniglia, BSC Financial, LLC

(Printed name and title)

ARCHITECT

(Signature)

Mark Steppan, AIA, CSI, NCARB

(Printed name and title)

Addendum: No.1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.

AIA Contract Review between BSC Financial, LLC and Mark B. Steppan, AIA and Fisher Friedman Associates, Design Consultants

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Both parties are aware of this Contract Addendum and do hereby elect and agree to said terms and conditions as stated below.

- ss. 1.1.2.1 The project is to create an urban mixed use high rise residential development with approximately 499 living units for BSC Financial, LLC.
- ss. 1.1.2.3 To obtain entitlements and approvals for the property and proposed buildings as shown in exhibit B as attached to the AIA B141 agreement as part of the design services in the Schematic Design/Entitlements Phase.
- ss. 1.1.2.5.2 Replace ' \$160,000,000' with approximately '\$180,000,000'.
- ss. 1.3.2.2 Replace text to read beginning with the sentence 'If and upon' as follows:
If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license, including Architects consent, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

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

any other insolvency, bankruptcy or reorganization act; or (c) a receiver is appointed for a substantial part of the assets of either party.

ss. 1.3.5.4

See the language at ss. 4.6.4 of AIA Form 201.

ss. 1.3.7.1

This agreement shall be governed by the State of Nevada, without regards to the conflicts of state of operation of the principal architect or it's consultants.

ss. 1.3.7.6

Unless otherwise provided in this agreement, the architect and the architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or the exposure of persons to hazardous materials or toxic substances in any form at the project site, unless the architect or the architect's consultants specify the use of hazardous materials, that cause the creation of said instance and can be directly attributed to the architect or it's consultants.

ss. 1.3.7.9

The owner and architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this agreement their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this agreement. The Architect and the Owner shall not assign this agreement without the written consent of the other party, or assignment thereof shall be void. The owner may assign this agreement to any party, provided that such assignment shall not materially prejudice the Architect and also with the written consent of the Architect. The architect shall execute all consents reasonably required to facilitate such assignment.

ss. 1.5

Section 1.5 – The abbreviated terms used in the first paragraph are as follows:

- ☐ Schematic Design (Includes City of Reno Entitlements Process)
- ☐ Design Development
- ☐ Construction Documents
- ☐ Construction Administration

The definitions can be found in the American Institute of Architect's Handbook of Professional Practice, Volume 2, Sections 3.6 Design Services, 3.7 Design Parameters, 3.8 Design Documentation, and 3.9 Construction Related Services. Copies of these sections shall be provided upon request.

ss. 1.5.1

Replace ' \$160,000,000 ' with approximately ' \$180,000,000 '.

ss. 1.5.1

All existing text in this section shall remain with the addition of the following:

In the event that the Owner chooses not to proceed with construction of the project, the fees associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architects scope of work and estimated value:

ss. 1.5.9

The extent of the work as defined by this agreement is estimated at thirty two months (32) from the effective date of this agreement. If through no fault of either party, the time frame is extended beyond the 32 months, then neither party Owner nor Architect, shall be held liable for additional sums or compensation. The architectural work product as defined to obtain the required entitlements and the respective budgets will remain as fact without respect to an estimated time line.

ss. 2.4.1

All existing text in this section shall remain with the addition of the following:

In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagant systems are required by the Owner which would trigger an increase in consultants fees as well as Architects. Currently the MEP work will be done as a modified design build process.

Agreed this Day, 21 day of April, 2006.

BSC Financial, LLC.

Owner:

Signature

Title

Mgr.

Mark B. Steppan, AIA, CSI, NCARB

Architect:

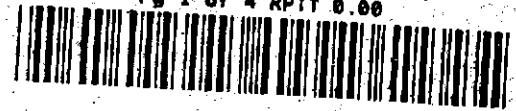
Signature

EXHIBIT 5

— EXHIBIT 5 —

DOC # 3460499
11/07/2008 04:21P Fee:17.00
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Requested By
GAYLE A KERN LTD
Washoe County Recorder
Kathryn L. Burke - Recorder
Pg 1 of 4 RPTT 0.00



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, Berkeley, 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.

JA0433

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

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

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

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

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



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

APN: 011-112-03

Commencing at the point 129.6 feet West of where the center line of Hill Street projected Northerly will intersect the North line of Court Street thence running Westerly along the North line of Court Street, 75 feet; thence running Northerly at an angle of $89^{\circ}58'$ 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



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

DATED: This 7th day of November, 2006.

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

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

Gayle A. Kern
Gayle A. Kern, Esq.

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

Amber A. Garrell
Notary Public

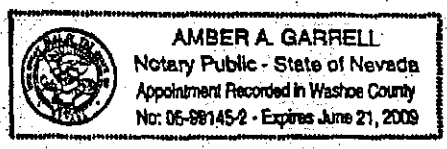
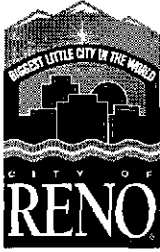


EXHIBIT 6

EXHIBIT 6

Reno City Planning Commission



MINUTES

Wednesday ~ October 4, 2006 ~ 6:00 p.m.

Reno City Hall – City Council Chambers
One East First Street, Reno, Nevada

MEMBERS

Darrin Georgeson, Chair
James Newberg, Vice-chair
Todd Brabbin
Doug Coffman
Elizabeth Ford
Lisa Foster
Dennis Romeo

I. ROLL CALL *

Chair Georgeson called the meeting to order at 6:00 p.m. A quorum was established.

PRESENT: Todd Brabbin, Doug Coffman, Elizabeth Ford, Lisa Foster, Darrin Georgeson, Jim Newberg and Dennis Romeo.

ABSENT: None.

Marilyn Craig and Matthew Jensen, Deputy City Attorneys, were also present.

II. APPROVAL OF MINUTES OF SEPTEMBER 6, 2006

It was moved by Commissioner Brabbin, seconded by Commissioner Romeo, to approve the September 6, 2006, minutes, as submitted. The motion carried unanimously.

IV. PUBLIC COMMENT *

Cathy Brandhorst outlined concerns about inhumans on Forest Street.

III. CITY COUNCIL LIAISON REPORTS * [Taken out of agenda order]

Councilperson Dwight Dortch outlined recent City Council actions including the Willowbrook conversion. Responding to the Planning Commission's concerns about overturning Planning Commission decisions, Councilperson Dortch explained that he would research specific cases and emphasized that the City Council decision to overturn the Planning Commission should not be misconstrued as an improper action since the Planning Commission's decision, like that of the City Council, should be based on the information and testimony received during the public hearing. Mr. Dortch encouraged Planning Commission member to contact him directly with any concerns and/or questions.

IV. PUBLIC COMMENT * [Reopened]

John Krmpotic, Jeff Codega Planning and Design, asked that the Planning Commission consider a text amendment to the Dandini Regional Center Plan that would allow a rear loaded project to reduce setbacks to three (3-) feet.

* denotes NON action item

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V. UNFINISHED BUSINESS/PUBLIC HEARINGS

LDC05-00516 (Sky Vista Commons) – This is a request for: (1) a tentative map for a 282 unit condominium subdivision; and (2) a special use permit for conversion of 282 existing apartments to condominiums. The ±20.59 acre site is located on the west side of Sky Vista Parkway at its intersection with Silver Lake Boulevard in the PUD (Planned Unit Development – Sky Vista) zone.

Postponed.

LDC07-00022 (Silver Sage at Sky Vista) – This is a request for: (1) a zoning map amendment to amend the Sky Vista PUD (Planned Unit Development) handbook to allow a single family subdivision on a site identified for elementary and secondary school facilities; and (2) a tentative map to allow a 74 lot single family attached townhouse subdivision. The ±8.28 acre site is located directly west of where Silver Desert Way terminates at Silver Sky Parkway, in the PUD zone.

Postponed.

VI. PUBLIC HEARINGS

AT-4-06 (Accessory Dwelling Units) – This is a request for an amendment to Chapter 18.08, Zoning and 18.12, General Development and Design Standards of the Reno Municipal Code. The amendments pertain to Accessory Structures and Accessory Dwelling Units. This request also involves an amendment to Section 18.24.203, Definition of Words, Terms and Phrases.

Postponed.

LDC07-00011 (Major Street System Update) – This is an amendment to the City of Reno Master Plan to update certain text related to the City of Reno Major Street System that includes adding new streets, revising existing extents of certain streets, and other matters properly relating thereto.

Postponed.

LDC07-00036 (Hidden Valley Well House) – This is a request for a variance to allow a ±552 square foot well house to encroach 13 feet into the required 20 foot side yard setback. The ±63 acre parcel is located on the northwest corner of Mill Street and South McCarran Boulevard in the IB (Industrial Business) zone.

Commissioner Romeo recused.

Kelly Sleep, Assistant Planner, provided an overview of the variance request that will relocate certain equipment for its current building to a slightly larger structure. It is staff's belief that the public art set aside condition is not applicable to this particular location as it is a secured site along Mill Street.

* denotes NON action item

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Chair Georgeson opened the public hearing.

Alan Jones, Washoe County Department of Water Resources, concurred with the staff report and conditions.

Chair Georgeson closed the public hearing.

Marilyn Craig, Deputy City Attorney, asked that the Planning Commission clarify whether the applicant is Washoe County or Washoe County Department of Water Resources.

Mr. Jones explained that Washoe County Department of Water Resources is a Department of Washoe County.

Ms. Craig suggested that the record reflect that the applicant in this particular instance is Washoe County.

Ms. Sleep explained that the Reno City Planning Commission now hears all variance requests that were previously heard for the former Board of Adjustment.

It was moved by Commissioner Brabbin, seconded by Commissioner Ford, to a variance to allow a ±552 square foot well house to encroach thirteen (13) feet into the required twenty (20) foot side yard setback in Case No. LDC07-00036 (Hidden Valley Well House), subject to conditions. Commissioner Brabbin stated he could make the applicable Findings. The motion carried: Commissioners Brabbin, Coffman, Ford, Foster, Newberg and Chair Georgeson assenting; and Commissioner Romeo recused.

Commissioner Romeo rejoined the meeting.

LDC07-00039 (Summit Ridge Townhomes) – *This is a request for: (1) a zoning map amendment from PO (Professional Office) to MF21 (Multifamily - 21 dwelling units per acre); (2) a tentative map to develop a 19 unit single family attached townhouse subdivision; and (3) a special use permit to: (a) develop 19 single family townhouse units; (b) allow hillside development; and (c) for private streets. The ±1.98 acre site is located on the south side of Summit Ridge Drive approximately ±360 feet north of its intersection with West 4th Street.*

Vern Kloos, Senior Planner, provided an overview of the zoning map, tentative map and special use permit requests. Mr. Kloos noted that the special use permit to allow private streets was no longer needed and suggested that conditions be amended as follows: delete Condition 6; Condition 8 modified to read "Prior to the issuance of any permit or recordation of any final map, the applicant shall submit a Sewerage Report in accordance with the Public Works Design Manual. All sanitary sewer facilities offered for public dedication shall be to City of Reno standards. All proposed private on-site sanitary sewer facilities shall be owned and maintained by a Home Owners Association (or equivalent). All sanitary sewer improvements shall be designed and constructed, with adequate

* denotes NON action item

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maintenance access, in accordance with the Public Works Design Manual.” and Condition 13 to read “Prior to the issuance of any permit or recordation of any final map, the applicant shall demonstrate the design for the common use driveway is in accordance with City of Reno standards. The applicant shall demonstrate the driveway designs provide adequate clear sight distances – both vertically and horizontally – in accordance with the City’s code.” Staff recommends approval, subject to amended conditions.

Chair Georgeson opened the public hearing.

Stacey Huggins, Wood Rodgers, concurred with the staff report and amended conditions.

Robert Bony outlined his public safety concerns noting that most motorists do not drive within the posted speed limit.

Chair Georgeson closed the public hearing.

During the discussion it was noted that the Townhomes typically generate ± 6 trips per day and did not meet the threshold necessary to generate a traffic study. As the discussion continued, it was pointed out by Interim Engineering Manager Denny Peters that traffic safety concerns had resulted in added conditions to assure that the line of sight distance is maintained and that speeding is an enforcement rather than design issue.

It was moved by Commissioner Newberg, seconded by Commissioner Brabbin, to approve the zoning map amendment from PO (Professional Office) to MF-21 (Multi-Family 21 dwelling units per acre) in Case No. LDC07-00039 (Summit Ridge Townhomes), by ordinance. Commissioner Newberg stated he could make the applicable Findings. The motion carried unanimously.

It was moved by Commissioner Newberg, seconded by Commissioner Brabbin, to approve: 1) a tentative map to develop nineteen (19) single family attached Townhomes; and 2) a special use permit to allow: (a) development of nineteen (19) single family townhomes units; and (b) allow hillside development in Case No. LDC07-00039 (Summit Ridge Townhomes), subject to amended conditions. Commissioner Newberg stated he could make the applicable Findings and amended Conditions of Approval as follows: Condition 6 - deleted; Condition 8 amended to read “Prior to the issuance of any permit or recordation of any final map, the applicant shall submit a Sewerage Report in accordance with the Public Works Design Manual. All sanitary sewer facilities offered for public dedication shall be to City of Reno standards. All proposed private on-site sanitary sewer facilities shall be owned and maintained by a Home Owners Association (or equivalent). All sanitary sewer improvements shall be designed and constructed, with adequate maintenance access, in accordance with the Public Works Design Manual.” and Condition 13 amended to read “Prior to the issuance of any permit or recordation of any final map, the applicant shall demonstrate the design for the common use driveway is in accordance with City of Reno standards. The applicant shall

* denotes NON action item

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demonstrate the driveway designs provide adequate clear sight distances – both vertically and horizontally – in accordance with the City's code." The motion carried unanimously.

Chair Georgeson read the appeal process.

LDC07-00037 (Silver Lake LDS Church) – *This is a request for a special use permit to: (1) construct a ±16,636 square foot church; (2) allow nonresidential development adjacent to residentially zoned property; (3) allow cuts greater than 20 feet in depth; and (4) allow wall signs for a nonresidential use in a residential zone. The ±3.71 acre site is located on the south side of Silver Lake Road, ±300 feet east of its intersection with Red Rock Boulevard, in the SF6 (Single Family Residential – 6,000 square feet) zone.*

Beverly Straub, Assistant Planner, summarized the requests and noted that the architecture would resemble that of a church located in Eagle Canyon. Ms. Straub suggested that Conditions of Approval be amended as follows: Condition 6 amended to read "Prior to the issuance of any certificate of occupancy, the applicant shall construct sidewalk to the southeast corner of Silver Lake Road and Red Rock Road from this site, and shall further make connection with the pedestrian improvements for the subdivision to the east."; and add Condition 8 "Prior to the approval of any permit, the applicant shall pay a pro-rata share of costs toward improvements of the Lear Lift Station." Staff recommends approval subject to amended conditions.

Chair Georgeson opened the public hearing.

Chair Georgeson disclosed a telephone conversation with applicant's representative.

Chad Wilkinson, Summit Engineering, concurred with the staff report and conditions.

Cathy Brandhorst noted her concerns about the location of a church near homes without security and suggested the application be denied.

Chair Georgeson closed the public hearing.

During the discussion it was noted the signs and the steeple (spire) would not be illuminated. Other discussion noted that City code specifically addresses traffic counts for this particular type of project.

It was moved by Commissioner Ford, seconded by Commissioner Brabbin, to approve the special use permit to: (a) construct a ±16,636 square foot church; (b) allow nonresidential development adjacent to residentially zoned property; (c) allow cuts greater than twenty (20) feet in depth; and (d) allow wall signs for a nonresidential use in a residential zone in Case No. LDC07-00037 (Silver Lake LDS Church), subject to amended conditions. Commissioner Ford stated she could make the applicable Findings and amended Conditions of Approval as follows: Condition 6 amended to read "Prior to the issuance of any certificate of occupancy, the applicant shall construct sidewalk to the southeast corner of Silver Lake Road and Red

* denotes NON action item

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Rock Road from this site, and shall further make connection with the pedestrian improvements for the subdivision to the east.”; and add Condition 8 “Prior to the approval of any permit, the applicant shall pay a pro-rata share of costs toward improvements of the Lear Lift Station.”

Chair Georgeson noted his concern that the applicant would be required to pay their pro-rata share of costs under Condition 8 with the approval of the special use permit.

Denny Peters, Interim Planning Manager, stated that this type of condition was typically associated with a building permit rather than a special use permit.

Commissioner Ford amended the motion to further modify Condition 8 such that the pro-rata cost share is required with the issuance of a building permit. Commissioner Brabbin amended the second. The motion carried unanimously.

Vern Kloos, Senior Planner, commented that staff was in the process of producing additional copies of the staff report for Case No. LDC07-06-00321 (Wingfield Towers) and suggested the Planning Commission take a short break.

The meeting recessed at 6:49 p.m. and reconvened at 7:17 p.m. A quorum was established.

LDC06-00321 (Wingfield Towers) – This is a request for: (1) a tentative map to develop a 499 unit residential condominium subdivision; (2) special use permits to allow: (a) hillside development; (b) cuts of 20 feet or more, (c) modification to the building setback envelope for a building within the South Esplanade Frontage; and (d) 100 or more condominium units; and (3) a variance to allow the buildings to cast a shadow on a public park between the hours of 10 a.m. and 2 p.m. on December 21st. In addition to the condominium units, ±19,817 square feet of retail space and ±20,603 square feet of office space will be located within two towers which are ±492 and ±374 feet tall, respectively from Court Street. The ±1.36 acre site is located on the south side of Island Avenue ±200 feet east of Arlington Avenue and north of Court Street in the MU/DRRC (Mixed Use/Downtown Reno Regional Center Plan) zones.

Commissioner Brabbin recused.

Commissioners Coffman, Ford, Foster, Newberg, Romeo and Chair Georgeson disclosed discussions with the applicant and/or applicant's representative.

Chair Georgeson encouraged audience members to share the staff reports.

Vern Kloos, Senior Planner, outlined the requests associated with the 40-story, 499 unit high rise condominium complex and explained how, in staff's opinion the various issues had been addressed. Mr. Kloos explained how the Findings for the variance could, in staff's opinion, be met due to shadowing of Wingfield Park on December 21. Mr. Kloos also noted that the applicant was working

* denotes NON action item

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with Trinity Episcopal Church and Park Tower residents to provide additional parking. Mr. Kloos recommended that Conditions of Approval be amended to read as follows: Condition 26 "All traffic study updates shall be to the approval of the Community Development Department and shall provide analyses and review of the site plan and proposed mitigations for project generated impacts, relative to the trip generation distribution estimates included in the September 21, 2006 master traffic study, on the adjacent roadway network, site accesses, pedestrian routes, and cut-through traffic concerns."; Condition 28 "Prior to the issuance of the certificate of occupancy for the combined residential and non-residential portions of the project that will generate 50-percent (approximately 1,500 ADT) of the total project trips, the applicant shall have City approved traffic study and Transportation Management Plan updates for the project. This update shall evaluate background and project traffic patterns, site accesses, and pedestrian routes and review of the roadway capacities and intersection levels of service for the roadway network included in the project master traffic study. Prior to the issuance of any certificate of occupancy beyond a 65-percent combined occupancy threshold, the applicant shall have approved plans and securities in place for all recommended roadway or intersection improvements and/or shall provide alternate traffic mitigation plans as identified in the City approved 50-percent occupancy traffic study update"; Condition 29. "Prior to the issuance of the certificate of occupancy for the combined residential and non-residential portions of the project that will generate 85-percent (approximately 2,600 ADT) of the total project trips, the applicant shall have City approved traffic study and Transportation Management Plan updates for the project. This update shall evaluate background and project traffic patterns, site accesses, and pedestrian routes and review of the roadway capacities and intersection levels of service for the roadway network included in the project master traffic study. Prior to the issuance of any certificate of occupancy beyond a 95-percent combined occupancy threshold, the applicant shall have approved plans/securities and shall construct and install all recommended roadway improvements and/or shall execute alternate traffic mitigation plans as identified in the City approved 85-percent occupancy traffic study update."; Condition 32 "Prior to the issuance of the building permit containing 100-percent of the project commercial development and additional residential units that, collectively, will generate no less than 45-percent and no more than 55-percent of the total project trip generation estimate, the applicant shall develop a rehabilitation plan in conjunction with requirements established by engineering staff to determine the extents and nature of upgrades, repairs, renovations, or reconstruction of the pavement structure and surface for the roadways identified as construction transportation and delivery routes within the project vicinity as depicted in the Construction Management Plan and all updates thereto. As a minimum, the applicant shall provide a 2-inch grind and overlay, with full depth replacement in required areas, for the full street widths of Court Street, Island Avenue, Arlington Avenue, and Rainbow Street within the block formed by these roadways. Prior to the issuance of the building permit containing 100-percent of the commercial development and residential units that, collectively, will generate no less than 85-percent and no more than 95-percent of the total project trip generation estimate, the applicant shall complete all pavement structure and roadway surface improvements necessary to sustain minimum roadway functional classifications within the project vicinity resulting from construction and project traffic impacts. The applicant shall replace all roadway markings and striping affected or displaced by the pavement improvements." Staff recommends approval of the requests, subject to amended conditions.

* denotes NON action item

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Chair Georgeson opened the public hearing and allowed the applicant up to 20-minutes to make their presentation.

Gary Duhan outlined the numerous meetings with adjacent property and business owners to address their concerns and introduced Dave Snelgrove – Wood Rogers.

Mr. Snelgrove narrated a 3 dimensional fly-through presentation (copy on file) of the project and outlined the various amenities in the public plaza area that will provide access from the California Avenue area to Wingfield Park. Mr. Snelgrove pointed out the shadowing over the four seasons and pointed out the step-backs on the towers.

Mr. Duhon narrated a PowerPoint presentation (copy on file) and explained the reason for the variance (conflict in zoning code between shadowing and the density requirements). Mr. Duhon pointed out that a three story structure would also require a variance given the slopes of the subject site. The proposed project is inspired by the San Antonio (Texas) river district using existing structures and new high rise construction to provide the critical mass to support retail/commercial and other uses in the urban core.

Stanley Waugh submitted a written statement (copy on file), which Chair Georgeson read into the record.

Mrs. Ernest Rutherford voiced her opposition to the project and explained that, in her opinion, the project would make life unbearable for Park Tower residents.

Sibyl Titus explained that she had purchased her Park Tower condominium three weeks ago knowing that the Wingfield Towers project was in development review. Ms. Titus pointed out that she had purchased the downtown Reno condominium in order to avail herself of theater, movies, dining and casinos without having to drive to her home in Genoa (Nevada), which is shaded from 3:00 p.m. daily by the mountains. Ms. Titus expressed her support for the project and urged others to do the same.

Shirley Palmisano submitted a written statement to the Planning Commission (copy on file) and read the statement in to the record.

Martha Voyevodka commented that while Wingfield Towers is a lovely project she questions whether it is the right project for this particular location.

Mats Unander Scharn noted his concern about potential flood issues and the proposed UV (ultra violet) windows proposed for the project, which he believes will be detrimental to the residents of both Wingfield Towers and Park Tower.

Robert Infantino expressed his support for the project and concurred with Ms. Titus' comments.

* denotes NON action item