

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 11:44 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 IV**

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

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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Counsel for Appellants

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		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 IV**, 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.,
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Reno, Nevada 89519
Tel: (775) 786-6868
drg@lge.net / tra@lge.net
Attorneys for Third-Party Defendant
Hale Lane



An employee of Albright, Stoddard, Warnick & Albright

Project Location

The subject property is between Island Drive and Court Street in the Downtown Reno. The property is located within the newly created Redevelopment Area 2 and within the S. Virginia Street Transit Corridor. The subject property contains 1.36± acres in four (4) parcels. (APNs: 011-122-03, 06, 07 & 12) An aerial based Vicinity Map showing the project location is provided on page 3 of this Project Description.

Project Overview

The Wingfield Towers Project is a private residential, office and retail development offering commercial, housing and public plaza space in the ever growing and improving downtown core. The central location to the heart of Reno is accessible to key transportation corridors through the South Virginia Street Transit Corridor, adjacent to the Riverwalk and overlooks the Truckee River. An appealing mix of retail and office uses at the ground floors and street elevations of the building will service residents of this project as well as surrounding residents and visitors. The project has been designed with two main structures (one 28 and one 40 story building). Parking will be provided entirely within a parking structure below the podium (public plaza) level. The public plaza area will provide opportunities to tie in the building, residents and future businesses to the festivals and events that have been so successful in the Wingfield Park area (such as, Artown and the River Festival). The tie and increase of potential space for events and exhibits in association with the existing festivals will help to continue enhancing Reno's urban environment and help Reno attain infill and intensity goals and objectives within the Downtown Core, as driven by the Truckee Meadows Regional Plan.

Project Background and Community Goals

The Wingfield Tower project helps promote many of the goals of the Truckee Meadows Regional Plan through intensification of the regional core. Additionally, the property lies within the City of Reno Transit Corridor Overlay District. Location indicated and mandates intensification of this and other properties in the surrounding area so as to (1) create a critical mass to rejuvenate downtown Reno and (2) generate demand for mass transit.

The Truckee Meadows Regional Plan provides strong encouragement for intense/dense mixed use developments within appropriate locations of the region. Appropriate locations are considered to be Downtown and Regional Centers and TOD Corridors. Following are excerpts from the 2002 Truckee Meadow Regional Plan proving this encouragement and direction.

Regional Form and Pattern

- The Regional Plan will promote a Regional Form that minimizes sprawl and supports a higher intensity and density of development within designated centers and transit corridors. The plan will strongly promote infill development within centers and transit corridors to optimize existing infrastructure.
- Intensification within the region will be directed toward defined centers and TOD corridors
- The Regional Plan identifies the desired distribution of forecasted population and employment growth within the region. Downtown Centers, Regional Centers and TOD Corridors will accommodate an increasing proportion of the region's population and employment growth over the next 20 years.

Centers and Corridors

- The region will plan Centers and TOD Corridors that attract increasing levels of investment and development capital. These Centers and TOD Corridors will grow to absorb our increasing population through the development of high-density residential development. Commercial and mixed-use development will be directed to centers and transit corridors.
- The Downtown Centers of the City of Reno and City of Sparks, will be significant economic centers in our region. These regional mixed-use centers will include retail, high density residential, entertainment, office buildings and public facilities.
- Downtown Centers, Regional Centers and TOD Corridors will be mixed-use, visually attractive and will entice both local residents and visitors to the area, day and night. These Centers and TOD Corridors will promote multi-modal transportation and may support a range of activities including shopping, recreation, dining and entertainment, gaming and accommodation, employment, cultural or community events, as well as providing high density residential opportunities.
- To accommodate our changing population's needs, the Regional Plan will support the provision of more diverse market-rate and affordable housing products and opportunities, such as, assisted care and other elderly housing facilities, multi-family units, student housing, and mid to high rise apartments.
- Intense development will be directed to the Downtown Centers, Regional Centers and TOD Corridors.

These Planning Principals are the springboard for many of the Goals and Policies of the Regional Plan. It is clear to see that intensification of the urban core area of the Region is desired and directed through these Principals. It is the belief of Wood Rodgers and the project applicant that the proposed Wingfield Towers promotes these Regional Plan Principals and will assist in the continued progress being made in the Reno Downtown Core.

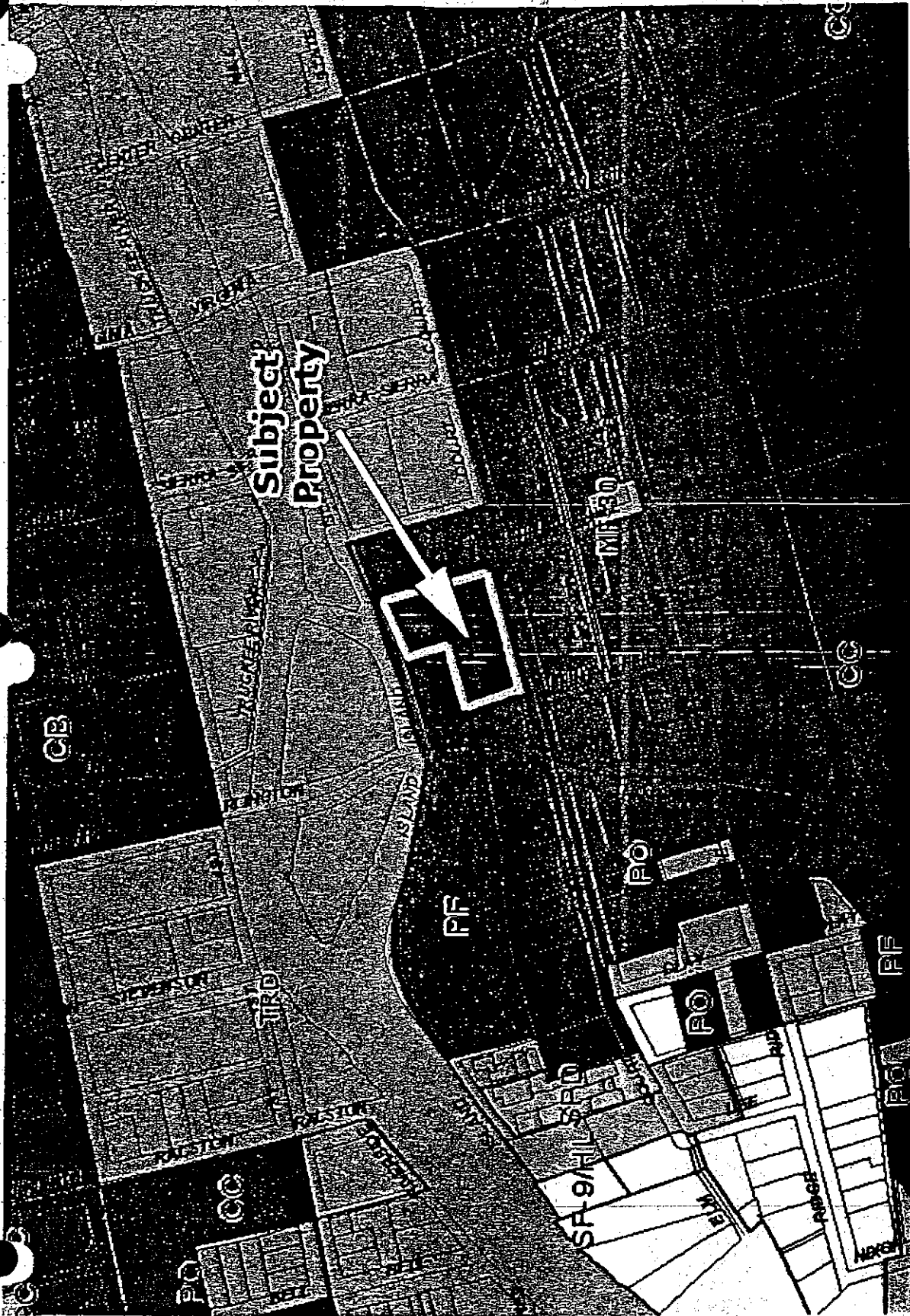
Reno Districts and Special Planning Areas

The project site lies within the City of Reno Downtown Area Overlay District (see Figure 18.08-3 of the Reno Municipal Code, updated February 9, 2005). A copy of this section is provided in Tab 5 of this application. With the property location in this Overlay District, development on the site is generally encouraged for intensification to meet the Regional land use goals for the area. Some of the specific allowances or exemptions from standards City Code include: exemption from Landscape Area Requirements, Shading of parks and residents, and residential adjacency standards.

In addition to the project site location within the Downtown Area Overlay District, the property is also located within a City of Reno Transit Corridor (the South Virginia Street Transit Corridor). The Truckee Meadows Regional Plan provides direction for development in the Regional. Specific references are made to mixed use and high density residential opportunities within the Downtown Centers, Regional Centers and Transit Oriented Development (TOD) Corridors.

The property was recently added to the City of Reno Redevelopment District in Redevelopment District 2. As such, the incremental tax benefits from the construction of this project will strongly benefit the district.

The project site is NOT within the Truckee River Corridor or Downtown Riverfront Special Purpose District. This district has special restrictions to height and setbacks from the urban core area, adjacent to the River. This and a few other properties have been left out of this District.



Wingfield Towers

Vicinity Zoning Map



WOOD ROOGERS
 DEVELOPING INNOVATIVE DESIGN SOLUTIONS
 575 Double Eagle Court Tel: 775.823.4088
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Summary of Proposed Development

The project site consists of 1.36± acres of land located between Island Drive and Court Street in Downtown Reno, just east of Arlington Avenue. The Wingfield Towers will consist of two architecturally matching towers (one of 40 stories and one of 28 stories). The following uses are included in the proposed towers:

- 499 residential (condominium) units
- 824 parking spaces, entirely contained within a parking structure
- 28,300± SF of Public Plaza Space at the Podium Level
- 40,500± SF of Office and Retail Space
- A winter garden with a 75-foot lap pool, situated on top of the 28-story tower

A copy of the tentative map exhibits is provided in reduced size in Tab 3 and in full size attached to this application package. Architectural elevations have also been provided in this application.

Zoning Designation	CB
Master Plan Designation	Tourist Commercial
Proposed lots/Units	499 Condominium Units ranging in size from 378± SF to 7,014± SF and an average unit size of 1,243± s.f.
Setbacks & Lot Sizes	The CB zone allows for 0-foot setbacks on all sides of the property. The project incorporates 0-foot setbacks for the subterranean structural portion of the building containing the Parking Garage and some retail space, which is exposed on the downhill/river side of the property. The setbacks to property line for the two towers range from just over 20-feet to over 80-feet.
Pedestrian Access	Pedestrian access will be provided into and through the property grounds through a public plaza.
Parking:	A total of 824 parking spaces are provided in the parking structure at the base of the building. Depending upon the calculation method used, between 407 and 679 parking spaces are required to meet the minimum Code Standards. The excess parking is intended for use and benefit by others in the areas. Please see the Parking Section of this Project Description for additional details regarding the provision of and required parking spaces
Project Signage:	Project Signage is proposed on both the Court Street and Island Drive entrances/accesses to the project and will conform to the CB standards.

Project Height and Architecture:

The proposed Wingfield Towers area Please refer to the colored building elevations provided in Tab 3 to view the proposed architectural character.

Project Maintenance:

Common Area within for the Wingfield Towers is proposed to be maintained through an association, or other acceptable vehicle.

Requests of the City

Three requests are sought with this application.

- (1) A tentative map for a 499 unit high-rise condominium development containing 11 units of retail and office space.
- (2) A special use permit for hillside development
- (3) A special use permit for cuts and fills.

Tentative Map Request

As noted previously, the Wingfield Towers proposes 499 residential condominium units. An addition 11 units are proposed to contain retail and office space.

Building Unit and Non-residential Areas

Unit or Use Type	Number of Units or Square Footage
Studio Units	71 Units
1 Bedroom Units	263 Units
2 Bedroom Units	144 Units
3 bedroom Units	17 Units
Penthouses	4 Units
Total Residential Units	499 Units
Office & Retail Space	40,500± SF

Amenities

The amenities included in the Wingfield Towers include a health club or wellness center, 75-foot long lap pool and 28,300± SF of Public Plaza area at the podium level. It has yet to be determined whether the health club/wellness center will be a commercial venture or if it will be open only to the residents of the Wingfield Towers project.

Vehicular and Pedestrian Access

Access to the parking garage area will be accommodated through Court Street and Island Drive. Pedestrian access will be serves similarly off both of these streets through stairways and elevators. Access to the Public Plaza at the podium level of the Wingfield Tower project will be available from both Court Street and Island Drive.

Parking

Parking will be provided in a parking garage beneath the proposed towers. The parking garage area will be subterranean when viewed from Court Street and six stories in height when on the Island Drive side of the site. Access to the garage will be provided from Court Street and Island Drive.

The total number of parking space provided in the garage is 824. The parking requirements for the project range from 407 spaces to 679 spaces, depending upon whether code allowed reductions are used in the project. The area in which the project is located does have some parking issues, without this project, it is for this reason that the parking provided within the proposed Wingfield Tower garage is more than ample to meet the demand of the proposed Towers and to provide possible additional parking for adjacent, deficient uses (such as the Park Tower Condominiums) or for special events at Wingfield Park (such as the Truckee River Festival, Artown, etc.). The variance in required spaces is based upon the general code provisions for off-street parking in transit corridor areas.

RMC Section 18.08.405(c)(4)(b) allows for buildings over 65 feet in height to reduce the overall parking requirement by 40%. Residential uses may take the 40% reduction or provide one space per dwelling unit, whichever is less.

The following tables show the various parking requirement calculations, allowed by Code. The first table calculates the Standard Downtown Parking Requirement, also showing the TOD allowed (40%) reduced parking requirement. The second table (Alternative 2) calculates the TOD parking requirement if 1 parking space per unit is provided, rather than using the Standard Downtown Parking Requirement.

Alternative 1 - Standard Downtown Code and TOD Reduced Parking Requirements (40% Reduction)

Use	Units or SF	Multiplier	Parking Required
Studio Units	71	0.9 per unit	64 Spaces
1 Bedroom Units	263	1 per unit	263 Spaces
2 Bedroom Units	144	1.5 per unit	216 Spaces
3 bedroom Units	17	1.5 per unit	26 Spaces
Penthouses	4	1.5 per unit	6 Spaces
Guest		1/10 units	50 Spaces
Office	20,603± sf	1/385 SF	54 Spaces
Retail	19,817± sf	none	0 Spaces
Downtown Code Required Parking			679 Spaces
TOD Allowed - 40% Reduction			271.6 Spaces
TOD Reduced Parking Requirement			407 Spaces

Alternative 2 – TOD Parking Requirement (1 Parking Space Per Unit Calculation)

Use	Units or SF	Multiplier	Parking Required
Studio Units	71	1 per unit	71 Spaces
1 Bedroom Units	263	1 per unit	263 Spaces
2 Bedroom Units	144	1 per unit	144 Spaces
3 bedroom Units	17	1 per unit	17 Spaces
Penthouses	4	1 per unit	4 Spaces
Guest		1/10 units	50 Spaces
Office	20,603± sf	1/385 SF	54 Spaces
Retail	19,817± sf	none	0 Spaces
Total			603 Spaces

Parking reductions have been allowed in the downtown and TOD areas to encourage the use of alternative transportation modes. Unfortunately, a viable, dependable mass transit system does not currently exist in Reno. While it is applauded that appropriate planning is taking place through the Regional Center and TOD plans, it is foreseen that viable mass transit is still a number of years away. As such, the applicant is proposing parking in excess of the Code requirements. It should be understood that excess parking is allowed as long as it is contained within a parking structure – Section 18.08.405(c)(4)(c.) states that "Parking in excess of code minimums may only be provided in parking structures or within the envelope of the building." The community benefit from this excess parking could help to address some of the existing parking issues in the area, such as at the Park Tower Condominiums. Appropriate agreements for use of the spaces would need to be executed, but it is the intent of the applicant that, if additional parking can be provided that it benefit the existing area and residents. Possible additional benefit uses for the excess parking could be the ever-growing and successful special events held in Wingfield Park (Rollin on the River Concert Series, The Truckee River Festival and Arttown to name a few).

Accessible Parking

Accessible parking is required at a rate of 9 spaces for 401-500 required spaces. The parking garage provides 17 total accessible spaces while only 9 spaces are required. As such, the requirement for accessible parking spaces is met.

Special Use Permit Request

Requested with this application are two special use permits:

- (1) Hillside Development and;
- (2) Cuts in excess of 20 feet.

Hillside Development Special Use Permit

The subject property, due to existing slopes, requires a special use permit for Hillside Development. Approximately 26% of the total site area contains slopes over 15%.

Wood Rodgers has analyzed the proposed Wingfield Towers project with respect to the existing Hillside Ordinance. The subject property has a Central Business (CB) zoning designation and no maximum density requirements; therefore the subject property is not subject to the Hillside Development Density Reduction

requirements. A table identifying Required Open Space has been prepared. It should be noted that the proposed development conforms to open space requirements within the ordinance

REQUIRED OPEN SPACE IN HILLSIDE DEVELOPMENTS

Slope Range	Column A: Minimum Open Space (%)	Column B: Square Feet Within Slope Range	Column C: Required Open Space Within Each Slope Range (Square Feet)
0-15%	0	44,009.01	0
15.1-20%	25%	6,279.32	1,524.6
20.1-25%	50%	4,535.91	2,178
25.1-30%	75%	2,887.87	2,286.9
Greater than 30%	100%	1,586.35	1,742.4
Total Required Common Area Open Space			7,731.9

The results of this table show that a minimum of 7,732± square feet of common area open space is required based on the slopes on the project site. The total amount of Public Plaza area provided on the podium level of the development is 28,330± square feet. This amount of open space is in excess of the amount required per the Hillside Ordinance.

A copy of the slope analysis for this project with the site layout overlaid on the colorized slope map is provided in Tab 5 of this application package.

Cuts and Fill Special Use Permit

The application requests a special use permit for cut in excess of 20 feet. It should be noted that the cut areas on the site will be filled in with the base of the proposed buildings. This base area will house six stories of parking garage, as well as some residential and retail space.

Development Statistics

Total Site Area	1.36± Acres
Number of Towers	2 towers
East Tower	40 stories
West Tower	28 stories
Total Residential Units	499 Units
Residential Units East Tower	334 Units
Residential Units West Tower	161 Units
Residential Units (Accessed from Garage)	4 Units
Additional Units (Retail and Office)	11 Units
Retail Units	8 Units
Office Units	3 Units
Building coverage	53,420± SF
Residential Area (includes private terraces at levels 18, 31 and 38)	558,048± SF
Office and Retail Area	40,420± SF
Mechanical Room Area	32,951± SF
Gross Density	399.9 DU/Acre
Average Lot Size	1,243 ± SF
Minimum Lot Size	378± SF
Maximum Lot Size	7,014± SF
Parking	
Parking Spaces Required	407 Spaces
Parking Spaces Provided	824 Spaces
Accessible Parking Required	9 Spaces
Accessible Parking Provided	17 Spaces

PROJECT NAME: RESIDENTIAL PROJECT IN RENO NEVADA
LOCATION: RENO, NEVADA

APR: 011-112-03, 011-112-06, 011-112-07, 011-112-12

ZONING: C2

PROJECT DATA SUMMARY:

SITE AREA: 88,367 SF / 1.26 ACRE
PUBLIC OPEN SPACE: 41,687 SF
BUILDING FOOTPRINT @ GRADE: 63,370 SF

BUILDING DATA

	FLOOR	AREA
BUILDING 1	40	492
BUILDING 2	28	373.33
GARAGE	6.5	14

UNIT TABULATION

	STUDIO	1 BEDROOM	1 BR + DEN	2 BEDROOM	3 BEDROOM	VALUABLE	TOTAL
BUILDING 1	71	114	34	64	15	6	334
BUILDING 2	0	62	23	46	0	0	131
GARAGE	0	0	0	4	0	0	4
PROJECT TOTAL	71	206	57	114	15	6	489

AREA CALC. (SF)

	RESIDENCES	BALCONY / TERRACE	LOBBY / CIRCULATION	STORAGE / SERVICE	PERIOD	OFFICE	POOL / GYMNASIUM	RETAIL	PAVING	OTHER
BUILDING 1	344,024	36,211	48,297	63,302	25,206	0	0	10,286	0	532,306
BUILDING 2	152,513	15,859	30,167	30,807	0	19,849	6,364	0	0	256,599
GARAGE	7,328	316	3,552	21,127	0	0	0	7,012	320,928	380,263
PROJECT TOTAL	503,865	53,386	83,016	115,236	25,206	19,849	6,364	17,298	320,928	1,149,128

TOTAL RESIDENTIAL AREA: 557,251 SF

(INCLUDE BALCONIES & TERRACES)

TOTAL PARISH HALL & OFFICE AREA: 16,718 SF

(NOT INCLUDED IN PROJECT AREA CALCULATION)

PARKING REQ. CALCULATION

SPACE	1 UNIT	CITY REQUIREMENT
RESIDENTIAL: STUDIO	71	AS STALL / UNIT
RESIDENTIAL: 1BR	206	1 STALL / UNIT
RESIDENTIAL: 1BR + DEN	57	1 STALL / UNIT
RESIDENTIAL: 2BR	114	1.5 STALL / UNIT
RESIDENTIAL: 3BR	15	1.5 STALL / UNIT
RESIDENTIAL: P.J.U.T.H.	6	1.5 STALL / UNIT
OFFICE	19,849	84
RETAIL	RETAIL	7
GUEST		60
CITY REQ. TOTAL	19,849	711
ADDITIONAL REQ. (6 RESTAURANT)		60
TOTAL		761
HANDICAP ACCESSIBLE	1.5 % OF TOTAL	16
H.A. VAN PARKING	1 OUT OF 5 H.A.	2

PARKING PROPOSED

	STANDARD STALL	HANDICAP ACCESSIBLE	HANDICAP ACCESSIBLE - VAN	TOTAL
GARAGE: +30.00' G1	64	2	2	68
GARAGE: +21.00' G2	102	2	0	104
GARAGE: +12.00' G3	123	2	0	125
GARAGE: +3.00' G4	126	2	0	128
GARAGE: +6.52' G5	126	2	0	128
GARAGE: +14.92' G6	85	2	0	87
TOTAL	646	12	2	660

June 1, 2006

APRIL 7, 2006

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MARK B. STEPPAN, AIA, CSI, NCARB
ARCHITECT

FISHER FRIEDMAN ASSOCIATES
DESIGN CONSULTANT

JA0681

ILIESCU000173

PROJECT NAME: RESIDENTIAL PROJECT IN RENO NEVADA
LOCATION: RENO, NEVADA

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

ZONING: CB

PROJECT DATA SUMMARY:

SITE AREA: 58,367 SF / 1.31 ACRE
PUBLIC OPEN SPACE: 41,667 SF
BUILDING FOOTPRINT @ GRADE: 53,370 SF

BUILDING DATA

	1 UNIT	TOTAL
BUILDING 1	40	482
BUILDING 2	28	373.33
GARAGE	8.5	14

UNIT TABULATION

	0 BR	1 BEDROOM	1 BED + DEN	2 BEDROOM	3 BEDROOM	PA. HALL	TOTAL
BUILDING 1	71	114	34	84	15	6	334
BUILDING 2	0	92	23	46	0	0	161
GARAGE	0	0	0	4	0	0	4
PROJECT TOTAL	71	206	57	134	15	6	499

AREA CALC. (SF)

	RESIDENTIAL	BUILDING FOOTPRINT	LOBBY/CHANGEROOM	RETAIL/RENTAL/STORAGE	POOL/SPA	OFFICE	TRUCK/LOADING	RETAIL	PAVING	SPRINK
BUILDING 1	344,024	36,211	48,297	63,302	28,206	0	0	10,266	0	632,306
BUILDING 2	152,513	16,856	30,167	30,807	0	19,849	6,364	0	9	256,599
GARAGE	7,328	316	3,552	24,054	0	0	0	7,012	305,318	347,580
PROJECT TOTAL	503,865	53,386	82,016	118,163	28,206	19,849	6,364	17,278	305,318	1,136,445

TOTAL RESIDENTIAL AREA: 503,865 SF

(EXCLUDE BALCONIES & TERRACES)

TOTAL PARISH HALL & OFFICE AREA: 16,718 SF

(NOT INCLUDED IN PROJECT AREA CALCULATIONS)

PARKING REQ. CALCULATION

SPACE	UNITS	REQUIREMENT	SCALE
RESIDENTIAL: STUDIO	71	60 TOTAL PARK	84
RESIDENTIAL: 1BR	206	1 TOTAL PARK	206
RESIDENTIAL: 1BR + DEN	57	1 TOTAL PARK	57
RESIDENTIAL: 2BR	134	1.5 TOTAL PARK	216
RESIDENTIAL: 3BR	15	1.5 TOTAL PARK	23
RESIDENTIAL: P.H./H.	6	1.5 TOTAL PARK	9
OFFICE	19,849 SF	54	
RETAIL	6,364	7	
GUEST		50	
CITY REQ. TOTAL		711	
ADDITIONAL REQ. (B. RESTAURANT)		50	
TOTAL		761	
HANDICAP ACCESSIBLE	3% OF TOTAL	16	
HA VAN PARKING	1 VAN OF 3 HA	2	

PARKING PROPOSED

	STANDARD SPACES	HANDICAP ACCESSIBLE	HANDICAP ACCESSIBLE - VAN	TOTAL
GARAGE: +30.08'	G1	2	2	87
GARAGE: +21.08'	G2	2	0	104
GARAGE: +12.08'	G3	2	0	126
GARAGE: +13.08'	G4	2	0	126
GARAGE: -5.32'	G5	2	0	126
GARAGE: -14.52'	G6	2	0	82
TOTAL	646	12	2	660

ILIESCU000174

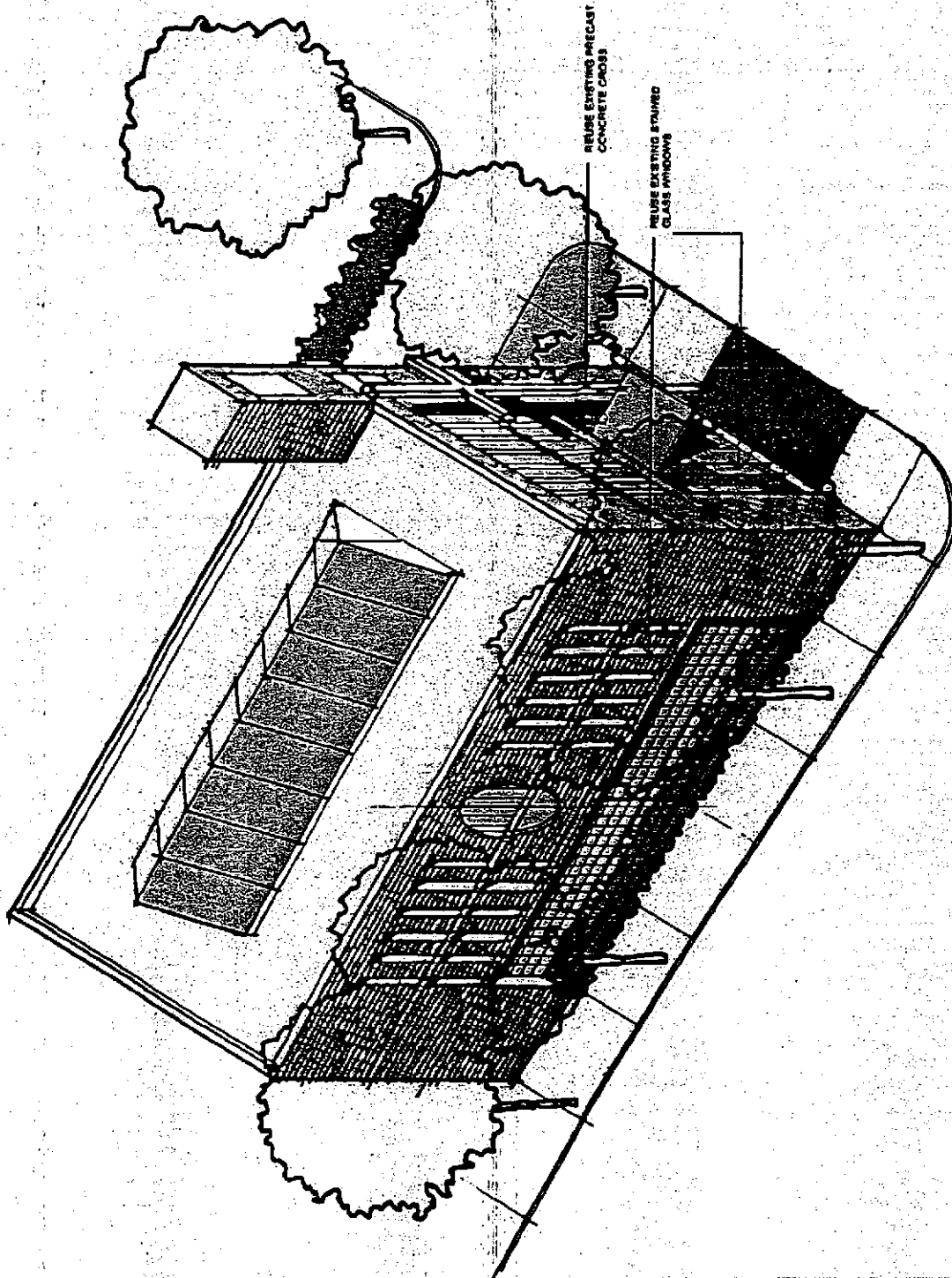
June 1, 2006
May 24, 2006
APRIL 7, 2006

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MARK B. STEPPAN, AIA, CSI, NCARB
ARCHITECT

FISHER FRIEDMAN ASSOCIATES
DESIGN CONSULTANT

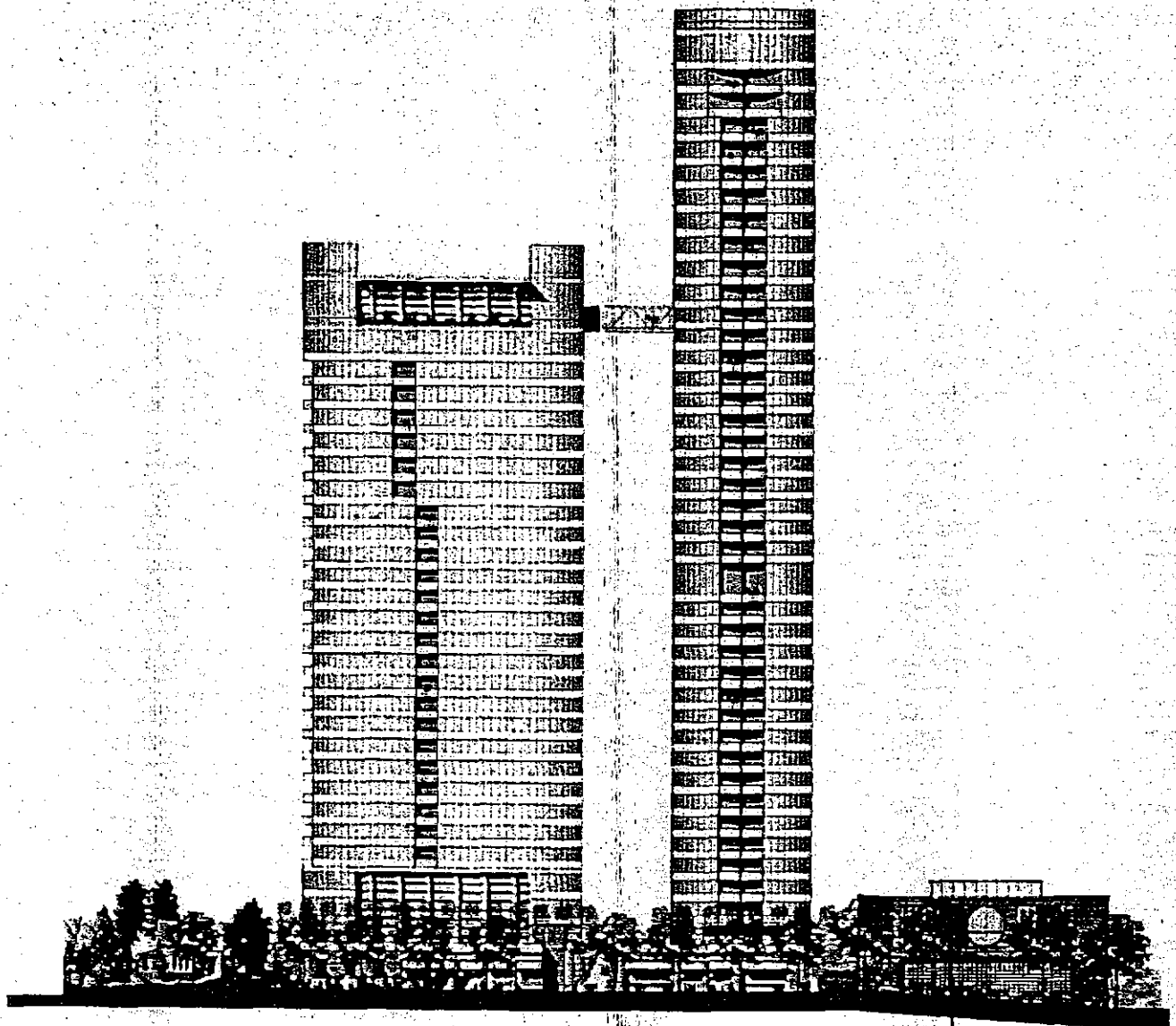
JA0682



NEW PROPOSAL FOR TRINITY EPISCOPAL CHURCH PARISH HALL
FISHER FRIEDMAN ASSOCIATES
R-1.06

ILIESCU000175

JA0683

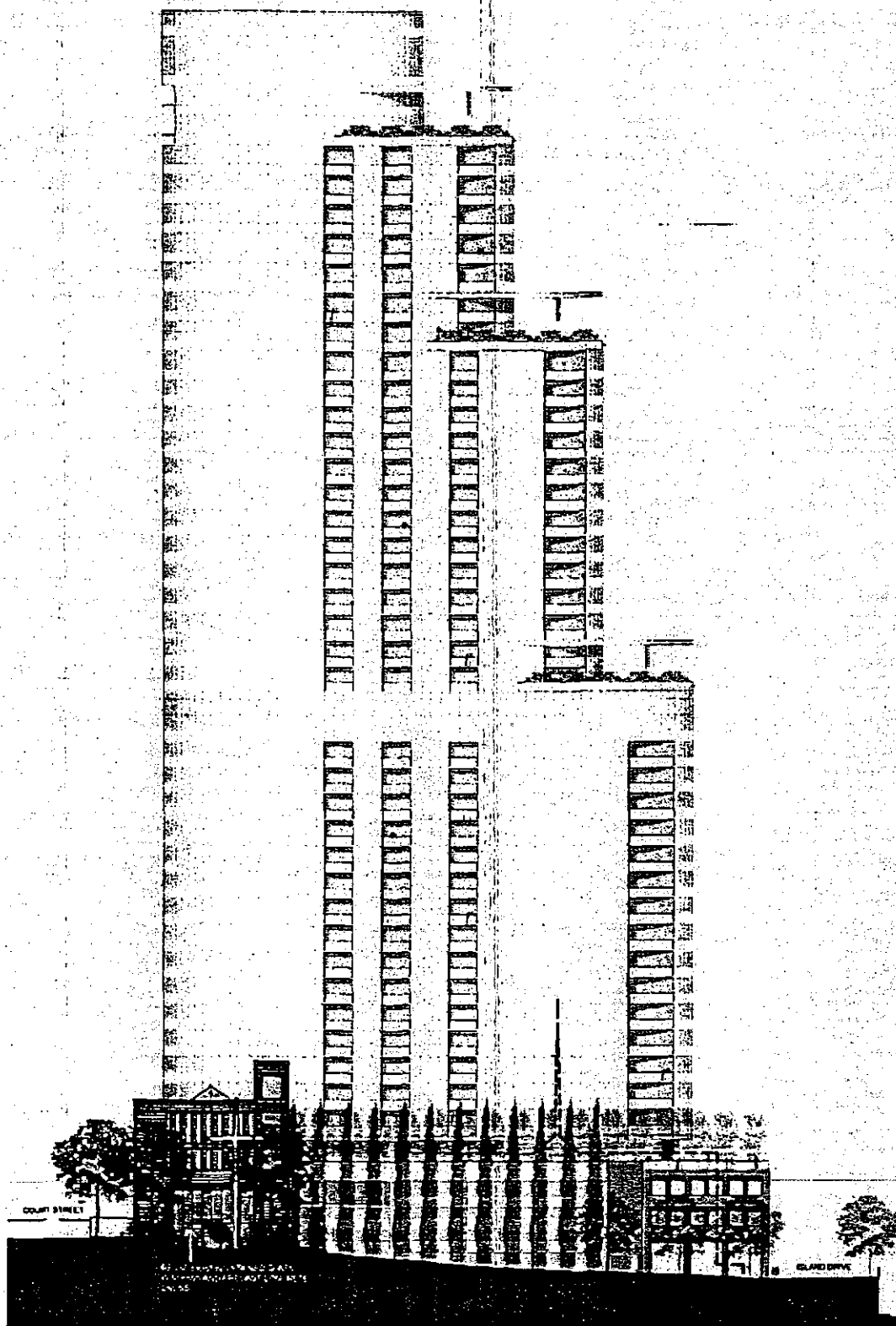


SOUTH ELEVATION SHOWING PROPOSED NEW FACILITY FOR TRINITY EPISCOPAL CHURCH
 DRAWN BY ARCHITECT AND COMPANY
 1/1/68

Scale: 1/8" = 1'-0"

ILIESCU000176

JA0684



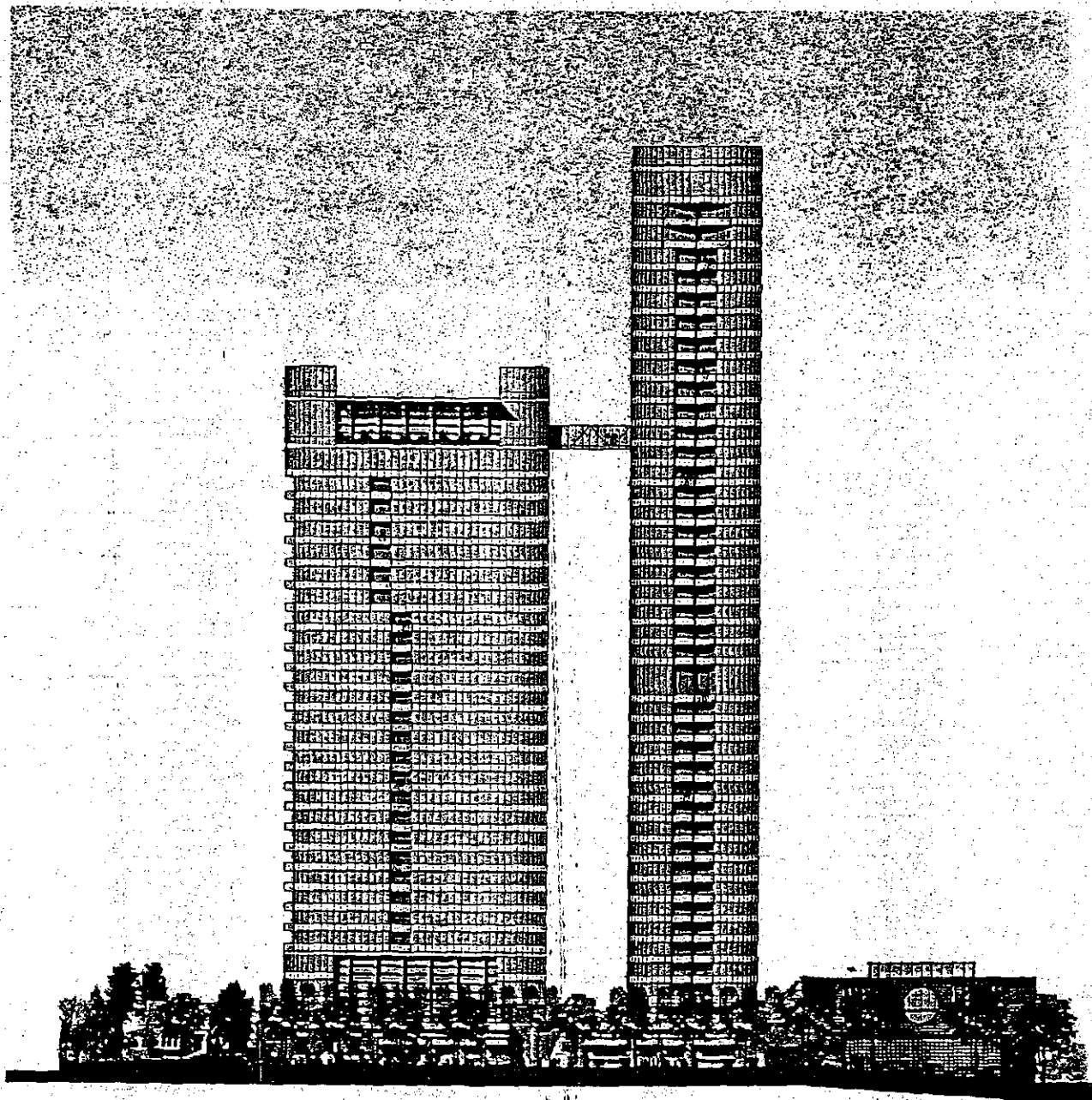
EAST ELEVATION SHOWING PROPOSED NEW FACILITY FOR TRINITY EPISCOPAL CHURCH
 TURNER FRIEDMAN ASSOCIATES
 9-80-85

JA0685

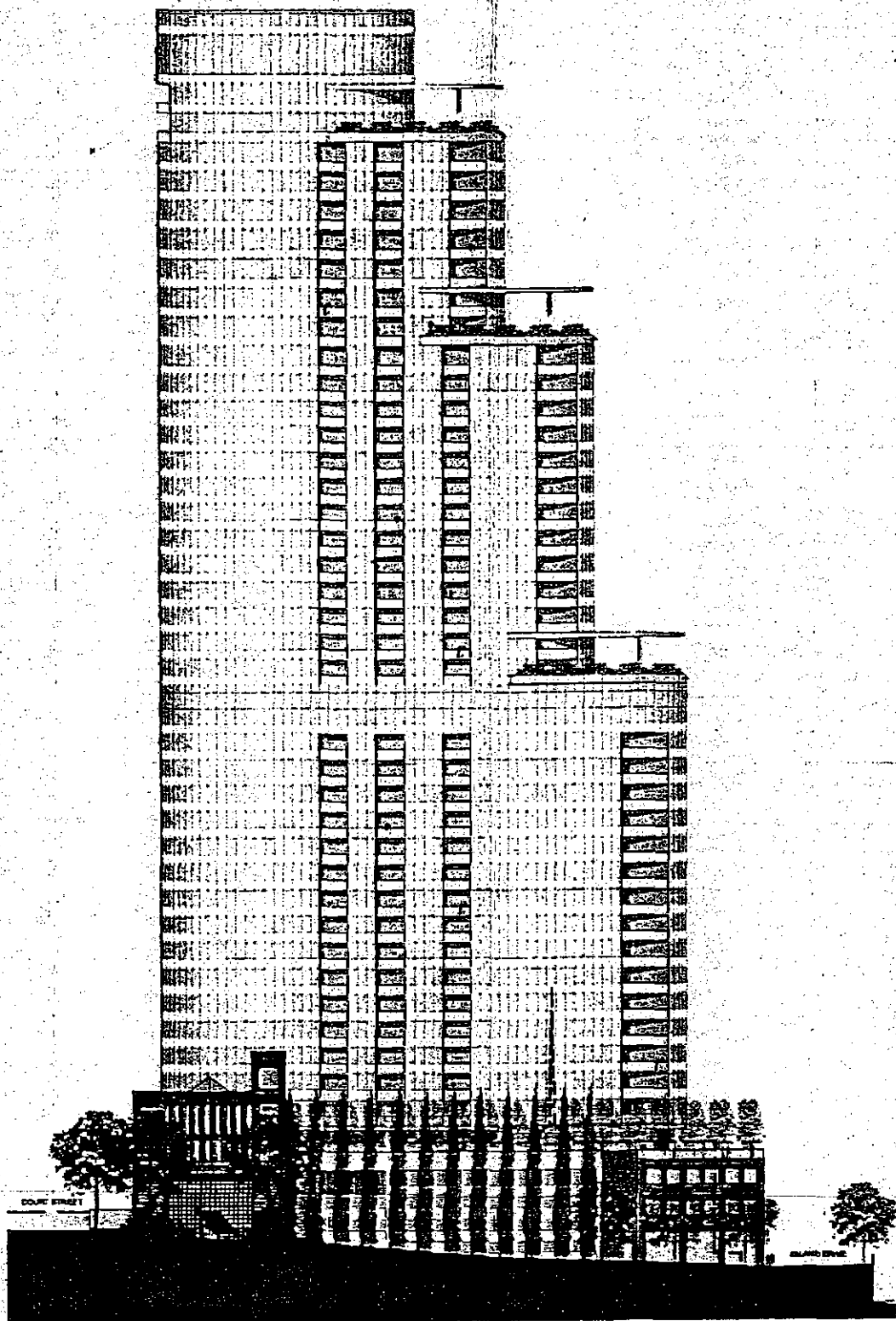
ILIESCU000177



NORTH ELEVATION OF PROPOSED NEW
FACILITY FOR TRINITY EPISCOPAL CHURCH
FISHER FRIEDMAN ASSOCIATES
5-30-06



SOUTH ELEVATION SHOWING PROPOSED NEW FACILITY FOR TRINITY EPISCOPAL CHURCH
 Prepared by: [illegible]
 1/1/80

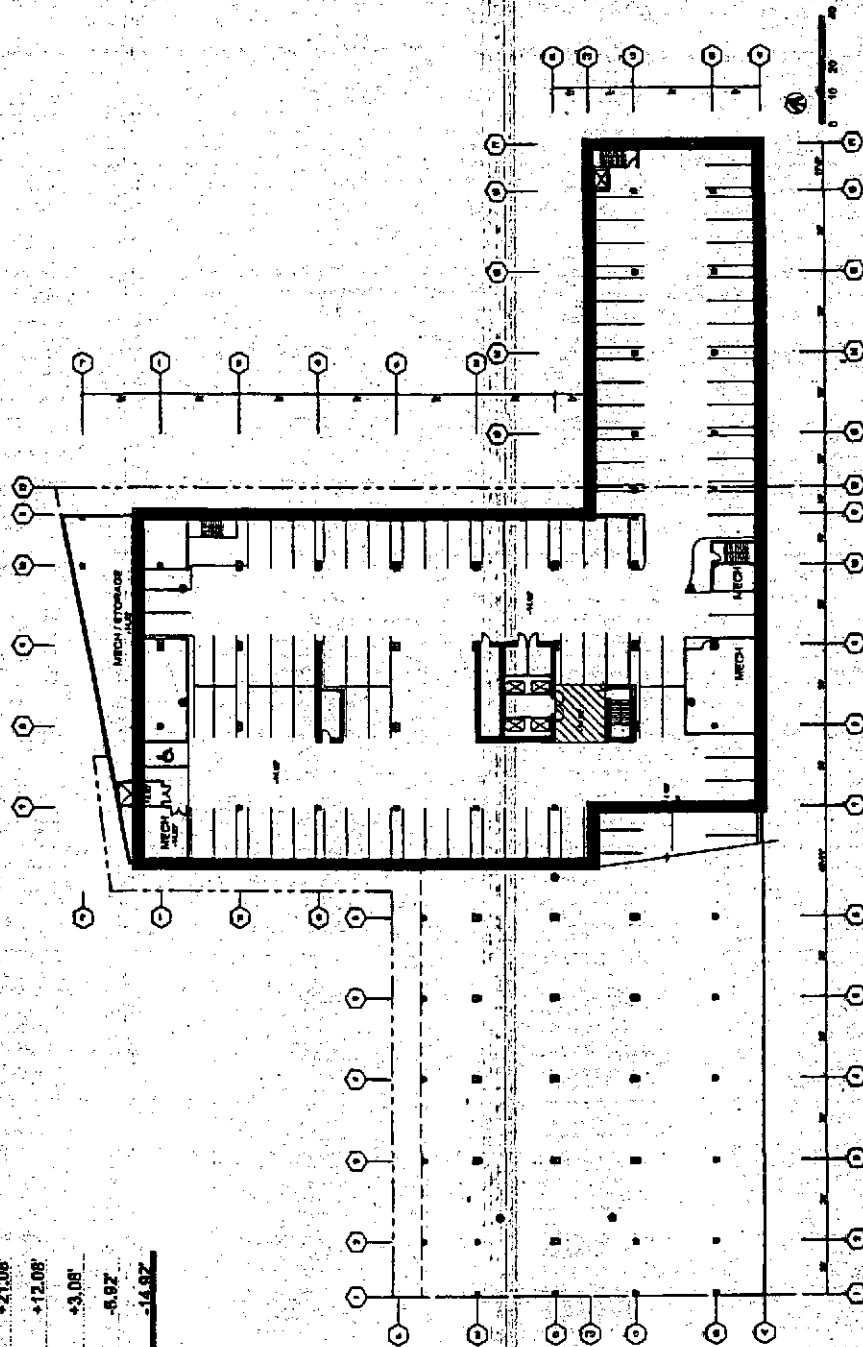


EAST ELEVATION SHOWING PROPOSED NEW FACILITY FOR TRINITY EPISCOPAL CHURCH
FOR THE TRINITY ASSOCIATES
4-30-81

JA0688

ILIESCU000180

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+25.55'	G1	+30.08'
+16.58'	G2	+21.08'
+7.58'	G3	+12.08'
-1.42'	G4	+3.08'
-10.42'	G5	-6.92'
	G6	-14.92'



MAY 24, 2006

APRIL 7, 2006

COMPILED BY MARK S. STEPPAN, AIA, CSI, NCARB

MARK S. STEPPAN, AIA, CSI, NCARB

ARCHITECT

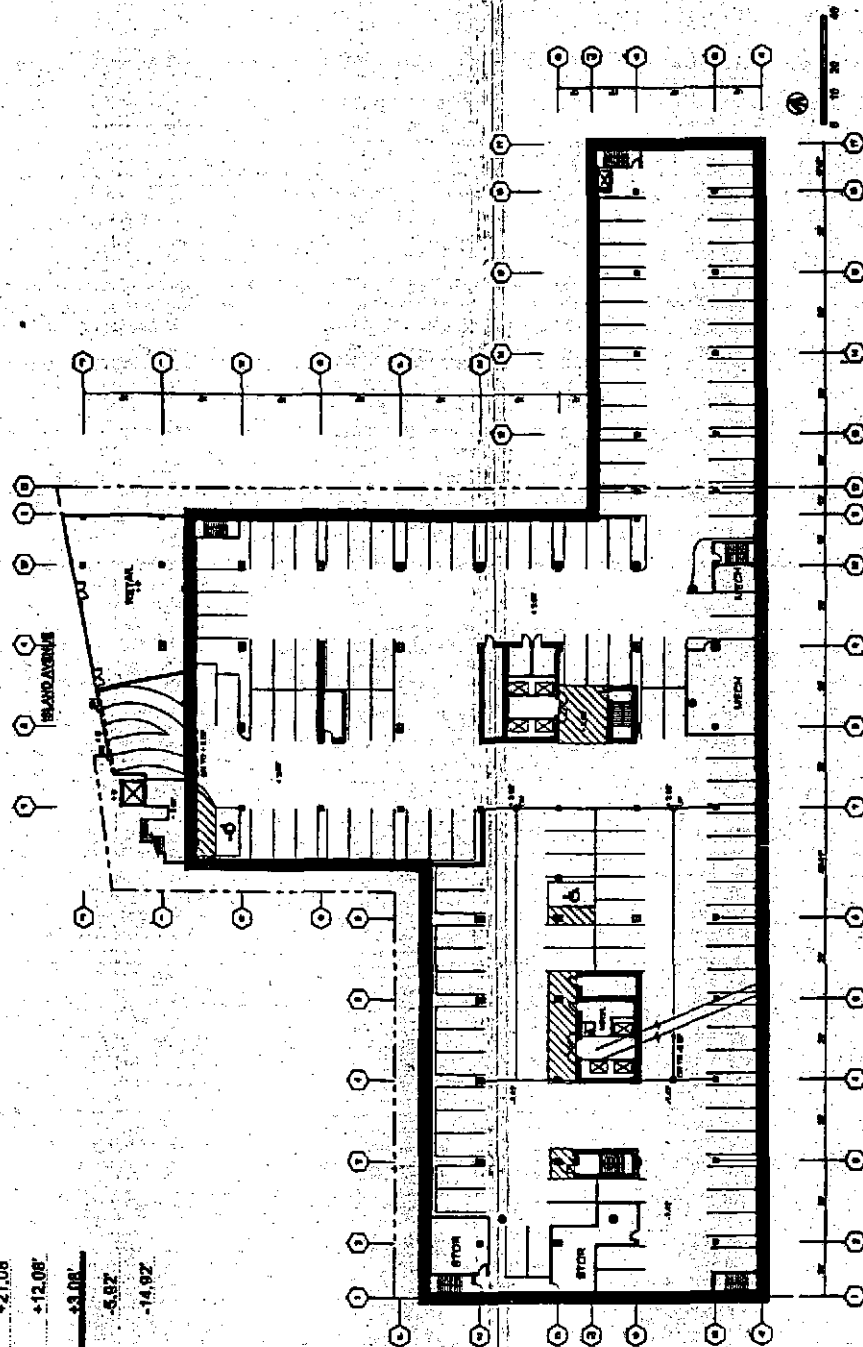
FISHER FRIEDMAN ASSOCIATES

DESIGN CONSULTANT

GARAGE @ -14.92'

87 PARKING STALLS

	PODIUM	+44.08'
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+18.58'	G2	+21.08'
+7.58'	G3	+12.08'
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	G6	-14.92'



MAY 24, 2006

APRIL 2, 2006

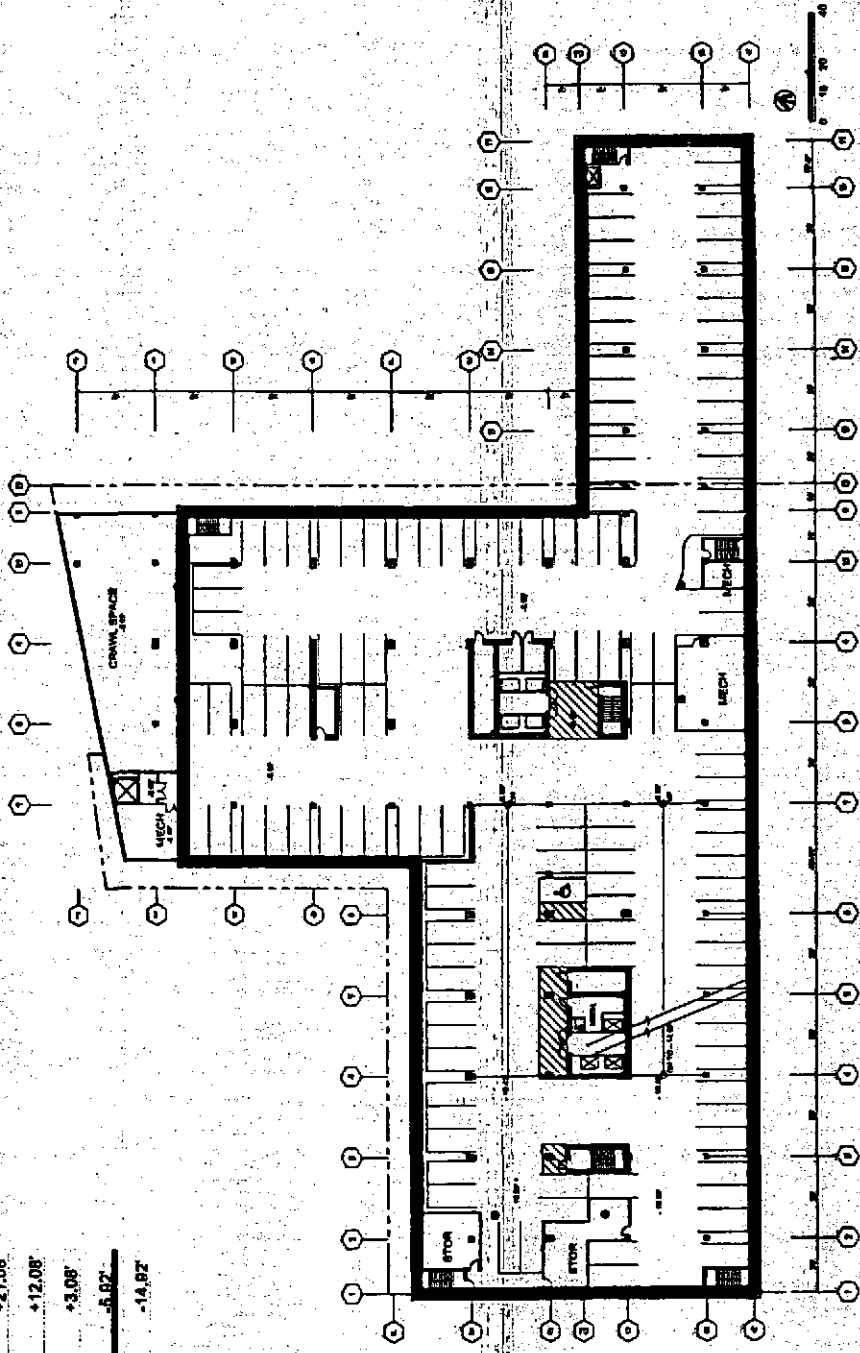
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 MARK B. STEPTAN, AIA, CBL, NCARB
 ARCHITECT
 FISHER FRIEDMAN ASSOCIATES
 DESIGN CONSULT, P.A.

GARAGE @ +3.08'
 128 PARKING STALLS

JA0690

ILHESCU000182

	PODIUM	+44.08'
+25.58'	G1	+30.08'
+16.58'	G2	+21.08'
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	G6	-14.92'

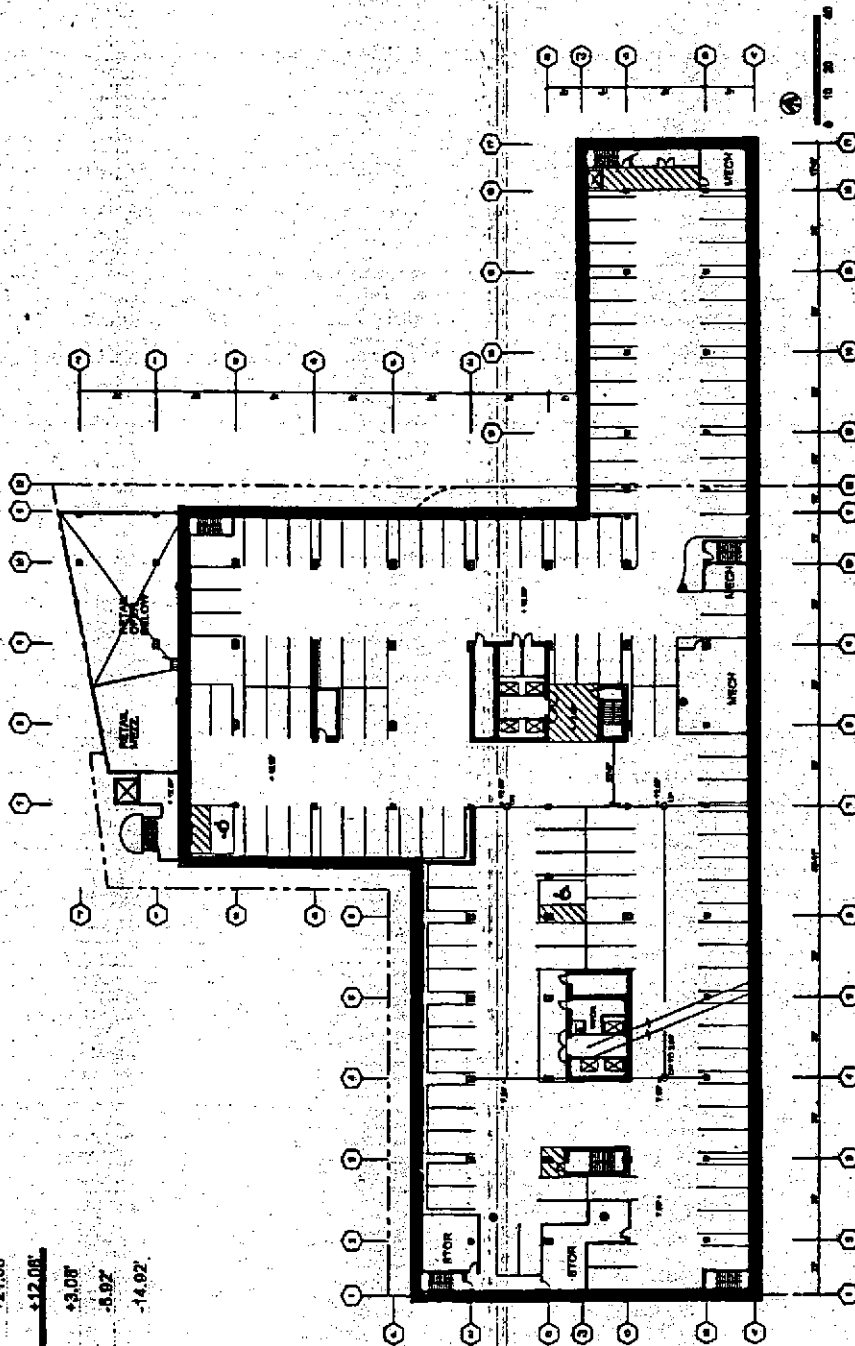


MAY 24, 2006

GARAGE @ -5.92' 128 PARKING STALLS

APRIL 7, 2006
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MARK B. STEPPAN, AIA, CSI, NCARB
ARCHITECT
FISHER FRIEDMAN ASSOCIATES
DESIGN CONSULTANT

	PODIUM	+44.08'
+25.58'	G1	+30.08'
+18.58'	G2	+21.06'
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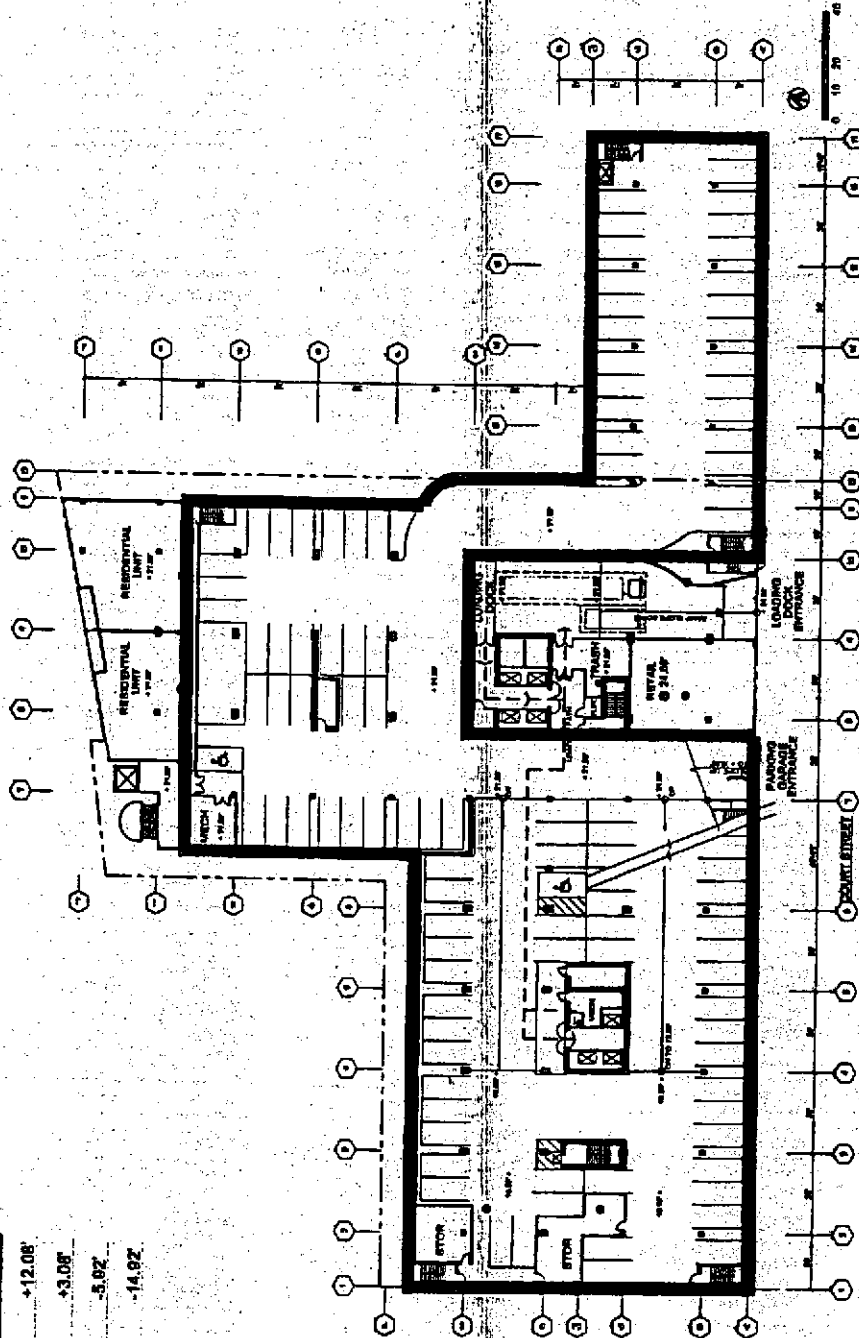


MAY 24, 2006

— APRIL 1, 2006 —
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 ARCHITECT
 FISHER FRIEDMAN ASSOCIATES
 DESIGN CONSULTANT

GARAGE @ +12.08'
 126 PARKING STALLS

PODIUM	+44.08'
G1	+30.08'
G2	+21.08'
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G4	+3.08'
G5	-5.92'
G6	-14.92'



GARAGE @ +21.08'
103 PARKING STALLS

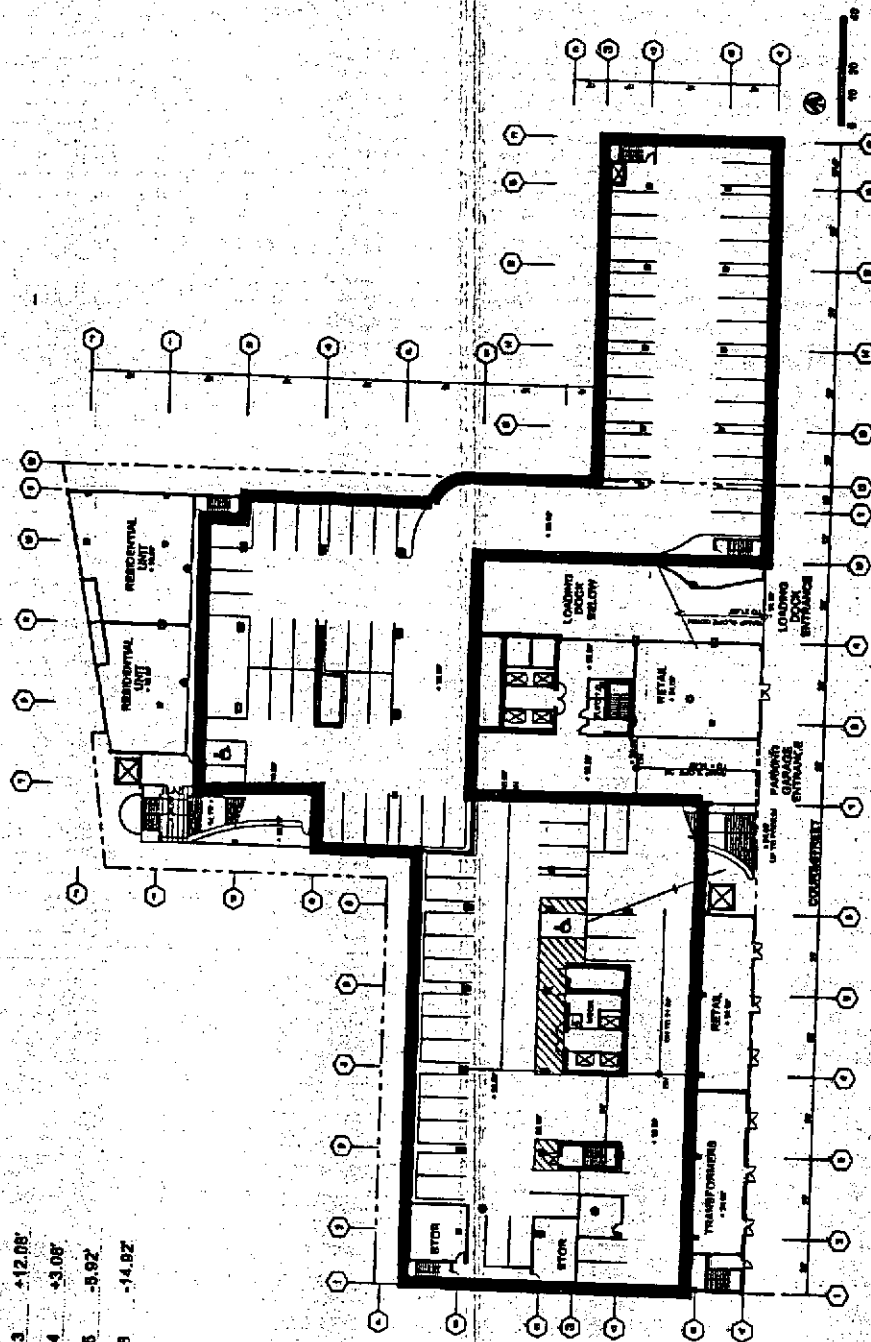
MAY 24, 2006

APRIL 3, 2006
COMMITTEE: MARK B. STEPPAN, AIA, CSI, NCARB
ARCHITECT
FISHER FRIEDMAN ASSOCIATES
DESIGN CONSULTANT

ILIESCU000185

JA0693

PODIUM	+44.08'
G1	+30.08'
G2	+21.08'
G3	+12.08'
G4	+3.08'
G5	-8.92'
G6	-14.92'



GARAGE @ +30.08'
88 PARKING STALLS

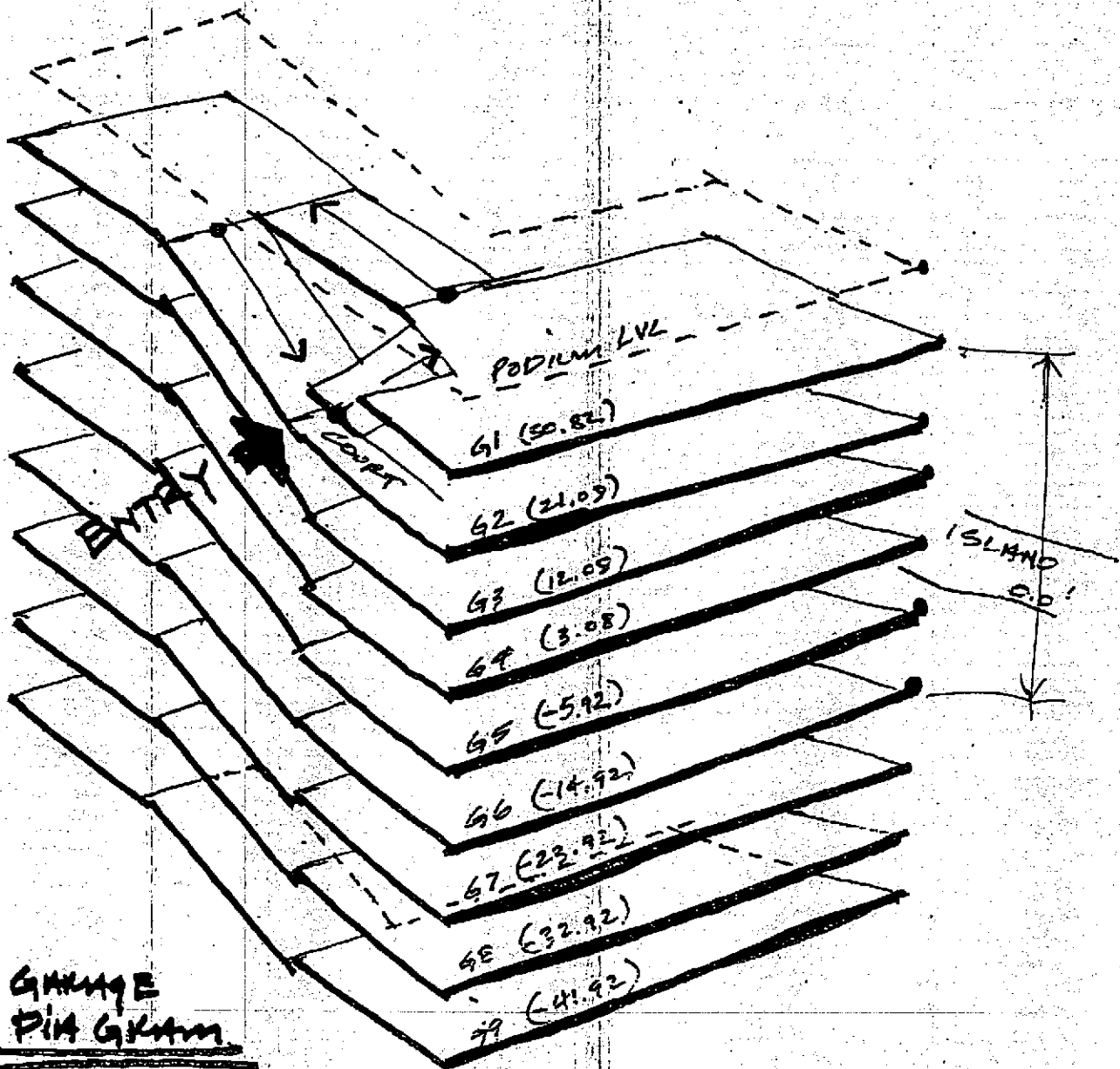
MAY 24, 2006

— APRIL 1, 2006 —
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ARCHITECT
FISHER FRIEDMAN ASSOCIATES
DESIGN CONSULTANT

LN 305m7
 Dispute
 Post-it Fax Note 7671

To: WILLIAM JAMES	Date: 5/20/06	# of pages: 6
Co./Dept: WK	From: N. OGUE	
Phone #	Co.: FFA	
Fax # 715 823 4066	Phone # 510 420 1666	
	Fax #	

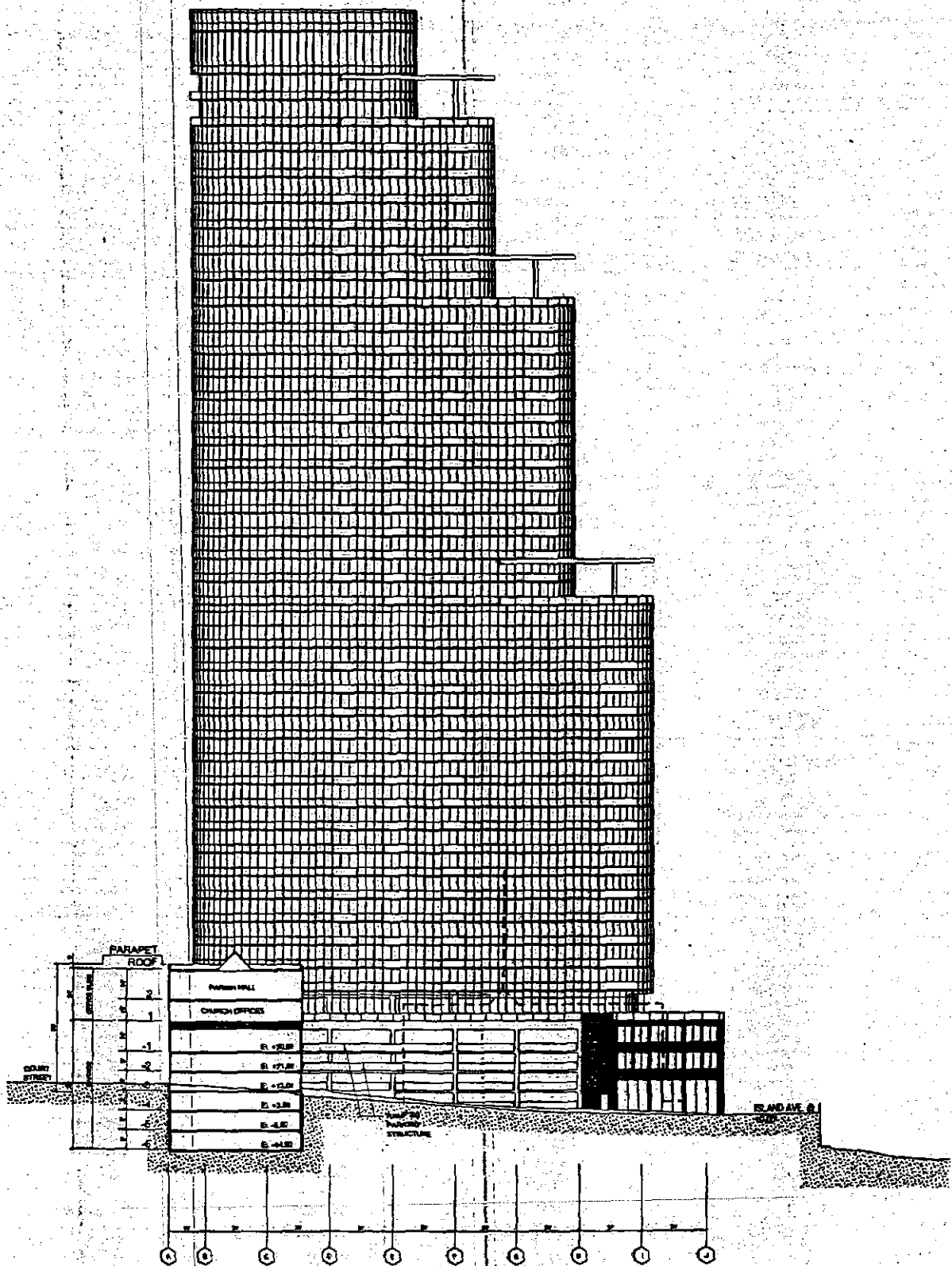
715.825.2152



GARAGE
PIN GRAM

NTS

5/20/06



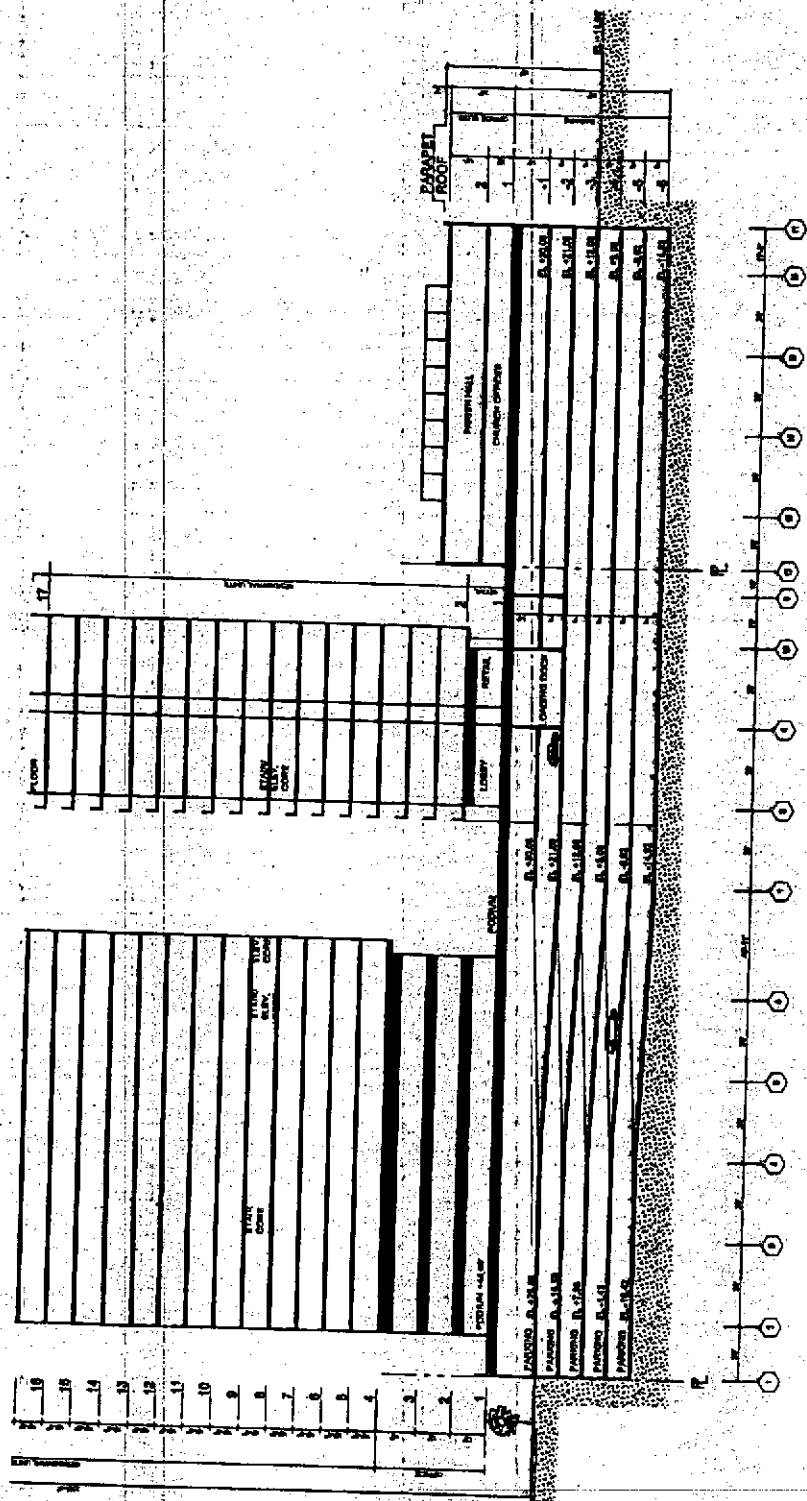
APRIL 7, 2006

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ARCHITECT

FISHER FRIEDMAN ASSOCIATES
DESIGN CONSULTANT

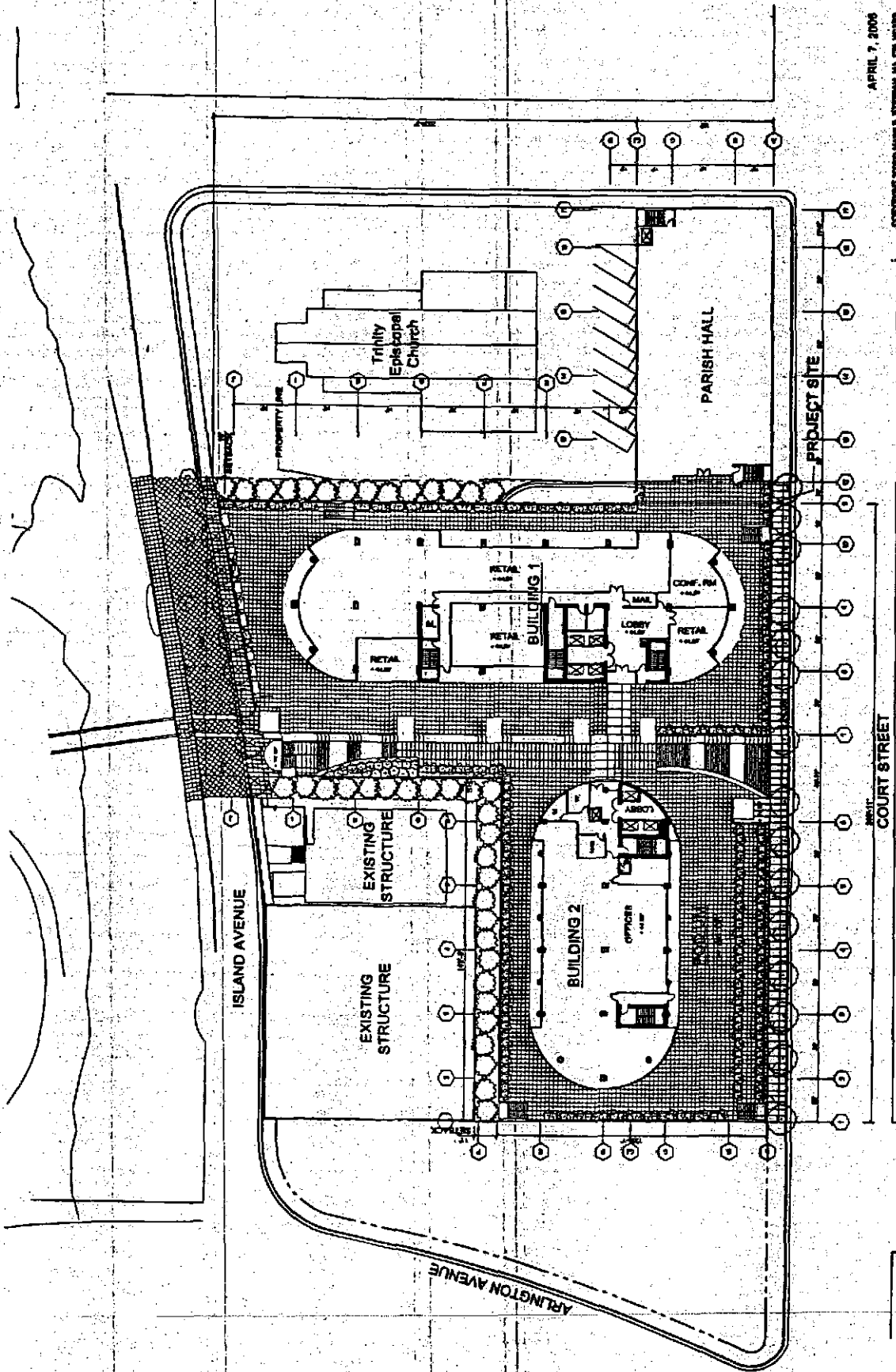
ILIESCU000188
JA0696



APRIL 7, 2008
 CONSULTING ENGINEER & ARCHITECT, INC.
 MARK E. STEPPAN, AIA, CSI, NCARB
 ARCHITECT
 FISHER FRIEDMAN ASSOCIATES
 DESIGN CONSULTANT



E BUILDING SECTION



APRIL 7, 2006
 CONFIRMED BY THE BOARD OF ARCHITECTS
 MARK B. STEPPAN, AIA, CSI, NCARB
 ARCHITECT
 FISHER FRIEDMAN ASSOCIATES
 DESIGN CONSULTANT

MILL STREET



PODIUM PLAN

FLINT STREET

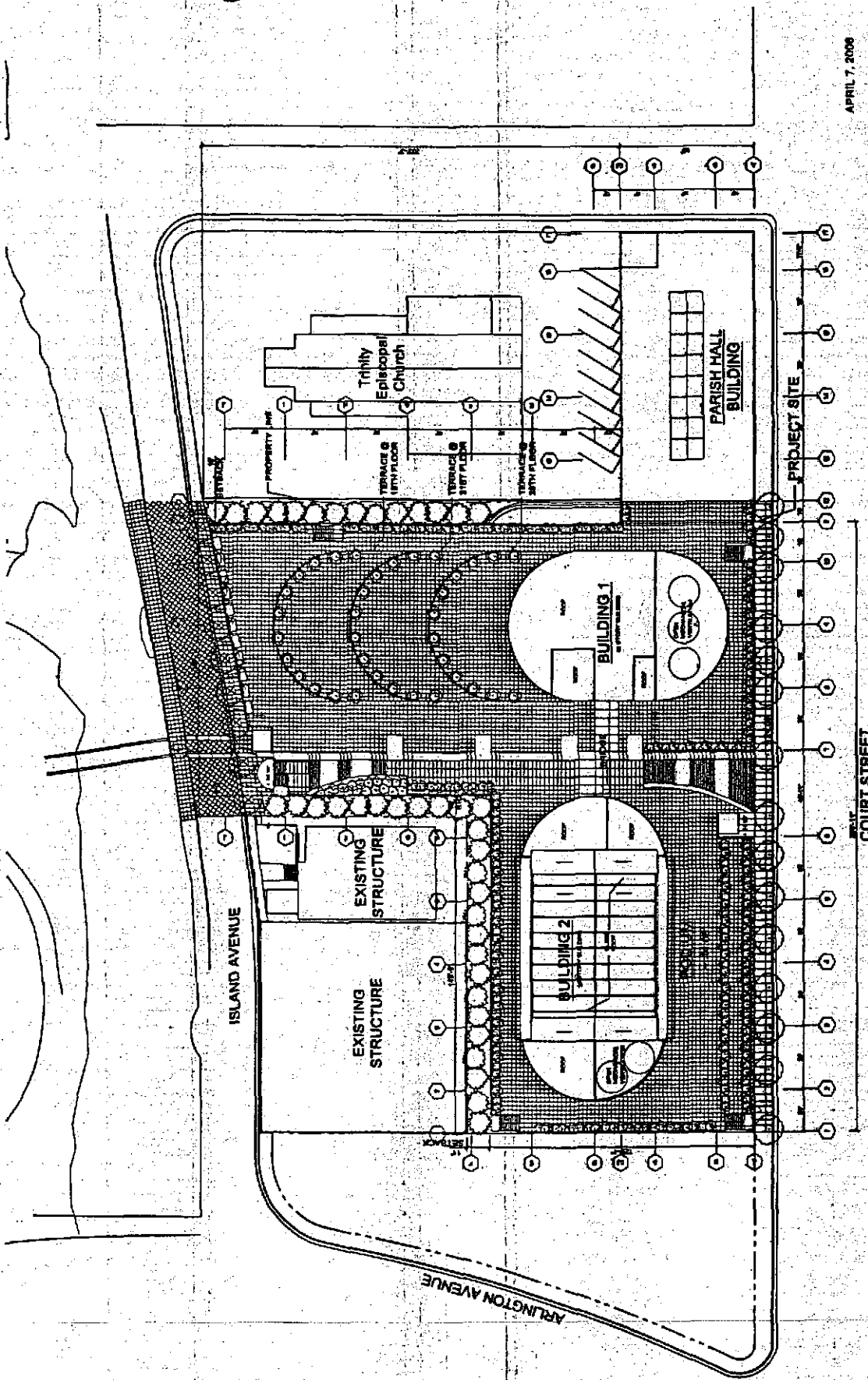
COURT STREET

ISLAND AVENUE

ARLINGTON AVENUE

ILIESCU000190

JA0698



APRIL 7, 2009

ARCHITECT
 MARK B. STEPPAN, AIA, CSI, NCARB
 FISHER FRIEDMAN ASSOCIATES
 DESIGN CONSULTANT

HILL STREET



COURT STREET

FLINT STREET

ARLINGTON AVENUE

ISLAND AVENUE

EXISTING STRUCTURE

BUILDING 2

BUILDING 1

PARISH HALL BUILDING

Trinity Episcopal Church

PROJECT SITE

APRIL 7, 2005

CORPORATE BUILDING MAINTENANCE, STATIONARY, AND EQUIPMENT

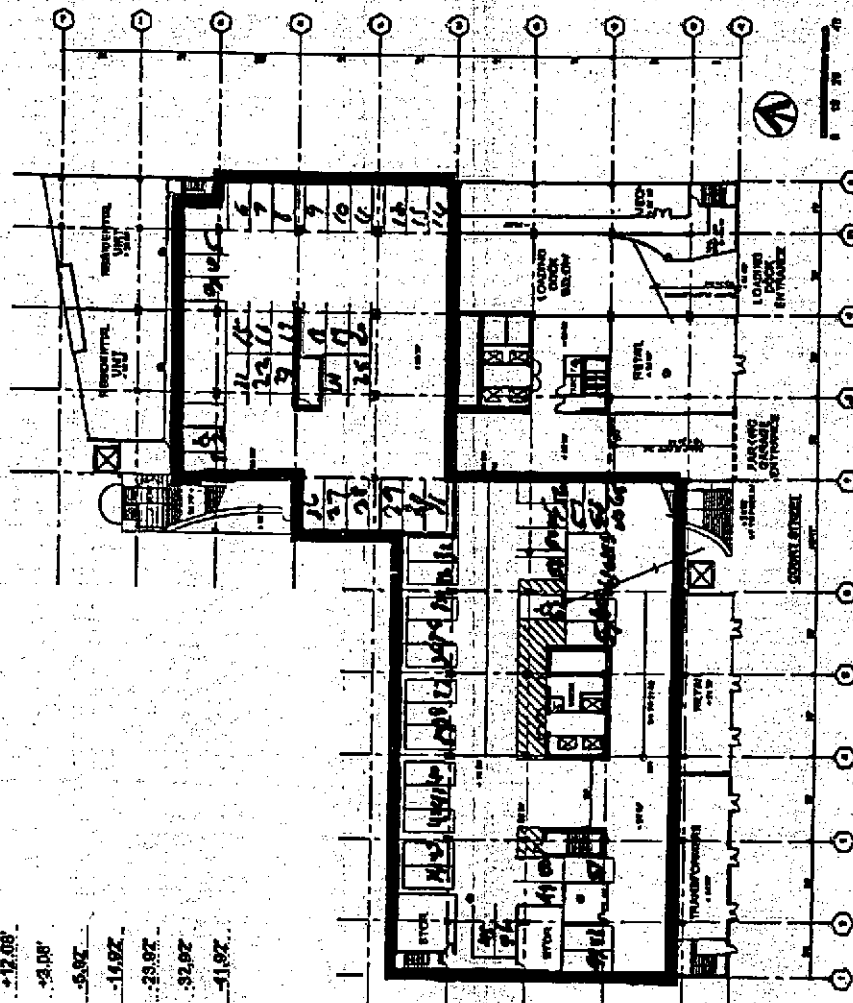
MARK B. STEPPAN, AIA, GCL, NCARB

ARCHITECT

FISHER FRIEDMAN ASSOCIATES

DESIGN CONSULTANT

FOOTING	+44.05'
G1	+39.05'
G2	+21.05'
G3	+12.05'
G4	+3.05'
G5	-5.92'
G6	-15.92'
G7	-25.92'
G8	-32.92'
G9	-41.92'



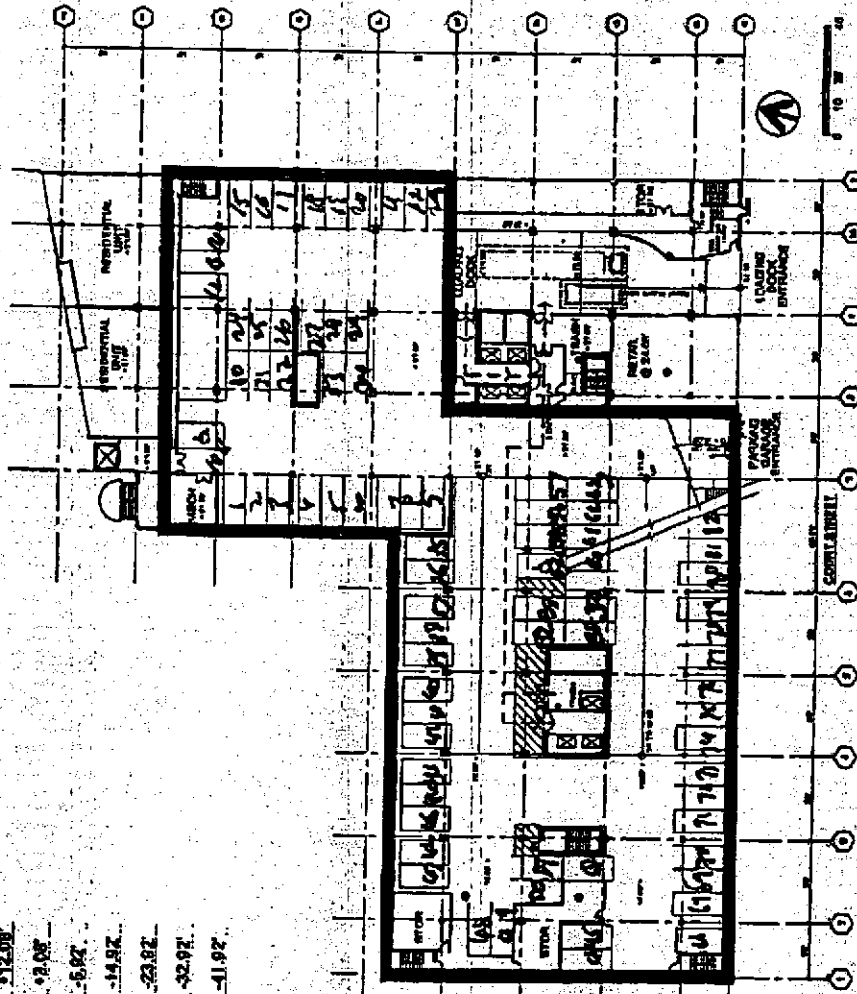
GARAGE @ +30.08'

65 PARKING STALLS

G1

APRIL 7, 2006
 CONFIDENTIAL: THESE PLANS ARE THE PROPERTY OF FISHER FRIEDMAN ASSOCIATES
 MARK B. STEFFAN, AIA, CSI, NCARB
 ARCHITECT
 FISHER FRIEDMAN ASSOCIATES
 DESIGN CONSULTANT

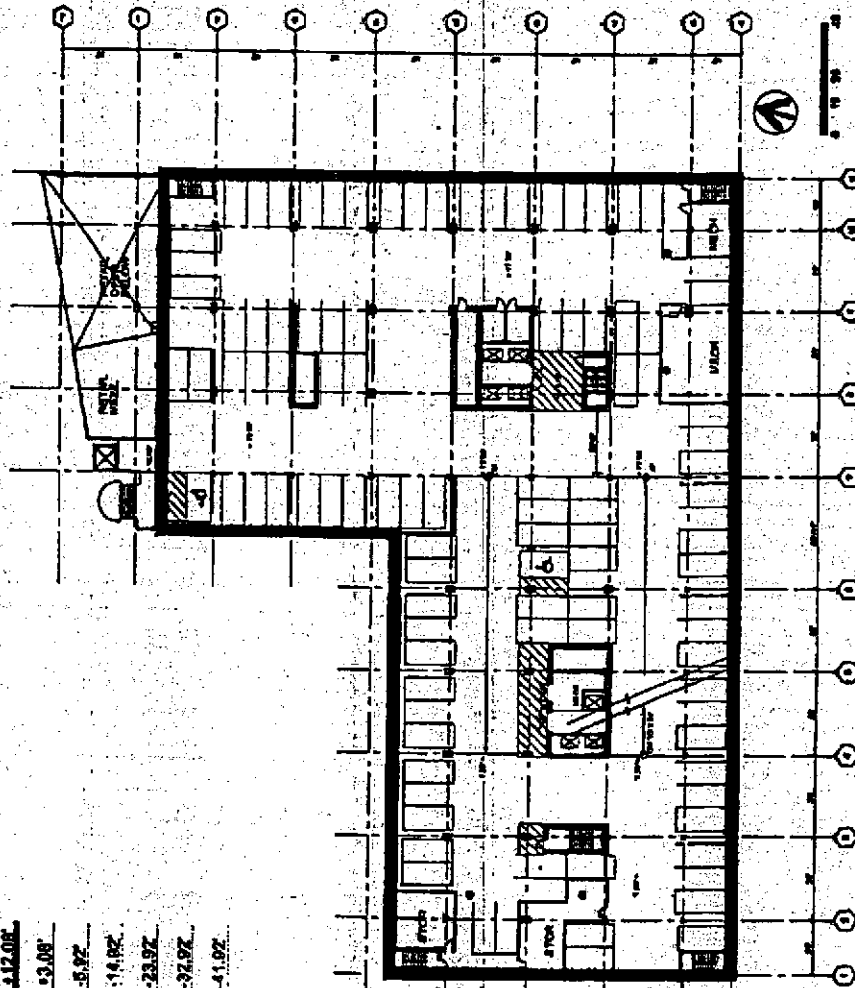
PODIUM	+44.08'
G1	+30.05'
G2	+21.08'
G3	+12.08'
G4	+2.05'
G5	-8.92'
G6	-14.52'
G7	-23.82'
G8	-32.97'
G9	-41.92'



G2 GARAGE @ +21.08'
 82 PARKING STALLS

APRIL 7, 2009
 CONVEYANCE AND SUBORDINATION OF INTERESTS IN REAL ESTATE
 MARK B. STEPPAN, AIA, CSI, NCARB
 ARCHITECT
 FISHER FRIEDMAN ASSOCIATES
 DESIGN CONSULTANT

	PODIUM	+44.08'
+75.58'	G1	+30.08'
+18.58'	G2	+21.08'
+7.58'	G3	+12.08'
-1.42'	G4	+3.08'
-10.42'	G5	-5.92'
-19.42'	G6	-14.92'
-28.42'	G7	-23.92'
-37.42'	G8	-32.92'
	G9	-41.92'



G3 GARAGE @ +12.08'
 103 PARKING STALLS

103

5

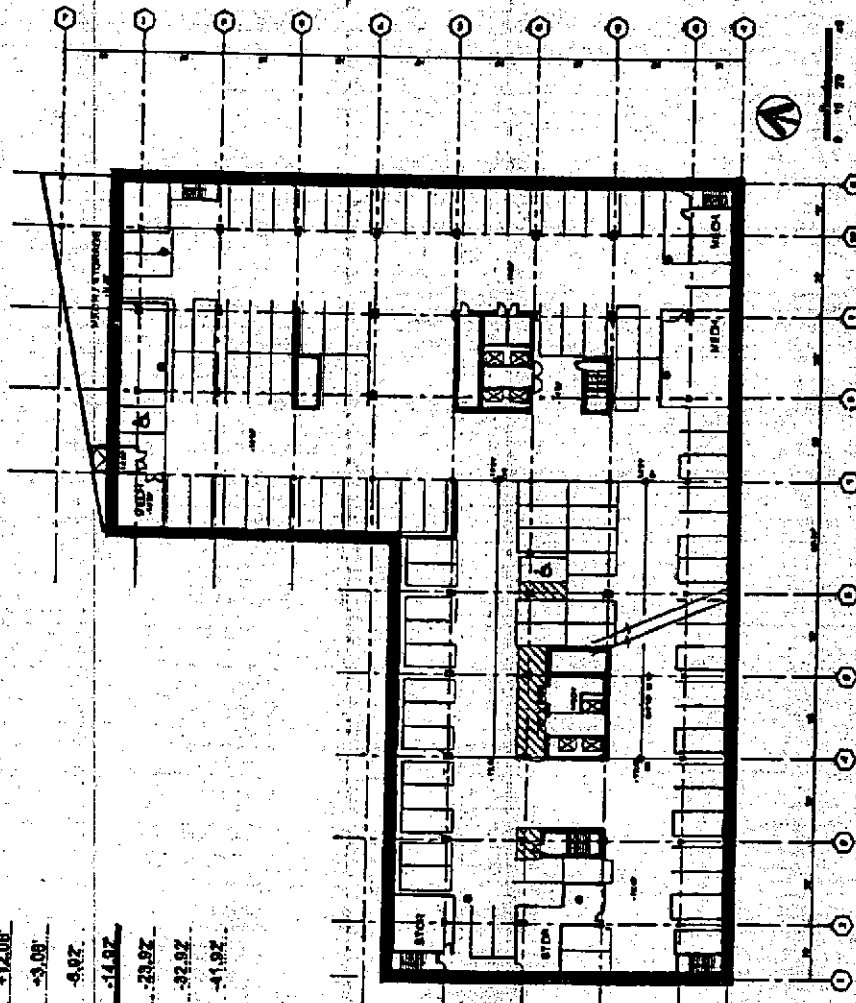
APRIL 7, 2006

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MARK B. STEPPAN, AIA, CSI, LECA, MS, ARCHITECT

FISHER FRIEDMAN ASSOCIATES
DESIGN CONSULTANT

PODIUM	+44.08'
G1	+30.08'
G2	+21.08'
G3	+12.08'
G4	+3.08'
G5	-9.92'
G6	-14.92'
G7	-23.92'
G8	-32.92'
G9	-41.92'



66 GARAGE @ -14.92'
108 PARKING STALLS
68

APRIL 7, 2006

CONVERTING 100' WIDE S. STATION, 100' WIDE

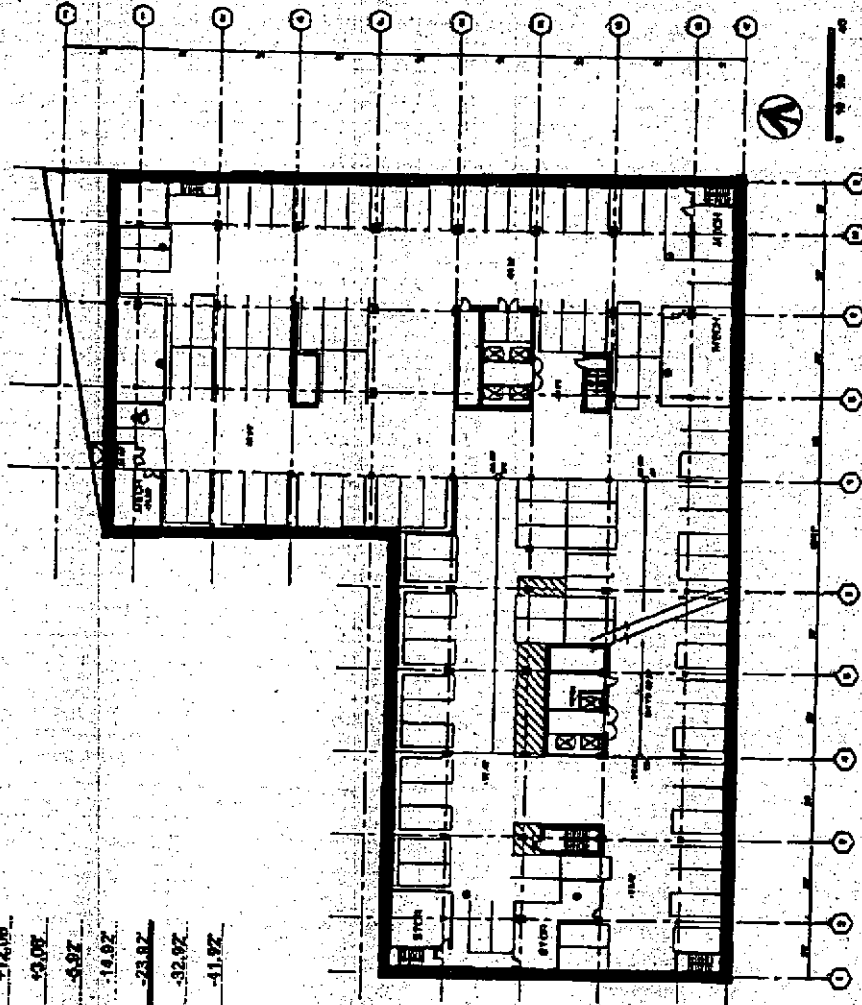
MARK B. STEPPAN, AIA, CRL NCARB

AT CONCEPT

FISHER FRIEDMAN ASSOCIATES

CONSULTANT

PODIUM +44.05'	
+25.65'	G1 +30.05'
+18.86'	G2 +21.05'
+7.68'	G3 +12.05'
-1.42'	G4 +3.05'
-10.42'	G5 -5.92'
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-28.42'	G7 -23.92'
-37.42'	G8 -32.92'
	G9 -41.92'



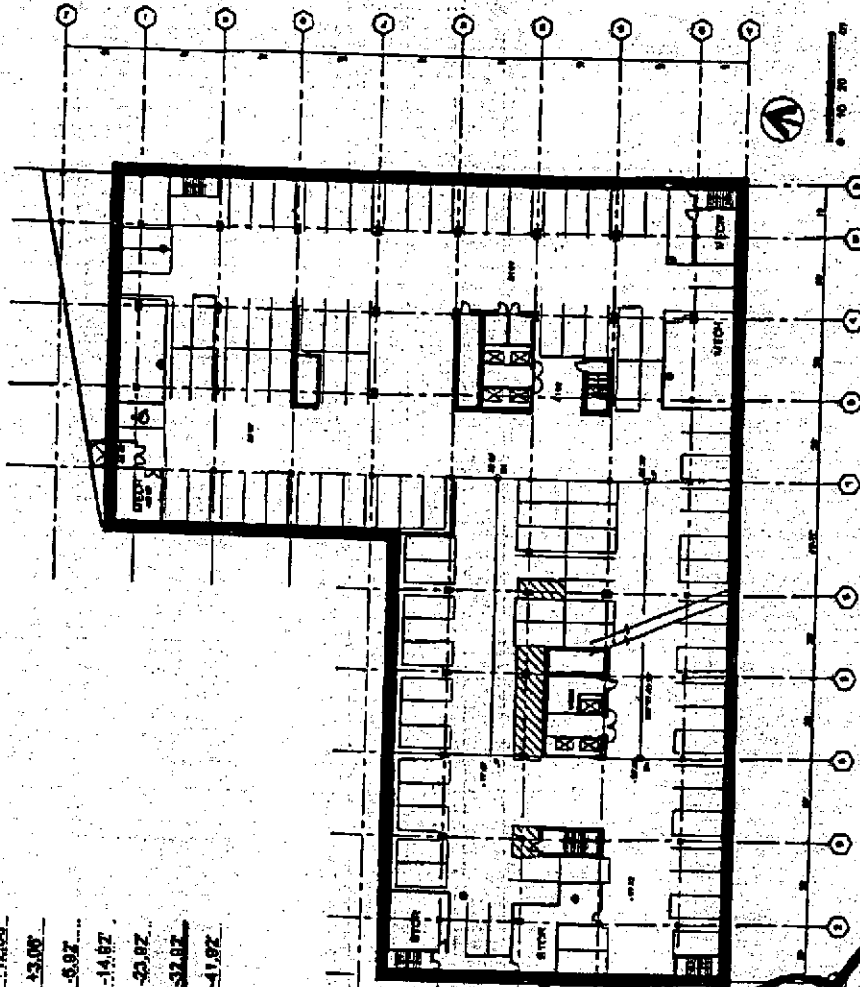
G-7 GARAGE @ -23.92'

108 PARKING STALLS

608

APRIL 7, 2006
 CONSULTING ARCHITECTS
 MARK S. STEPTAN, AIA, CSI, NCARB
 FISHMAN ASSOCIATES
 10000 RIVERVIEW BLVD
 SUITE 100
 FARMINGTON, CT 06030

PODIUM	+44.08'
G1	+30.08'
G2	+21.08'
G3	+12.08'
G4	+3.08'
G5	-6.92'
G6	-14.92'
G7	-23.92'
G8	-32.92'
G9	-41.92'



GARAGE @ -32.92'

108 PARKING STALLS

108

+48,000 GSF TYP
 FULL LVL

APRIL 7, 2006

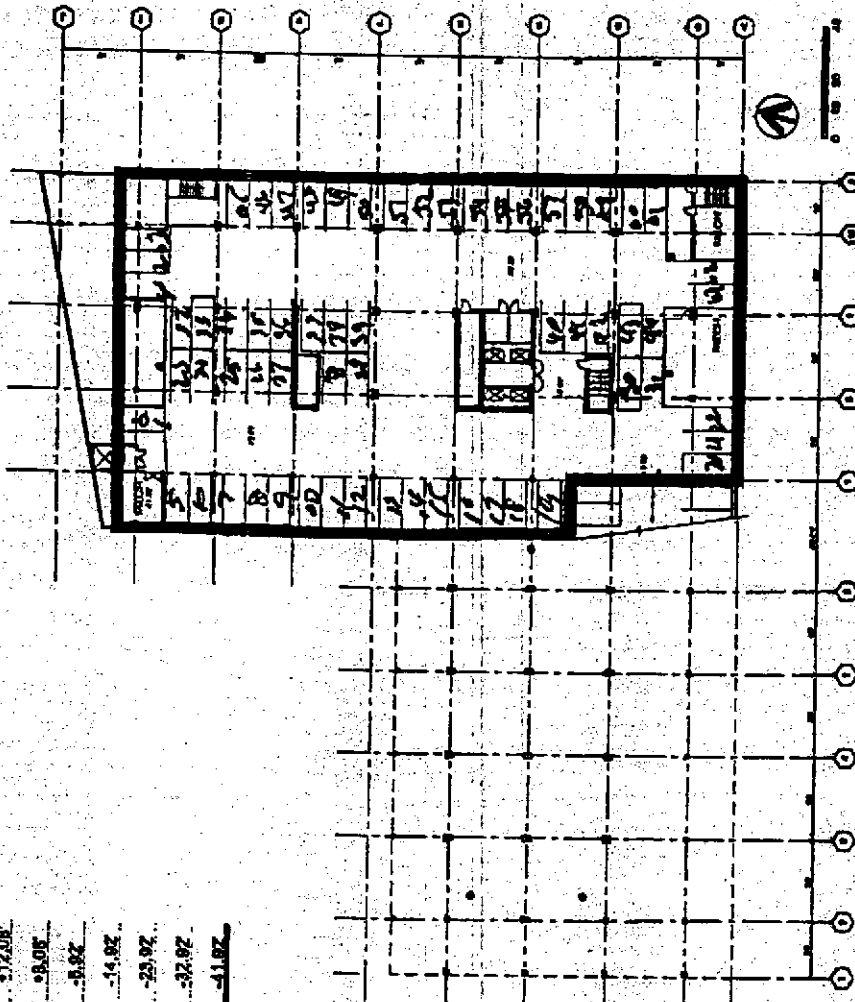
REVISION: SEE SHEET 510 420 6599

MARK B. STEPPAN, AIA, CSLS, NCARB

FISHER FRIEDMAN ASSOCIATES

ARCHITECTS

PODIUM	+44.08'
G1	+30.08'
G2	+21.08'
G3	+12.08'
G4	+9.05'
G5	-5.92'
G6	-14.92'
G7	-23.92'
G8	-32.92'
G9	-41.92'



GARAGE @ -41.92'

63 PARKING STALLS

63

FILED

Electronically

02-03-2009:04:56:47 PM

Howard W. Conyers

Clerk of the Court

Transaction # 579452

1 **CODE 2645**
2 GAYLE A. KERN, LTD.
3 GAYLE A. KERN, ESQ.
4 Nevada Bar No. 1620
5 5421 Kietzke Lane, Suite 200
6 Reno, NV 89511
7 (775) 324-5930
8 Fax (775) 324-6173
9 E-mail: gaylekern@kernltd.com

10 Attorneys for Respondent Mark B. Steppan

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

13 IN AND FOR THE COUNTY OF WASHOE

14 JOHN ILIESCU JR., SONNIA SANTEE
15 ILIESCU, AND JOHN ILIESCU JR. AND
16 SONNIA ILIESCU AS TRUSTEES OF THE
17 JOHN ILIESCU, JR. AND SONNIA ILIESCU
18 1992 FAMILY TRUST,

19 Applicants,

20 vs.

21 MARK B. STEPPAN,

22 Respondent.

23 MARK STEPPAN,
24 Plaintiff,

25 vs.

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

Defendants.

AND RELATED ACTIONS.

CASE NO.: CV07-00341
(Consolidated with Case No. CV07-01021)

DEPT. NO.: 6

**MARK B. STEPPAN'S OPPOSITION TO
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND CROSS-MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Respondent/Plaintiff Mark Steppan ("Steppan"), by and through his counsel, opposes Applicants/Defendants' John Iliescu, Jr. and Sonnia Iliescu as Trustee of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust's, and John Iliescu's ("Iliescu"), individually, (collectively "Defendants") Motion for Partial Summary Judgment on Mark B. Steppan's Claim for Foreclosure of Mechanic's Lien (hereinafter "MSJ") and moves for partial summary judgment to foreclose on the mechanic's lien at issue, and submits the following Memorandum of Points and Authorities in support of his opposition.

Dated this 22nd day of January, 2009.

GAYLE A. KERN, LTD.



GAYLE A. KERN, ESQ.

Attorneys for MARK STEPPAN

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As this Court aptly stated at the hearing for Motion for Release of Mechanic's Lien, this case involves only one issue: "[D]id the owner have actual knowledge of information sufficient to put him on a duty – to impose on him reasonably a legal duty to do something, get more information or sufficient information for the notice of non-responsibility." Exhibit "3"¹ to MSJ at 53-54. Based on the undisputed facts of this case, the answer to this issue must be in the affirmative.

II. STATEMENT OF UNDISPUTED FACTS

Defendants own four parcels of land in downtown Reno ("the Property"). Exhibit "1" to MSJ. Pursuant to an "Agency Relationship Confirmation," Metzker Johnson Group ("Johnson") exclusively represents Defendants in the sale of the Property. *Id.* at Iliescu000038. Sam Caniglia represents Consolidated Pacific Development ("CPD"). *Id.* at Iliescu000028.

On July 14, 2005, Caniglia faxed a letter to Johnson stating that he was prepared to make an offer on the Property. *See* July 14, 2005 letter to Johnson from Caniglia, Exhibit "13" hereto.

¹ In order to assist the Court and avoid duplication of exhibits, Steppan will refer to the Exhibits provided in the MSJ and will continue with additional exhibits by numbering in sequential order for the new exhibits attached hereto. A combined Exhibit Index is also attached.

1 The letter set forth in detail the proposal, as well as a list of advantages to persuade Defendants to
2 accept the offer. *Id.* One of the advantages listed included the following: "Architects and Engineers
3 in place ready to start work." *Id.* at Iliescu000018.

4 On July 29, 2005, Defendants entered into a contract with CPD for the sale of the Property
5 (hereinafter "the Agreement"). *See generally* Exhibit "1" to MSJ. Iliescu fully understood that
6 CPD intended to construct residential condominium units ("the Project") and fully understood
7 architects and engineers would be starting work. *See* Exhibit "2" ¶ 4 to MSJ. Iliescu retained the
8 law firm of Hale Lane to represent Iliescu's interests in connection with the Property. *See generally*
9 Iliescu's Answer and Third Party Complaint; Exhibit "14" Testimony of Richard Johnson at pages
10 36-43, page 87. The Agreement was contingent upon CPD obtaining certain government approvals
11 for the Project. *See* Exhibit "1" ¶ 39(F) to MSJ.

12 Part of the purchase price included a 3,500 square foot penthouse condominium for Iliescu
13 and his wife. *Id.* ¶ 39(H). In fact, Iliescu had the right to review the floor plans related to this
14 penthouse. *Id.*

15 CPD entered into a contract with Steppan for architectural services. *See* Exhibit "4" at
16 Iliescu000108. Prior to the final contract, the parties negotiated several of the terms. In addition,
17 Iliescu's attorney drafted and circulated a Memorandum on behalf of the Owner of the Property,
18 Iliescu. *See* Exhibit "15 ", Stepp001-002.

19 The agreement provided that Steppan would be compensated at the rate of 5.75% of the total
20 construction costs estimated at \$160,000,000. Exhibit "4" at Iliescu000116. CPD and Steppan
21 later amended the total construction costs and increased it from \$160,000,000 to \$180,000,000. *Id.*
22 at Iliescu000119.

23 As part of the Tentative Map & Special Use Permit Application ("Application"), Iliescu and
24 his wife executed "Owner Affidavits" January 17, 2006. *See* Exhibit "11" to MSJ. Attached to the
25 "Owner Affidavits" was the Tentative Map & Special Use Permit Application. *See generally*
26 Exhibit "12" to MSJ. The third page of this Application identified certain parties. *Id.* at
27 Iliescu000147. The Application identified Iliescu and his wife as the owners, CPD as the developer,
28

1 and Fisher Friedman Associates as the person to contact regarding the application. *Id.* The
2 Application included architectural drawings. *Id.* at Iliescu000173-000200.

3 David Snelgrove of Wood Rogers assisted in the preparation of the Application. *See* Exhibit
4 "10" ¶ 2 to MSJ. The Application included architectural drawings for the Project and contained the
5 names of the project architect, Mark Steppan, and the architectural design consultant Fisher
6 Friedman Associates. *Id.* at Iliescu000173-000200. The City of Reno sent a letter and
7 Memorandum to John and Sonia Iliescu on February 14, 2006. Directly below the name of the
8 Iliescu is the name of Fisher Friedman Associates. *See* Exhibit "16", Stepp010-016. The attached
9 Memorandum identified the Residential towers showing a development of a 394 condominium
10 subdivision. *Id.* at Stepp015. The architectural drawings reflect dates of April 7, 2006, May 24,
11 2006, and June 1, 2006. *See* Exhibit "10" ¶ 2 to MSJ at Iliescu000173-000200.

12 Mr. Snelgrove recollects that Iliescu saw these architectural drawings. *See* Exhibit "10" ¶
13 7 to MSJ. Iliescu argues that he could not have seen these drawings when he signed the Owner
14 Affidavit in January of 2006 because the drawings show dates of April, May and June, 2006.
15 Although Iliescu had the opportunity to provide an affidavit stating that he had never seen any of
16 these architectural drawings until the inception of the instant lawsuit, he failed to do so. Nothing
17 in his original affidavit indicates that he never viewed any of these architectural drawings until the
18 inception of the instant lawsuit. *See generally* Exhibit "2" to MSJ. The only inference that can be
19 drawn from Mr. Snelgrove's and Iliescu's affidavits is that at some point in time before the lawsuit,
20 Iliescu viewed the architectural drawings.

21 Iliescu attended two public meetings where the design team presented the proposed
22 condominium project. *See* Exhibit "4" ¶ 7 to MSJ. The very first slide of the presentation
23 specifically identified Mark B. Steppan as the Architect and Fisher-Friedman Associates as the
24 Design Consultant. *See* Exhibit "7" to MSJ. There can be no doubt in Iliescu's mind at this time
25 that an architect and designers prepared the schematic drawings presented at this meeting. *See*
26 *generally id.*

27 In November of 2006, Steppan recorded a Notice and Claim of Lien for services provided
28 on the Project benefitting the Property. *See* Exhibit "5" to MSJ. Iliescu initially moved for release

1 of mechanic's lien. This Court held a hearing on this motion in May of 2007 and declined to rule
2 on that motion at that time. This Court correctly noted it had to "discern what Dr. Ilescu's
3 knowledge [regarding Steppan providing architectural services] was." See Exhibit "3" at 59 to
4 MSJ.

5 Ilescu never recorded a Notice of Nonresponsibility with respect to the Property.

6 III. DISCUSSION

7 A. Mechanic's Lien Law Is Remedial in Nature and Should Be Liberally Construed.

8 The Nevada Supreme Court has consistently held that "the mechanic's lien statutes are
9 remedial in character and should be liberally construed: that substantial compliance with the
10 statutory requirements is sufficient to perfect the lien if the property owner is not prejudiced." *Las*
11 *Vegas Plywood & Lumber, Inc. v. D&D Enterprises*, 98 Nev. 378, 380, 649 P.2d 1367, 1368
12 (1982).

13 [W]hile there must be substantial compliance with the essential requisites of the
14 statute, such pleadings and notices as the law requires should be liberally construed
15 in order that justice might be promoted and the desired object might be affected.
16 Courts will not give the statute such a narrow or technical construction as to fritter
away, impede, or destroy the right of the lien claimant. . . . [T]he statute to be
remedial [sic] must be liberally construed and that substantial compliance is
sufficient to create a valid lien.

17 *Peccole v. Luce & Goodfellow, Inc.*, 66 Nev. 360, 370-71, 212 P.2d 718, 723-24 (1949) ; *see also*
18 *BMC West Corp. v. Horkley*, 174 P.3d 399 (Idaho 2007) (materialman's lien laws construed
19 liberally in favor of the person who performs labor upon or furnishes materials to be used in
20 construction of building); *In re Regan*, 151 P.3d 1281 (Colo. 2007) (mechanic's lien laws liberally
21 construed because designed to prevent unjust enrichment of property owners); *Betancourt v. Storke*
22 *Housing Investors*, 82 P.3d 286 (Cal. 2003) (court uniformly classified mechanic's lien laws
23 remedial legislation to be liberally construed for protection of laborers and materialmen).

24 When the Nevada Legislature amended the mechanic's lien statutes in 2005, the Assembly
25 Committee on Judiciary recognized that the purpose of the statutes is to "get people paid."
26 Assembly Committee on Judiciary May 13, 2005 at 23, Exhibit "18" hereto.

27 One of the things we have learned is that our mechanics' lien statute is there for a
28 purpose. It helps to get people paid.

1 In 2003 we did a major overhaul of the statute, which is there for a purpose. It is
2 there to assist people who have improved real property so that they can get paid for
3 their efforts. That is something that has proven to work over the years. In fact, our
Nevada Supreme Court has consistently held that our lien law should be liberally
construed in favor of lien claimants.

4 *Id.* (emphasis added).

5 Similarly, when the Nevada Legislature amended the mechanic's lien statutes in 2003, the
6 primary purpose was to add additional protection to the lien claimants' rights.

7 The purpose of this bill is to prohibit the prospective waiver of lien claimant's
8 rights, and to confirm, clarify, and standardize the procedures and forms required
for a waiver and release upon payment.

9 Senate Committee on Judiciary, March 11, 2003 at 7, Exhibit "17" hereto. Included within the
10 2003 amendment was a statute involving disinterested owners in a lessor and lessee relationship
11 situation:

12 Senator Care: Section 7 is about a disinterested owner, I understand the definition,
13 but can you tell me what recourse a disinterested owner has? For example, I once
14 represented a landlord who owned a shopping center where an electrician was
recruited by a tenant and did some work. Then the tenant skipped out and never
paid the electrician. A lien was filed on the shopping center itself.

15 Mr. Hollway: Disinterested owners, as soon as they learn the work is being done,
16 should file notices as disinterested owners. The existing law and the proposed
17 changes would then absolve the disinterested owner's property of any lien claims.
They need to file the notice as soon as they become aware work is being done by the
tenant.

18 *Id.* at 8.

19 In ruling on the issue of the validity of Steppan's lien, this Court should be cognizant of the
20 fact that the primary purpose of the mechanic's lien statutes is to provide security to individuals
21 such as Steppan for the services provided for improving Defendants' Property. Steppan's
22 substantial compliance with the lien statutes is sufficient to perfect the lien. This is particularly so
23 where Iliescu had actual knowledge that architectural services would be provided and were provided
24 for the benefit of the Property by as early as July of 2005.

25 **B. Iliescu Had Actual Knowledge of the Architectural Services to Be Provided for the**
26 **Benefit of the Property.**

27 As thoroughly discussed at the hearing before this Court, Iliescu is not a disinterested party
28 to the transaction. From the beginning, Iliescu sought to benefit from the work performed in relation

1 to the real property. Iliescu negotiated a Land Sale Agreement that included consideration for the
2 real property to include conveyance of a penthouse and parking in the finished project. In addition,
3 the approval process that resulted in entitlements to real property creates significant value in the real
4 property prior to any construction. This is not a situation where Iliescu entered into a contract to sell
5 the real property and had no knowledge what the buyer would be doing prior to the close of escrow.
6 To the contrary, Iliescu was intimately aware of the project and its components. Iliescu was
7 intimately aware of the tremendous amount of work that the buyer would be doing to obtain approval
8 of the ambitious project. Iliescu knew, from the language of the Land Sale Agreement that the
9 buyer would be engaging several professionals, including architects.

10 The Land Sale Agreement is filled with specific language that evidences Iliescu's full
11 knowledge of the condominium project, full knowledge of the work to be performed, full
12 knowledge of the very services that form the basis of the mechanic's lien and full knowledge that
13 mechanic's liens may be asserted. *See e.g.* Exhibit "1", Paragraphs 31, 39E, 39F, 39H(1), 39H,
14 39L, Addendum No. 1, Addendum No. 2, Addendum No. 3, 39M. The Applicant knew that prior
15 to escrow, the purchaser would be obtaining all necessary governmental permits to develop the
16 property as a condominium and commercial project; would be engaging professionals, including
17 architects and engineers; the property was to be developed as quickly as possible; and that the real
18 property could be subject to liens. *Id.* In fact, the Applicant negotiated that part of the purchase
19 price would be a 3500 square foot condominium. *Id.* Iliescu negotiated to provide for certain action
20 with respect to liens. In paragraph 31, the parties agreed that if a lien were filed, the buyer would
21 "indemnify, defend and hold [Iliescu] harmless from any *lien*, loss, claim, liability, or expense
22 including (without limitation) reasonable attorney's fees and costs, arising of or in connection with
23 [buyer's] activities . . . " *Id.* at ¶ 31 (emphasis added). Now, in light of buyer's inability to
24 indemnify Iliescu from Steppan's lien, Iliescu wants to avoid the bargain he struck regarding liens.
25 Iliescu prefers that the lien he anticipated may be recorded, the lien Iliescu negotiated would be
26 taken care of by the buyer's indemnification, would instead just go away because Iliescu failed to
27 record a notice of non-responsibility. It is frivolous to assert that Iliescu was unaware of the work
28

1 of improvement that was going to occur on the property before the close of escrow and that may
2 result in a lien.

3 **1. *Fondren Remains Good Law and Is Directly On Point.***

4 Defendants acknowledge that *Fondren v. K/L Complex Ltd.* remains good law despite the
5 2005 amendments to the lien statutes. 106 Nev. 705, 800 P.2d 719 (1990). *Fondren* is directly on
6 point.

7 In *Fondren*, Fondren leased commercial space to a tenant. *Id.* at 707, 800 P.2d at 720. The
8 leased space was designed to accommodate a restaurant and the tenant intended to open a new
9 restaurant. *Id.*, 800 P.2d at 720. The tenant began to remodel the leased space and contracted with
10 the lien claimants for a number of services, including development of design and layout drawings,
11 performance of process inspections, review of the installation of kitchen equipment, preparation of
12 all areas to comply with health department regulations, and custom built items. *Id.*, 800 P.2d at 720.

13 After the completion of the remodel, the tenant opened for business. *Id.*, 800 P.2d at 720.
14 A fire subsequently broke out causing substantial damage to the leased premises and forced the
15 permanent closure of the restaurant. *Id.*, 800 P.2d at 720.

16 The lien claimants executed mechanic's liens against the premises for design, consulting
17 services, labor and value of goods supplied to the premises. *Id.*, 800 P.2d at 720. The district court
18 ruled on summary judgment that the liens had been properly perfected and subsequently entered
19 judgment foreclosing the liens. *Id.* at 708, 800 P.2d at 720.

20 Fondren appealed raising three issues, only one of which pertains to the instant case: Did
21 Fondren have actual notice of the construction on her property to vitiate the notice requirement of
22 NRS 108.245? In response to this question, the Nevada Supreme Court held that Fondren had
23 actual knowledge of the work of improvement and failed to record the required notice of
24 nonresponsibility. *Id.* at 710, 800 P.2d at 722.

25 Fondren knew that the tenant intended to remodel. *Id.* at 708, 800 P.2d at 721. Both
26 Fondren and the tenant understood that substantial remodeling would be required when the lease
27 was negotiated. *Id.* at 709, 800 P.2d at 721. The tenant apprized Fondren on the progress of the
28 remodel and she approved specific construction activities. *Id.*, 800 P.2d at 721. Fondren's attorney

1 regularly inspected the progress of the remodeling efforts. *Id.*, 800 P.2d at 721. The court
2 concluded Fondren had actual knowledge of the work being performed and this knowledge satisfied
3 the notice requirement of NRS 108.245. *Id.*, 800 P.2d at 721.

4 [S]ubstantial compliance with the technical requirements of the lien statutes is
5 sufficient to create a lien on the property where, as here, the owner of the property
receives actual notice of the potential lien claim and is not prejudiced.

6 *Id.*, 800 P.2d at 721 (quoting *Board of Trustees v. Durable Developers, Inc.*, 102 Nev. 401, 410,
7 724 P.2d 736, 743 (1986)).

8 Fondren argued that she did not know the various subcontractor's names or the extent of the
9 expenditures. *Id.*, 800 P.2d at 721. In response, the court concluded that this argument "misses the
10 point: she knew that a construction project was underway on the Property." *Id.*, 800 P.2d at 721.
11 Fondren's "knowledge that construction was underway places the burden on her to file the notice
12 of nonresponsibility." *Id.*, 800 P.2d at 721 (emphasis added).

13 NRS 108.234, which existed during *Fondren*, provided that the owner of property could
14 record a notice of nonresponsibility within three days after he has obtained knowledge of the
15 construction, alteration or repair to avoid liability on the lien. *See* NRS 108.234 (1991), Exhibit "9"
16 to MSJ. Since *Fondren*, the Nevada Legislature in 2005 amended NRS 108.234 to require each
17 notice of nonresponsibility to include a number of specific items in order to be effective and valid.
18 NRS 108.234. One of the items to be included are the names and addresses of the disinterested
19 owner's and the person who is causing the work of improvements to be constructed, altered or
20 repaired. *Id.*

21 A comparison of NRS 108.234 as it existed during *Fondren* and as it exists now undeniably
22 shows that in order to avoid liability on the lien, the owner has a much more onerous burden now.
23 Prior to the 2005 amendment, all the owner had to do was give "notice that he will not be
24 responsible for such improvement by filing a notice in writing to that effect. . ." *See* Exhibit "9" to
25 MSJ. The current statute still requires the owner to give "notice that he will not be responsible for
26 the improvement by recording a notice in writing to that effect . . ." NRS 108.234(2). In order for
27 the notice to be effective and valid, however, it must include certain information. NRS 108.234(3).
28

1 The changes in NRS 108.234 in 2005 obviously show that the legislature intended to make
2 it more difficult for the owner to avoid lien responsibility.

3 Section 15 modifies the statute that pertains to the notice of nonresponsibility and
4 provides that an owner must give that notice to a prime contractor and a lessee. It
5 also provides the method for the prime contractor to give notice to the lower tier
6 trades. In subsection 2, we have modified the definition of "disinterested owner."
7 We believe the current language that is set forth in the statute has too many
8 exceptions to the exception. We are trying to make certain that it is understood and
9 a court can easily understand what the intent of the Legislature was.

10 Exhibit "18" May 13, 2005 Assembly Committee Minutes at 29².

11 Nothing in the revised NRS 108.234 supports a conclusion that the burden as articulated in
12 *Fondren* ("knowledge that construction was underway places the burden on her to file the notice
13 of nonresponsibility"), has been shifted to the lien claimants. 106 Nev. at 710, 800 P.2d at 721
14 (emphasis added). The burden remains on the owner to record the requisite notice of
15 nonresponsibility when the owner acquires knowledge that improvements are being made on his
16 property.

17 **2. Iliescu Had Actual Knowledge of the Fact that CPD Had to Hire Architects and**
18 **Designers.**

19 On July 14, 2005, Johnson received a facsimile letter from CPD stating that "Architects and
20 Engineers [were] in place ready to start work." See Exhibit "13" at Iliescu000018. Because
21 Johnson exclusively represents Defendants in the sale of the Property Pursuant to an "Agency
22 Relationship Confirmation," see Exhibit "1" at Iliescu000038 to MSJ, actual knowledge of the
23 owner's agent will be imputed to the owner for purposes of the lien statutes. See *Fondren*, 106 Nev.
24 at 709, 800 P.2d at 721 (citing *Gould v. Wise*, 18 Nev. 253, 3 P. 30 (1884)). By as early as July 14,
25 2005, Iliescu knew that CPD had hired both architects and engineers for the Project.

26 On July 29, 2005, Defendants entered into the Agreement with CPD for the sale of the
27 Property. See generally Exhibit "1" to MSJ. CPD had the exclusive right to purchase the Property
28 and Defendants could not solicit or accept any other offers during the term of the Agreement. *Id.*
¶ 39(A).

²The page number of the minutes is in the top left hand corner.

1 As part of the purchase price, Iliescu negotiated a 3,500 square foot penthouse
2 condominium. *Id.* ¶ 39(H) to MSJ. In fact, Iliescu had the right to review the floor plans related to
3 this penthouse. *Id.*

4 Under the Agreement, CPD and their retained professionals had access to the Property. *Id.*
5 ¶ 31. The Agreement was contingent upon CPD obtaining certain governmental approvals. *Id.* ¶
6 39(F). The governmental approvals to be obtained included the following: (1) variance, (2)
7 tentative map, (3) special use permits, zone change and land use designation, and (4) architectural
8 and design review and approval. *Id.* Item (4) was specifically added to the Agreement. *Id.*

9 By the end of July of 2005, Iliescu had actual knowledge that architects and designers would
10 be hired to work on the Project in order to obtain the governmental approvals as required by the
11 Agreement. Similar to Fondren who understood that substantial remodeling would be required
12 when the lease was negotiated, Iliescu understood that CPD intended to develop the Project and had
13 to hire architects and designers in order to obtain certain governmental approvals. *See* Exhibit "2"
14 ¶ 4 to MSJ.

15 On August 25, 2005, Mr. Cagnilia and Johnson met with the Mayor of Reno regarding the
16 Project. *See* September 1, 2005 Letter from Sam Cagnilia to Mayor Robert A. Cashell, Sr., Exhibit
17 "19" hereto.

18 In October and November of 2006, John Iliescu attended two public meetings involving the
19 presentation of the Project. *Id.* Although Dr. Iliescu may not have been introduced to Steppan at
20 any of these presentations, the very first slide of the presentation specifically identified Mark B.
21 Steppan as the Architect and Fisher-Friedman Associates as the Design Consultant. *See* Exhibit
22 "7" to MSJ. This slide was not hidden away amongst the other slides but was the very first one of
23 the presentation. *Id.* Nothing in Dr. Iliescu's affidavit states that he never saw this specific slide.
24 *See generally* Exhibit "2" to MSJ. The affidavit only asserts that no one introduced him to any of
25 the architects or designers at either of these two public meetings. *Id.* ¶ 4.

26 The fact that Iliescu may not have known the name of the architect in July of 2005 "misses
27 the point." It is undisputed that Iliescu knew that as part of the Agreement he negotiated with the
28 buyer, the buyer was required to hire architects and designers to obtain architectural and design

1 review and approval as a condition to closing the deal on the sale of the Property. By October of
2 2006, Iliescu became aware of the identity of the architect. Nothing in the record supports a
3 contrary conclusion.

4 As this Court correctly stated, "[t]he more you know, the greater your responsibility is."
5 Exhibit "3" at 17 to MSJ.

6 But if you, as an example, are sitting in a planning meeting and an architectural firm
7 is making some sort of detailed presentation of the design to the planning
8 authorities, I don't know what else you need to know, or at least need to know in
order to have a duty to inquire an obligation to file your notice of non-responsibility.

9 *Id.* at 33.

10 Once Iliescu acquires notice or knowledge that the buyer was required to and had in place
11 an architect to obtain the required architectural and design review and approval, he has a duty to act
12 to avoid liability on potential liens. *See Duffield Construction, Inc. v. Baldwin*, 679 N.W.2d 477
13 (S.D. 2004). In *Duffield*, lessee hired a contractor to make improvements to the land. *Id.* The
14 contractor subsequently brought an action to foreclose a mechanic's lien. *Id.*

15 The court held that the landowners had notice and knowledge that improvements were being
16 made to their property and were equitably estopped from attacking the mechanic's lien. *Id.* The
17 landowners could have filed a noticed of non-responsibility and failed to do so. *Id.* The landowners
18 argued that they did not watch the work performed and did not know who performed the work. *Id.*
19 at 482. The court ruled that "the validity of a lien does not depend on the owner's knowledge of
20 each and every detail about the improvements being made to his property." *Id.*

21 Even if an owner does not know all the details, once he has acquired notice or
22 knowledge that improvements are being made to his property, he has a duty to act
to avoid liability.

23 *Id.* at 482-83; *see also Thirteenth Street Corp. v. A-1 Plumbing & Heating Co.*, 640 P.2d 1130, 1136
24 (Colo. 1982) (in action to determine validity of mechanic's and materialmen's liens, court affirmed
25 trial court's ruling "that even if the owner corporation did not have actual knowledge of all the
26 specific work being provided, it had information which would have led a reasonably prudent person
27 to investigate further; thus, knowledge of the specific facts could be presumed").
28

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24 (Colo. 1982) (in action to determine validity of mechanic's and materialmen's liens, court affirmed
25 trial court's ruling "that even if the owner corporation did not have actual knowledge of all the
26 specific work being provided, it had information which would have led a reasonably prudent person
27 to investigate further; thus, knowledge of the specific facts could be presumed").
28

Iliescu had notice and knowledge that CPD had in place architects and engineers by as early as July 14, 2005. The Agreement executed on July 29, 2005 further confirmed this notice and Iliescu's knowledge when it required the buyer to obtain the architect and design review and approval as a condition to closing the deal. By October of 2006, the architect was specifically identified by name during a presentation to the planning commission.

Armed with this notice and knowledge, Iliescu cannot remain silent, acquiesce and consent to the making of the improvements and disclaim all liability. Iliescu had information which would have led a reasonable person to make inquiry through which he would have learned the necessary information to record the requisite notice of non-responsibility. Even after Iliescu admits to knowledge of the architects, Iliescu failed to record a notice of non-responsibility.

NRS 108.234 places upon Iliescu the burden to record a notice of non-responsibility. Iliescu failed to do so. Instead of recording a notice of non-responsibility, Iliescu intentionally chose to execute an "Indemnity Agreement" to have the buyers indemnify him "for any and all claims and costs related to the Architect's recording of the Mechanic's Lien on the Property." See Indemnity ¶ E, Exhibit "20" hereto.

Iliescu made this decision while recognizing the need and importance of recording a notice of non-responsibility:

The Hale Lane law firm never discussed with or advised Iliescu at any time to record a Notice of Non-Responsibility with the Washoe County Recorder to ensure the Property would not be encumbered by mechanics or architect's liens recorded by individuals hired by CPD as contemplated by the Purchase Agreement.

...

The Hale Lane law firm, Dennison, Howard and Snyder were negligent because, among other things, they failed to advise Iliescu to record a Notice of Non-Responsibility, ...

Answer and Third Party Complaint in Case No. CV07-00341 ¶¶ 21, 59. As Iliescu's allegations demonstrate, the burden of notifying potential lien claimants that Iliescu's interest will not be subject to a mechanic's lien is on the owner.

Iliescu cannot claim that he had no obligation to record a notice of non-responsibility because he purportedly did not know the identity of the architect and at the same time claim that

1 his attorneys were negligent in failing to advise him to record the notice of non-responsibility to
2 ensure that "the Property would not be encumbered by mechanics or architect's liens recorded by
3 individuals hired by CPD as contemplated by the Purchase Agreement." *Id.* Iliescu knew that the
4 Agreement required CPD to hire architects and engineers. Iliescu attended a planning commission
5 meeting where the architect and designers were specifically identified. Iliescu cannot cover his eyes
6 and sit idly to reap unfairly the unjust enrichment bestowed upon him by Steppan's services.

7 The undisputed facts show that Iliescu had actual knowledge that CPD had hired architects
8 as required by the Agreement. See *Fondren*, 106 Nev. at 705, 800 P.2d at 719 (substantial
9 compliance with lien statute sufficient to perfect lien where owner received actual notice of
10 potential lien and not prejudiced); *Board of Trustees of Vacation Trust Carpenters Local No. 1780*
11 *v. Durable Developers, Inc.*, 102 Nev. 401, 724 P.2d 736 (1986) (same); *Las Vegas Plywood and*
12 *Lumber, Inc. v. D & D Enterprises*, 98 Nev. 378, 649 P.2d 1367 (1982) (same).

13 According to Iliescu, he recognized the benefits of Steppan's labor.
14 The architectural schematic drawings were necessary to obtain the land use
15 entitlements for the Project. The land use entitlements were approved by the City
16 of Reno.

17 Exhibit "20" ¶ B. Without the benefit of Steppan's architectural schematic drawings, no entitlement
18 exists to build the Project within the scope as approved. Iliescu cannot claim any prejudice and in
19 fact did not argue that he has been prejudiced. Iliescu has been unjustly enriched as a result of
20 Steppan's services and Steppan is entitled to foreclose his lien.

21 The purpose and intent behind the lien statutes is to "get people paid." Where the
22 undisputed facts show that Iliescu had actual knowledge that CPD hired architects and other
23 professionals to obtain the necessary architectural and design review and approval from the City
24 of Reno as required by the Agreement, he cannot sit there and claim ignorance. Iliescu had before
25 him sufficient knowledge to place upon him a duty to obtain the necessary information to record
26 a notice of non-responsibility. Iliescu recognized this duty as alleged by him in his Answer and
27 Third Party Complaint. For this Court to hold otherwise in light of these facts would completely
28 eviscerate the purpose and intent of the lien statutes.

///

1 **3. Hale Lane's Knowledge of the Identity of the Architectural Firm Retained by**
2 **BSC Should be Imputed to Iliescu.**

3 Iliescu retained the Hale Lane law firm (hereinafter "Hale Lane") to represent him in all
4 aspects of the sale transaction. Once BSC became the purchaser of the Property, it also retained
5 Hale Lane to represent it in all aspects of the same transaction. It appears Hale Lane obtained
6 waivers from both Iliescu and BSC. It is clear that in December of 2005, Hale Lane agreed that if
7 there were any conflict between their two clients, the representation would be solely extended to
8 Iliescu. See Exhibit "21" at Iliescu 000134.

9 Documentation shows that Sarah Class, an attorney with Hale Lane reviewed a draft of the
10 agreement between BSC and Mark Steppan. Exhibits "15 " and "22". It is important that the
11 review of the Steppan contract provided all information regarding the potential claims and work of
12 the architect on the project. It provided all information regarding the names and addresses of the
13 firm. It included the consideration that would be paid for the work performed. The information that
14 Hale Lane obtained was not through the representation of some unrelated client in an unrelated
15 transaction. It was the exact transaction at issue and it involved the same parties. Sarah Class, the
16 attorney that reviewed the Steppan contract, communicated directly with Iliescu. Exhibit "23".

17 Steppan performed according to the agreement and BSC never paid it. Steppan filed a
18 mechanic's lien seeking payment from Iliescu. Iliescu maintains that he did not know that BSC had
19 retained Steppan to provide architectural services.

20 In addition to the discussion above, *Fondren v. K/L Complex Ltd.*, is instructive in light of
21 these facts. 106 Nev. 705, 800 P.2d 719 (1990). As noted, Fondren argued that she did not
22 know the various subcontractor's names or the extent of the expenditures. *Id.*, 800 P.2d at 721. In
23 response, the court concluded that this argument "misses the point: she knew that a construction
24 project was underway on the Property." *Id.*, 800 P.2d at 721. Fondren's "knowledge that
25 construction was underway places the burden on her to file the notice of nonresponsibility." *Id.*,
26 800 P.2d at 721 (emphasis added).

27 When Hale Lane acquired knowledge of the identity of the architectural firm, notice of this
28 information to Hale Lane is notice to Iliescu. See *Lange v. Hickman*, 92 Nev. 41, 544 P.2d 1208

(1976) (notice to an attorney is notice to his client); *Noah v. Metzker*, 85 Nev. 57, 450 P.2d 141 (1969) (notice to attorney of any matter relating to business of client in which attorney engaged is notice to client); *Aldabe v. Aldabe*, 84 Nev. 392, 441 P.2d 691 (1968) (same); *Milner v. Dudrey*, 77 Nev. 256, 362 P.2d 439 (1961) (same).

An attorney's duty to his client is that of a fiduciary or trustee. *See, e.g., Cinema 5 Ltd. v. Cinerama, Inc.*, 528 F.2d 1384 (2d Cir. 1976). The attorney-client relationship is predicated on trust and confidentiality and the client is entitled to believe the attorney who says "I am a lawyer, I protect you, I take care of everything . . .," *Wille v. Maier*, 176 N.E.2d 841, 842 (1931), or "I am your lawyer, why not trust me . . . I would not do anything that is wrong . . ." *Kornbau v. Evans*, 152 P.2d 651, 653 (Cal. Ct. App. 1944). The attorney's fiduciary duties to the client involve the duty of undivided loyalty and the duty to preserve the client's confidences. *See, e.g., Kirksey v. State*, 112 Nev. 980, 996, 923 P.2d 1102, 1112 (1996) (recognizing attorney owes paramount duty of loyalty to client); *Yorn v. Superior Ct.*, 153 Cal. Rptr. 295 (Cal. Ct. App. 1979).

These two fiduciary obligations form the foundation of the attorney-client relationship and allow the client to reveal full confidences and to trust fully in the attorney's ability to represent the client's interests diligently and competently. *See, e.g., U.S. Ice Cream Corp. v. Bizar*, 659 N.Y.S.2d 492 (N.Y. 1997). Part of these two fiduciary obligations involve the attorney's responsibility to inform immediately the client of any important information that may impinge on the attorney's ability to perform those obligations. *See, e.g., Day v. Rosenthal*, 217 Cal. Rptr. 89 (Cal. Ct. App. 1985); *Rice v. Perl*, 320 N.Y.2d 407 (Minn. 1982).

Dual or simultaneous representation in real estate transactions may pose an enhanced potential for conflict, but do not affect the conclusion that the knowledge of Iliescu's attorneys regarding the work performed and consideration for such work is knowledge that Iliescu is charged with in connection with this action. *See St. Paul Title Co. v. Meier*, 226 Cal. Rptr. 538 (Cal. Ct. App. 1986).

It is a matter of common experience that real estate transactions carry the potential for conflict and litigation. The published reports of our appellate courts are filled with disputes arising from property sales, escrows and related matters.

Id. at 540.

1 As Mr. Johnson testified, Iliescu retained Hale Lane within the week of the executing the
2 contract with BSC to guide them as to the transactions arising out of the Property. *See* Exhibit "14,"
3 Johnson testimony, page 36. Hale Lane owed its duty of loyalty to Iliescu from that moment. The
4 duty of loyalty to BSC and Iliescu is not a casual one that can be turned on or off as the situation
5 dictates. "An attorney's loyalty to his client is not just a casual obligation to be turned on or off
6 as the dictates of the moment indicate or particular employment may demand." *In re Evans*, 556
7 P.2d at 796.

8 When Hale Lane learned of the identity of the architectural firm when it reviewed the
9 contract between BSC and Steppan, it acquired information material to its representation of Iliescu
10 which it should have revealed to him, particularly where Hale Lane knew that Iliescu could
11 potentially be exposed to a multi-million dollar lien. "The attorney is under a duty to represent the
12 client with undivided loyalty, to preserve the client's confidences, and to disclose any material
13 matters bearing upon the representation of these obligations." *Rice v. Perl*, 320 N.W.2d 407, 410
14 (Minn. 1982).

15 "An attorney owes to his client the high duty to diligently, faithfully and legitimately
16 perform every act necessary to protect, conserve and advance the interests of his client." *Bank of*
17 *Mill Creek v. Elk Horn Coal Corp.*, 57 S.E.2d 736, 748 (W. Va. 1950). "No deviation from that
18 duty can be permitted." *Id.* In this case, Iliescu retained Hale Lane to represent him in all aspects
19 of the sale and transaction of the Property. Iliescu was the primary client and in the event of a
20 conflict would be represented by Hale Lane. Exhibit "20".

21 Whatever information Hale Lane obtained that might affect the interests of Iliescu's with
22 respect to the matters entrusted to Hale Lane was information that Iliescu is charged with based on
23 Iliescu's reliance and retention of Hale Lane as Iliescu's attorneys .

24 The fiduciary obligations which are the premise of trust may be simply stated. The
25 attorney is under a duty to represent the client with undivided loyalty, to preserve
26 the client's confidences, and *to disclose any material matters bearing upon the*
representation of these obligations.

27 *Rice v. Perl*, 320 N.W.2d 407 (Minn. 1982) (quoting RL MALLEN & V. LEVIT, LEGAL
28 MALPRACTICE, section 121 at 208 (2nd ed. 1981) (emphasis added)); *see also Estate of Spencer v.*

1 Gavin, 946 A.2d 1051 (N.J. Ct. App. 2008) (attorney must communicate to client information client
2 needs to know); *Seigle v. Jasper*, 867 S.W.2d 476 (Ky. Ct. App. 1993) (attorney conducting title
3 search respecting real property has duty to communicate to parties any information that might
4 reasonably constitute defect and restriction on title); *Matter of Yetman*, 552 A.2d 121 (N.J. 1989)
5 (attorney's failure to communicate with his clients diminishes confidence that public should have
6 in members of the bar); *Dixon Ticonderoga Co. v. Estate of O'Connor*, 243 F.3d 151 (3d Cir. 2001)
7 (attorney, upon assuming representation of client in matter, assumed duty to take any steps
8 necessary for proper handling of matter, to communicate with client about matter, and to advise
9 client about legal and strategic issues involved in representation).

10 It is well settled that the knowledge of an agent will generally be imputed to the principal.
11 See, e.g., *Clark v. Mitchell*, 130 P. 674 (Nev. 1913); see also *Murray v. Murray*, 793 N.Y.S.2d 243
12 (N.Y. 2005) (knowledge acquired by agent acting within scope of his agency imputed to principal
13 and latter bound by such knowledge although information never actually communicated to it and
14 agent's knowledge need not be acquired while he is performing services for principal and may
15 include information learned in prior transactions and relationships); *Manley v. Ticor Title Ins. Co.*
16 *of Cal.*, 816 P.2d 225 (Ariz. 1991) (notice to agent is notice to principal); RESTATEMENT (SECOND)
17 OF AGENCY § 275.

18 The rationale for this rule is obvious:

19 The rule that notice to the agent is notice to the principal is premised on the
20 presumption that the agent will perform his obligation to give his principal all
knowledge relevant to the principal's protection and interest.

21 *Manley*, 816 P.2d at 229; see also *Fisher v. Heritage Nat. Ins. Co.*, 146 P.3d 815 (Okla. Ct. App.
22 2006) (same). This same presumption applies when an agent represents two parties with their
23 consent, in which instance he is referred to as a 'dual agent.'" *Fisher*, 146 P.3d at 819.

24 Where a principal knows that his agent is also acting for the party adversely
25 interested in the transaction, and yet consents to let him act as his agent, the
26 principal is estopped from denying notice and knowledge which the agent has during
the negotiation.

27 *Id.* (quoting 3 C.J.S. *Agency* § 271); see also *McDermott v. Burpo*, 663 S.W.2d 256, 261 (Mo. Ct.
28 App. 1983) (in case where real estate agent acted as dual agent for both buyer and seller, court held

1 knowledge of certain fact by dual agent imputed to both principals); *Arizona Title Ins. & Trust Co.*
2 *v. Smith*, 519 P.2d 860, 865 (Ariz. Ct. App. 1974) (knowledge of dual agent normally imputed to
3 both principals); *Emmons v. Ingebretson*, 279 F. Supp. 558 (N.D. Iowa 1968) (it is of no
4 consequence that agent occupies position of dual agent and rules applicable to knowledge gained
5 by agent for single principal come into play as to knowledge possessed by dual agent); *Carlton v.*
6 *Moultrie Banking Co.*, 152 S.E. 215 (Ga. 1930) (knowledge of dual agent acquired in course of
7 employment held as between the principals to be imputed to each of the principals even if not
8 actually transmitted to them).

9 In *Foster v. Blake Heights Corp.*, a real estate agent represented both the buyer and seller
10 in the same transaction. 530 P.2d 815 (Utah 1974). The court concluded that the plaintiff was
11 charged with notice of the lack of necessary approval of the land sale by the corporate landowner's
12 president the agent was informed by the corporation's secretary/ treasurer of the need for the
13 president's signature. *Id.* The court held that when a real estate agent acts as a "dual agent" with
14 the knowledge and consent of both the buyer and the seller, each is chargeable with notice of all
15 facts the agent acquired in the process of negotiations. *Id.*; see also *St. Paul Fire & Marine Ins. Co.*
16 *v. Federal Deposit Ins. Co.*, 765 F. Supp. 538 (D. Ct. Minn. 1991) (notice to bank's executive vice
17 president of changes in directors and officer's insurance policy could be imputed to bank and other
18 bank officers, despite executive vice president's dual role as agent for insurer and agent for bank
19 and other bank officers where executive vice president acted in dual agency role with consent of
20 insurer and bank and bank officers).

21 The holding in *Foster* should apply to the instant case. Similar to the real estate agent, Hale
22 Lane acted as a dual agent by simultaneously representing both the purchaser and seller with respect
23 to the same transaction and with their knowledge and consent. As such, both Iliescu and BSC are
24 chargeable with notice of all facts, which are not confidential, Hale Lane acquires in the process of
25 its dual representation. There was nothing confidential about the extent of the potential Steppan
26 claim or identity of Steppan and the design consultants.

27 In *Skiff-Murray v. Murray*, the plaintiff brought an action to set aside a series of fraudulent
28 transfers her former husband initiated after being ordered to pay child support in the parties' divorce

1 action. 793 N.Y.S.2d 243 (N.Y. 2005). While embroiled in a divorce proceeding, the husband
2 transferred his and the plaintiff's former marital residence, in addition to his business, to a newly
3 created Nevada corporation, defendant HiTrak Corporation ("HiTrak"). *Id.* HiTrak subsequently
4 transferred the same real property to the husband's aunt and uncle. *Id.* The aunt and uncle
5 simultaneously mortgaged the property to defendant First Pioneer Farm Credit, A.C.A. ("the
6 Bank"). *Id.*

7 The Bank moved for summary judgment on the grounds that it was a purchaser for fair
8 consideration. *Id.* One of the issues the court addressed was whether the Bank was a purchaser for
9 fair consideration without knowledge of the husband's fraudulent transfers. *Id.* at 246. This issue
10 "turns in part upon whether information obtained by [the Bank's] attorney, William Fitzgerald, prior
11 to [the Bank's] transaction with the [aunt and uncle], can be imputed to [the Bank]." *Id.* Prior to
12 being retained by the Bank, the husband had retained the attorney to effectuate the transfer from
13 HiTrak to the aunt and uncle. *Id.*

14 The court concluded that the attorney's knowledge could be imputed to the Bank even
15 though it was obtained before he was retained by the Bank and denied summary judgment.

16 In our view, however, Fitzgerald's knowledge did not have to be obtained after he
17 began working for [the Bank] on the transfers involving the [aunt and uncle], and
much of what he knew does not appear to have been privileged information.

18 *Id.* The court relied on the RESTATEMENT OF AGENCY and concluded the following:

19 The agent's knowledge need not be acquired while he or she is performing services
20 for the principal, and may include information learned in prior transactions and
21 relationships. [citations omitted] As long as it was in his mind when acting on [the
22 Bank's] behalf. Fitzgerald's knowledge can be imputed regardless of when or how
23 it was obtained unless it was acquired confidentially. [citations omitted] Even
though Fitzgerald may have obtained some information in confidence when
defendant was his client, there are questions of fact as to what nonconfidential
information he obtained and whether he had it in mind when acting on [the Bank's]
24 behalf.

25 *Id.*; see also *Floyd v. Hefner*, 556 F. Supp.2d 617, 655 (S.D. Tex. 2008) ("except for knowledge
26 obtained confidentially, knowledge of the agent is the knowledge of the principal irrespective of its
27 source or time of acquisition"); *In re Land*, 215 B.R. 398 (8th Cir. BAP 1997) (attorney's knowledge
28 imputable to client and therefore notice of Chapter 13 debtor's bankruptcy filing imputable to
creditor-wife based upon attorney client relationship where attorney represented both creditor-wife

1 and creditor-husband and received notice of filing from creditor-husband at least 20 days before
2 date set for confirmation hearing); RESTATEMENT (SECOND) OF AGENCY §§ 276, 281.

3 Although *Murray* involved a successive representation case rather than a dual representation
4 one, the fact that the court found that information an attorney acquired in a prior transaction may
5 be imputed to a subsequent client so long as that information was not confidential makes the case
6 even stronger for a dual representation situation. There is no dispute that Iliescu will be hard
7 pressed to argue that the identity of the architectural firm was some how confidential. In the instant
8 case, Hale Lane's dual representation of both the purchaser and seller was ongoing, arose out of the
9 same transaction, was simultaneous and Hale Lane knew that both were heavily involved in the
10 development of the Property. The imputed knowledge rule should apply in this case.

11 **C. Iliescu Should Be Judicially Estopped from Deliberately Shifting His Position**
12 **to Steppan's Detriment.**

13 "Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage
14 by asserting one position, and then later seeking an advantage by taking a clearly inconsistent
15 position. " *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001); *see also*
16 *Vaile v. Eighth Judicial District Court*, 118 Nev. 262, 44 P.3d 506 (2002) (same).

17 One of the purposes is "to prevent parties from deliberately shifting their position to suit the
18 requirements of another case concerning the same subject matter." *Vaile*, 118 Nev. at 273, 44 P.3d
19 at 514. Other purposes involve the "general consideration of the orderly administration of justice
20 and regard for the dignity of judicial proceedings," and to "protect against a litigant playing fast and
21 loose with the courts." *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990).

22 This Court may consider the following factors to determine whether to apply the doctrine:
23 (1) a party's later position must be inconsistent with its earlier position; (2) whether the party
24 succeeded in persuading a court to accept that party's earlier position; and (3) whether the party
25 seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair
26 detriment on the opposing party if not estopped. *Hamilton*, 270 F.3d 782-83. The application of
27 these factors commands a finding of judicial estoppel.

28 ///

1 **1. Iliescu's Position In Its Complaint Against Hale Lane Is Inconsistent With His**
2 **Earlier Position.**

3 Iliescu initially argued to this Court in May of 2007 that he was not required to record a
4 notice of non-responsibility because he did not receive the requisite notice as allegedly
5 contemplated by NRS 108.245. *See generally* Exhibit "3" to MSJ. In September of 2007 when he
6 filed his Answer and Third Party Complaint, he asserted an inconsistent position:

7 The Hale Lane law firm never discussed with or advised Iliescu at any time to record
8 a Notice of Non-Responsibility with the Washoe County Recorder to ensure the
9 Property would not be encumbered by mechanics or architect's liens recorded by
10 individuals hired by CPD as contemplated by the Purchase Agreement.

11 ...

12 The Hale Lane law firm, Dennison, Howard and Snyder were negligent because,
13 among other things, they failed to advise Iliescu to record a Notice of Non-
14 Responsibility, ...

15 Answer and Third Party Complaint in Case No. CV07-00341 ¶¶ 21, 59. As these allegations
16 demonstrate, Iliescu claims that he clearly recognizes that he had an obligation to record such a
17 notice to ensure that the Property would not be encumbered by mechanic's or architect's liens
18 recorded by individuals hired by CPD as contemplated by the Agreement.

19 **2. It Is Too Early To Determine Whether Iliescu Succeeded In Persuading This**
20 **Court to Accept His Earlier Position.**

21 Because this Court has yet to rule on the issue of notice, it is too early to determine whether
22 Iliescu succeeded in persuading this Court to accept his earlier position.

23 **3. If Iliescu Succeeds In Asserting an Inconsistent Position, He Would Derive an**
24 **Unfair Advantage or Concomitantly Impose and Unfair Detriment On Steppan**
25 **If Not Estopped.**

26 If Iliescu succeeds in asserting an inconsistent position, he would most definitely derive an
27 unfair advantage and concomitantly impose and unfair detriment on Steppan if not judicially
28 estopped from doing so. Iliescu would be unjustly enriched to the detriment and expense of
29 Steppan by claiming on the one hand that he was not obligated to record a notice of non-
30 responsibility while concomitantly asserting that he should have recorded such a notice to protect
31 the Property.

Iliescu recognized that the architectural schematic drawings were necessary to obtain the land use entitlements for the Project and City of Reno approved the land use entitlements. Exhibit "20" ¶ B. Without Steppan's valuable services, no entitlement exists to build the Project within the scope as approved. The entitlements increase the value of the property. See Exhibit "14" Johnson Testimony, page 71. Iliescu should not be able to reap such valuable benefits for "free."

D. Based on the "Participating Owner Doctrine," CPD May Be Treated As An Agent of Iliescu.

1. The Participating Owner Doctrine.

Although the participating owner doctrine stems from a lessor and lessee relationship, the doctrine should be applied to the unique facts of the instant case. Based on this doctrine, a lessor can be held liable for liens where the lessee is held to be the agent of the lessor in contracting for the labor or materials furnished in connection with the improvements made on the leased premises. See, e.g., *Howard S. Wright Construction Co. v. Superior Court*, 106 Cal.App.4th 314, 130 Cal.Rptr.2d 641 (Cal. Ct. App. 2003); *Ott Hardware Co., Inc. v. Yost*, 159 P.2d 663, 666 (Cal. Ct. App. 1945) ("[w]here the lease contains a provision requiring the lessee to make improvements, it is generally held that the lessee is thus constituted the agent of the lessor for that purpose").³

The use of the agency theory is based upon the following policy consideration:

It would open the door to great fraud in practice to allow the owner of property to lease it to another, contract with the other to put on permanent improvements, improvements that are only valuable when standing upon the premises, and then say that the materialmen and laborers who placed these permanent improvements upon defendant's property have no claim against the property, and must go unrewarded if the tenant is insolvent. It would be an invitation to short leases with permanent structures upon the premises during the term of the lease and this without jeopardizing any interest which the owner had in the property, while he greatly profited from the transaction.

³ In California, if an owner participates through lease provisions by requiring the lessee to make improvements to the leasehold, the owner cannot shield its property interest with a notice of non-responsibility. *Los Banos Gravel Co. v. Freeman*, 130 Cal.Rptr. 180, 184 (Cal. Ct. App. 1976). Although Nevada does not have a similar statute to that of California's, the doctrine of imputed agency should nevertheless apply to the unique facts of the instant case.

1 *Rowen & Blair Elec. Co. v. Flushing Operating Corp.*, 250 N.W.2d 481, 484 (Mich. 1977) (quoting
2 *Merithew v. Bennett*, 20 N.W.2d 860, 862 (Mich. 1945) (quoting *Denniston & Partridge Co. v.*
3 *Brown*, 167 N.W. 190, 191 (Iowa 1918)).

4 As a general rule, an agency is not created by a lessor and lessee relationship. *Ott*, 159 P.2d
5 at 665. In determining whether to impose an agency relationship, this Court should look at the
6 provisions of the sales contract. *See, e.g., 14th & Heinberg, L.L.C. v. Henricksen & Co., Inc.*, 877
7 So.2d 34, 39 (Fla. Ct. App. 2004) ("It has long been established . . . that [i]n order for a lessor's
8 interest to be subject to mechanic's liens arising from improvements made on its property [by
9 lessee], the lease agreement must require the lessee to make certain improvements or the
10 improvements must constitute the pith of the lease."⁴

11 Similarly, as a general rule an agency is not created by a seller and buyer relationship in a
12 real estate situation. This Court should apply the participating owner doctrine and conclude that
13 the Agreement between Defendants and CPD created an agency relationship between them. *See,*
14 *e.g., Ott*, 159 P.2d at 664 (terms of lease provided that (1) lessee obligated to make improvements;
15 (2) plans and specifications be approved by lessors, (3) any improvements made on property not be
16 removed by lessee at expiration or termination of lease, (4) lessee provide lessor statement of
17 materials used and labor supplied as work progresses, and (5) lease remain in escrow until
18 improvements completed and paid in full to create agency relationship between lessor and lessee).
19 The Agreement supports such an application.

20 The Agreement was contingent upon CPD obtaining certain governmental approvals. *See*
21 Exhibit "1" ¶ 39(F) to MSJ. Similar to a situation where the lease remains in escrow until the
22 improvements are completed and paid in full, the sale of the Property in this case remains in escrow
23 until CPD obtains certain governmental approval at its expense.

24 The Agreement required CPD to hire architects, designers, engineers and other professionals
25 to obtain certain governmental approval as a condition to the close of escrow. *Id.* Similar to a
26

27
28 ⁴ In Florida and similar to Nevada, a lessor's interest is not subject to a mechanic's
lien if he records the necessary disclaimer.

1 situation where the lessee is obligated to make the improvements, CPD in this case is obligated to
2 obtain architectural and design review and approval.

3 Part of the purchase price included a 3,500 square foot penthouse condominium for Iliescu
4 and his wife. *Id.* ¶ 39(H). Similar to a situation where the lease provides that any improvements
5 made on the property not be removed by the lessee at the expiration or termination of the lease,
6 when escrow closes Iliescu has the right to a 3,500 square foot penthouse condominium.

7 Iliescu had the right to review the floor plans, prepared by Steppan, related to this penthouse.
8 *Id.* Similar to a situation where the lessor has to approve the plans and specifications, Iliescu had
9 the right to review the floor plans related to his penthouse.

10 In light of the unique facts of this case, this Court should hold that CPD may be treated as
11 agent of Iliescu where CPD was required by the Agreement to hire architects, engineers, and other
12 professionals to obtain the land use entitlements for the Project and the City of Reno approved the
13 land use entitlements. The current marketing includes the entitlements. Such a ruling would be
14 consistent with the purpose and intent of the lien statutes.

15 IV. CONCLUSION

16 For the foregoing reasons, this Court should rule that Iliescu had "actual knowledge of
17 information sufficient to put him on a duty – to impose on him reasonably a legal duty to do
18 something, get more information or sufficient information for the notice of non-responsibility."
19 Exhibit "3" to MSJ at 53-54. This Court should further rule that Iliescu's failure to exercise this
20 duty is fatal and Steppan is entitled to foreclose on his mechanic's lien. Simply put, this Court
21 should hold that Iliescu had actual notice that CPD hired architects and other professionals to obtain
22 the necessary architectural and design review and approval to vitiate the notice requirement of NRS
23 108.245.

24 AFFIRMATION

25 Pursuant to NRS 239B.030

26 The undersigned does hereby affirm that the preceding document, **MARK B. STEPPAN'S**
27 **OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT AND CROSS-**
28

1 **MOTION FOR PARTIAL SUMMARY JUDGMENT** , filed in the above-entitled case does not
2 contain the social security number of any person.

3 Dated this 22nd day of January, 2009.

4 GAYLE A. KERN, LTD.

5 
6 GAYLE A. KERN, ESQ.
7 Attorneys for MARK STEPPAN

CERTIFICATE OF SERVICE

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

MARK B. STEPPAN'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT AND CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

on the party(s) set forth below by:

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

 Personal delivery.

 Facsimile (FAX).

 Federal Express or other overnight delivery.

 Reno/Carson Messenger Service.

addressed as follows:

Stephen C. Mollath, Esq.
Prezant & Mollath
6560 S. W. McCarran Boulevard,
Suite A
Reno, NV 89509

DATED this 3rd day of February, 2009.


TERESA A. GEARHART

INDEX OF EXHIBITS¹

MARK B. STEPPAN'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT AND CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

Exhibit No.	Exhibit Description	No. of Pages in Exhibit
1-MSJ	Land Purchase Agreement and Addendum	68
2-MSJ	Declaration of John Iliescu in Support of Application for Release of Mechanic's Lien dated February 13, 2007	2
3-MSJ	Transcript of Proceedings, Motion for Release of Mechanic's Lien, May 3, 2007	60
4-MSJ	AIA Contract dated October 31, 2005, between BSC Financial and Mark Steppan	25
5-MSJ	Notice and Claim of Lien dated November 7, 2006, Mark B. Steppan, Grantee	4
6-MSJ	Reno City Planning Commission October 4, 2006 Minutes (Request for Judicial Notice Pursuant to NRS 47.130)	15
7-MSJ	Power Point Presentation: Wingfield Towers, Reno, Nevada	178
8-MSJ	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-MSJ	NRS 108.234 (1991) (Request for Judicial Notice Pursuant to NRS 47.140)	3
10-MSJ	Affidavit of David Snelgrove in Support of Supplemental Response to Application for Release of Mechanic's Lien dated July 30, 2007	3
11-MSJ	Owner Affidavits of Sonnia Iliescu and John Iliescu dated January 17, 2006	2
12-MSJ	Reno Development Tentative Map & Special Use Permit Application dated February 7, 2006	56

¹ Exhibits 1 through 12 are listed for reference only and were originally attached to Applicants/ Defendants' Motion for Partial Summary Judgment on Mark B. Steppan's Claim for Foreclosure of Mechanics Lien. In order to avoid repetition of exhibits, counsel has simply referred to the respective exhibits in the preceding Opposition.

INDEX OF EXHIBITS (CONT'D)

MARK B. STEPPAN'S OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT AND CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

Exhibit No.	Exhibit Description	No. of Pages in Exhibit
13	Letter dated July 14, 2005, from Consolidated Pacific Development, Inc., to Dick Johnson	2
14	Pages 36-43, 71, and 87 of the Deposition Transcript of Richard K. Johnson dated September 29, 2008	6
15	Hale Lane Memorandum dated November 14, 2005, to Calvin Baty from Sarah Class re: AIA Contract Review - Owner's Issues	2
16	Letter dated February 14, 2006, from the City of Reno to Consolidated Pacific Development	7
17	Minutes of the Senate Committee on Judiciary dated March 11, 2003	10
18	Minutes of the Meeting of the Assembly Committee on Judiciary dated May 13, 2005	15
19	Letter dated September 1, 2005, from Consolidated Pacific Development to Mayor Robert A. Cashell, Sr.	1
20	Indemnity Agreement dated December 8, 2006, and E-mail dated February 12, 2006 from Craig Howard of Hale Lane to Dick Johnson	3
21	Letter dated December 14, 2005, from Karen D. Dennison of Hale Lane to John Iliescu, Jr., Sonnia Santee Iliescu, Calvin Baty, and Consolidated Pacific Development, Inc.	2
22	E-mail dated November 29, 2005, from Sarah Class at Hale Lane to Sam Caniglia, and an E-mail dated November 18, 2005, from Sarah Class at Hale Lane to Calvin Baty	3
23	Hale Lane Facsimile Transmittal Sheet dated December 15, 2005 from Sarah E. L. Class, Esq., to John and Sonnia Iliescu, and Page 3 of Letter dated December 14, 2005, with Acknowledgement of waiver of conflict signed by John Iliescu, Jr., Sonnia Santee Iliescu, both individually, and as Trustees of the John Iliescu Jr. And Sonnia Iliescu 1992 Family Trust	2

EXHIBIT “13”

EXHIBIT “13”

Consolidated Pacific Development Inc.

932 Parker Street, Berkeley, CA 94710
(510) 548-6093 (FAX) 548-6164

VIA FACSIMILE 775 823-8848

July 14, 2005

Mr. Dick Johnson
Metzker Johnson Group
6490 McCarran Blvd. Suite 10
Reno, NV 89509

Dear Dick:

In keeping with our telephone conversation of this date I am prepared to make an offer on Johns parcel of land between the River Walk and Court St. As you are aware, by my many phone calls, my interest in the project has never weakened.

The following is my proposal:

1. I will need a 30 day period to contact the City and make certain that they are supportive of the project. I cannot imagine they would not be, but with this amount of money involved I have to be certain.
2. At the end of 30 days One Hundred Thousand Dollars (\$100,000.00) would be tendered to John and becomes non-refundable. In all instances the non-refundable monies are credited to the purchase price.
3. Every 60 days an additional One Hundred Thousand Dollars (\$100,000.00) will be tendered to John with the same conditions spelled out in Item 2 above. This will continue until the City approves the project. It is anticipated it will take 7 to 9 months for approval.
4. The sales price is to be Six Million Five Hundred Thousand Dollars (\$6,500,000.00) plus one penthouse.

These are the advantages with our company and its partner:

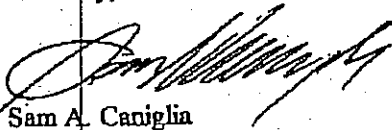
1. Financing has already been tentatively arranged and will be in place well before the project is approved.
2. Project to be built by an experienced developer/builder team with a proven record.

2. Project to be built by an experienced developer/builder team with a proven record.
3. Architect and Engineers in place ready to start work.
4. Upon tentative map approval site work can commence using the fast track method.
5. Building will be ready for occupancy in 30 months, plus or minus, from today depending on the approval time. We have assumed the longer period of 9 months.

Dick, I have told you on repeated occasions I would not come to the table unless I was prepared to move forward. Now is the time. Please advise at your earliest convenience, as my group with bankers, architects and engineers are scheduled to visit the site next Wednesday July 20, 2005.

Should you have any questions, please contact me immediately.

Sincerely,



Sam A. Caniglia

SAC/pb

EXHIBIT “14”

EXHIBIT “14”

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

-oOo-

JOHN ILIESCU, JR., SONNIA)
SANTÉE ILIESCU, AND JOHN)
ILIESCU, JR., AND SONNIA)
ILIESCU AS TRUSTEES OF THE) Case No. CV07-00341
JOHN ILIESCU, JR., AND SONNIA) (Consolidated with Case No.
ILIESCU 1992 FAMILY TRUST,) CV07-01021)

Plaintiffs,)

) Dept. No. 6

vs.)

MARK B. STEPPAN,)

Defendant.)

DEPOSITION OF RICHARD K. JOHNSON

MONDAY, SEPTEMBER 29, 2008

RENO, NEVADA

SUNSHINE REPORTING SERVICES
151 COUNTRY ESTATES CIRCLE, RENO, NEVADA 89511
REPORTED BY: SUSAN CULP, CCR #343

SUNSHINE REPORTING SERVICES
775-323-3411

COPY

JA0743

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Page 36

1 Q Did you speak with the Iliescus?

2 A I did.

3 Q Tell me what the substance of the conversation with

4 the Iliescus was.

5 A We were talking about who was going to win the

6 election and stuff. It wasn't about this project. It was

7 about the -- just our feelings on a lot of different things.

8 Q Did you -- So you didn't have -- When you got served

9 with the Notice of Deposition and the Subpoena, you did not

10 have any conversation with respect to the Court Street

11 properties or Mr. Steppan or Fisher Friedman with the Iliescus?

12 A Say again. You lost me when you got to Mr. --

13 Q After you had your Subpoena to appear today --

14 A Uh-huh.

15 Q -- did you have any conversations with the Iliescus

16 regarding the subject matter of this litigation?

17 A Oh, yes, uh-huh.

18 Q Tell me the substance of that conversation.

19 A We were trying to figure out when we had first ever

20 even heard of them, to be honest with you.

21 Q When you say ever heard of them, who are you referring

22 to?

23 A The architects.

24 Q Okay. What else did you talk about? Substantively, I

25 don't care about the election.

1 A That's what we were discussing on a pre-lien notice,

2 and them filling the notice of nonresponsibility. They were

3 asking me if I had seen or heard anything, you know, given a

4 pre-lien notice or know of it coming to anybody, and I said no,

5 I didn't.

6 Q When you got the letter dated July 14, 2005, and there

7 was a reference that there was going to be work being done by

8 architects and engineers, did you have any conversation with

9 your client about a mechanic lien potential?

10 A No.

11 Q Did you have any conversation with them recommending

12 that they retain legal counsel so that they would understand

13 what that meant, that engineers and architects would be working

14 on the property?

15 A In the contract it calls for them to review the

16 contract with legal and get whatever recommendations are given,

17 which we did with two different law firms, actually.

18 Q And who were they?

19 A Judy Otto was the first cleanup on the first addendum

20 or second addendum, whichever it was. And that was followed

21 quickly, within the week, to Hale Lane, who was retained

22 therefor to do it to guide them.

23 Q It's my understanding that Miss Otto represents Sam

24 Caniglia and/or his companies. Was it your understanding that

25 Miss Otto was representing the Iliescus?

Page 35

Page 37

1 A Yeah, right.

2 Q I mean, I do care, but not with respect to what you

3 guys are saying.

4 A Exactly. That's really all that came up. There was

5 very little conversation relative to it, other than I was being

6 deposed, and I -- Even in my records I'm having a hard time

7 figuring out exactly when we ever heard the name, to be candid

8 with you.

9 Q And did you have any conversation with them after the

10 service of the Subpoena with respect to the mechanic lien

11 itself?

12 A Yes.

13 Q Tell me about that.

14 A There was -- The First Centennial Title had notified

15 me that there was a lien. That's where I found out about it.

16 And then I believe Doctor was served a day later. And so we

17 were talking about what is it, and then I believe it was

18 through there that we got a hold of the document from the State

19 saying about the requirement for pre-lien and asking if anybody

20 received a pre-lien notice. You know, they have Hale Lane

21 representing them, and if I had heard anything from them,

22 anybody else about it. Because I had --

23 Q Had you had any conversation with the Iliescus with

24 respect to a notice of nonresponsibility? Do you know what

25 that is?

1 A It was my understanding, at that meeting, she was

2 representing all parties present, and I was present at that

3 meeting where they went through what was written and what

4 needed to be rewritten different or cleaned up according to the

5 legal requirements.

6 Q Did anybody -- To your knowledge, did the Iliescus

7 ever execute a retainer or engagement letter with Miss Otto?

8 A I don't know about Miss Otto. I know it was with

9 Hale Lane.

10 Q Well, why did you think that Miss Otto was

11 representing the Iliescus, as well?

12 A Because there was the conversation that we should meet

13 with an attorney to review what we had for the initial

14 addendum, and Sam said, "Well, I've been dealing with her.

15 Let's meet with her, if she can." And that was fine with the

16 doctor to do that, and so we did.

17 Q Do you recall when that meeting took place?

18 A 9/13/05.

19 Q You just were looking at some document. Could I see

20 that, please?

21 A (The witness complies.)

22 Q What is this?

23 A This is a timeline because I'm so bad with dates and

24 time, so if I have a cheat sheet I won't lie to you.

25 Q Did you prepare this from looking at your records?

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1 A Yes.
 2 Q We don't need to break right now, but I'll make a copy
 3 of it and make it as an exhibit so we both can look at it.
 4 A One thing I can tell you, I know there's a few items
 5 in there where I received them a lot later so I put them in
 6 chronological order. So the date there isn't necessarily when
 7 I was aware of them.
 8 Q For example, I'm looking at "Meeting 9/13/2005, OTTO
 9 legal review." Is that Judy Otto you're referring to?
 10 A Correct uh-huh.
 11 Q And this is a meeting where the Iliescus were present
 12 with Mr. Caniglia?
 13 A Correct.
 14 Q And you were there?
 15 A Correct.
 16 Q Anybody else?
 17 A No.
 18 Q Okay. Tell me how this deal was supposed to work.
 19 What was your understanding of what Mr. Caniglia was going to
 20 do and how the deal was going to work.
 21 A Long version or short version?
 22 Q Long version.
 23 A That's a long question.
 24 Kind of typical. Iliescu -- Sam Caniglia was to come
 25 in with the funding and wherewithal to build a condo on that

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1 Q Was it going to be before or after work was performed
 2 in order to get the project approved?
 3 A Well, by the timeline, it came after, but the one
 4 wasn't incumbent on the other.
 5 Q Explain what you mean by that.
 6 A To the best of my knowledge, and I'll read this again,
 7 but I don't believe that the entitlements was a requirement to
 8 be completed to buy the land. They could have bought the land
 9 without the entitlements done.
 10 Q But was it contemplated that the Iliescus would allow
 11 them to proceed to take the steps necessary to get the
 12 entitlements while the Iliescus still owned the property?
 13 A Yes.
 14 Q Why was that?
 15 A Because there were certain things that had to be done
 16 on it; i.e., they were looking at the parcelling of the
 17 property and putting it into one, and so I know they had to
 18 sign to have that done as owners. You sign for that. And
 19 there was servicing of water, is another issue. So there were
 20 certain things that the local governments require the owner of
 21 the property to sign off on behalf of the developer so that
 22 they can move forward.
 23 Q Another option for the deal would have been that no
 24 work would have been performed. Caniglia and/or his group
 25 would actually purchase the land and then they would go off and

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1 project and get it approved and do all the things he needed to
 2 do to move forward to build that project.
 3 In return, he was to pay Dr. and Sonia Iliescu an
 4 amount of money and also provide a value of condo to be given
 5 to them that would be adjusted up or down relative to the base
 6 cost of that condo. So it was a combination cash and physical
 7 property, and the two combined would equal the sale.
 8 Q Was that something that you came up with, that is that
 9 combination, or is that something that somebody else came up
 10 with?
 11 A Dr. Iliescu.
 12 Q So right from the beginning that's what he wanted: If
 13 somebody was going to purchase it to build a condominium, he
 14 wanted one of the condominiums within the project?
 15 A As long as they were of the quality level that they
 16 were saying they were going to do. There is an escape clause,
 17 if you will, on it where if for any reason he doesn't want it,
 18 i.e., the project gets going and all of a sudden we see that
 19 it's going to be a cheap-and-dirty-type building, he could in
 20 fact collect a certain amount of money, walk away.
 21 Q Was it intended -- Sorry. Let me start again.
 22 When was it intended that escrow would close and the
 23 buyers would actually be purchasing the land? Before or after
 24 the project was built?
 25 A Oh, before it was built, it would be sold.

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1 do the development, correct?
 2 A I haven't seen any of those being done, but yeah, it
 3 could.
 4 Q What do you mean you haven't seen any of those being
 5 done?
 6 A Well, usually a developer wants to move as fast as
 7 they can when they tie up a property, and tie up the property
 8 long enough so that they can do work on it without worrying
 9 about if it's still going to be there when they are ready to do
 10 it; i.e., buying it after the fact, or in your scenario, buying
 11 it before the fact, which is the reverse. They want to see
 12 what they can get before they finish.
 13 Q Other than the Iliescus, have you discussed this --
 14 the mechanic lien with any other person?
 15 A The attorneys that were hired to take care of it.
 16 Q Who?
 17 A Karen Dennison, I believe, a short conversation. And
 18 then Howard -- Is that his name? I'm trying to remember.
 19 There were two other guys that were involved at her office.
 20 Q This is over at Hale Lane?
 21 A Uh-huh.
 22 Q Anyone else?
 23 A No.
 24 Q You talked with Mr. Mollath?
 25 A Well, yeah, legal represent here, and the title

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1 company.

2 Q Who at the title company?

3 A Maryann Infantino.

4 Q And what was your conversation with Maryann Infantino?

5 A What she knew about these liens and the pre-liens and

6 that kind of stuff. Because her husband actually was a

7 licensed contractor and I thought she might know, and she was

8 privy to this information. She's the one that actually got --

9 Like I said, she's the one I got the notice from. How she got

10 it is beyond me, first. I would have thought the Iliescus

11 would have got it first.

12 Q What did you understand, from your conversations with

13 Ms. Infantino, regarding the mechanic lien?

14 A That people need to notify you if they have -- file an

15 intent to lien, and give you a name and address and so forth of

16 who it is before they are allowed to file a lien so that you

17 have time to go in and file some kind of paper saying, "No, I'm

18 not responsible, that guy is responsible."

19 Q But you all knew that work was going to be done on the

20 property, right? That wasn't a surprise, was it?

21 A Well, what's the work? I don't know what they were

22 doing. We were never privy to what they were doing

23 specifically.

24 Until we got to the point of the commission hearings

25 and the meeting prior to that, with the mayor and a couple of

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1 supportive of the project.

2 Wasn't that the purpose of the August 2005 meeting

3 with the mayor?

4 A I think that's kind of what I just said. Politically

5 talked with them and made sure they were in agreement.

6 Q You say that it was a very --

7 A There was no votes. You couldn't get into a lot of

8 stuff into those meetings, nor could you have a lot of the

9 councilmen at a lot of the meetings because there's laws

10 against that.

11 Q How was the project presented by you or Mr. Caniglia?

12 A Oh, by Caniglia. I didn't know the project to present

13 it.

14 Q But you were there and you heard what Mr. Caniglia

15 said?

16 A Correct.

17 Q Okay. How did he describe it?

18 A They did a fly-over, which was an aerial program, like

19 a plane was coming through and going over the town and you

20 could see a mock-up of a building as you came up to it, and

21 they showed some life pictures showing different angles of the

22 river, and what would be seen from the different angles north,

23 east, south and west.

24 Q And this was the August 2005 meeting?

25 A It was one of the meetings I attended. I don't

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1 the council members, to -- I attended one or two of those where

2 they gave a fly-over and that type of thing to show what they

3 were doing. That's the first that we were given any indication

4 of what it is.

5 Q Well, you met with the mayor and Mr. Caniglia on

6 August 25th of 2005, didn't you?

7 A That's what I just said. Those were the first

8 meetings where we had any idea of what was going on.

9 Q And who was present during that August meeting with

10 the mayor and Mr. Caniglia? Anyone else?

11 A Couple of guys that I don't know who they were. I

12 assume they were the staff. Bob Cashell was there, a guy from

13 Wood Rodgers was there, myself, Sam.

14 Q What was the substance of that conversation?

15 A It was more shake your hand, "Here's what is going on.

16 We are going to be developing a big project."

17 And I asked Dick, because he asked me to call and set

18 up the meeting with Cashell, I asked Dick to get us down here

19 just so we can answer any questions. It was pretty broad. It

20 was, "Here, we are going to do this big project and Reno is

21 going to be excited about it." It was a courtesy meeting with

22 the mayor to let him know what it was.

23 Q Well, in the letter dated July 14, 2005, there was a

24 specific reference by Mr. Caniglia that he wanted some period

25 of time to contact the City and make certain they are

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1 remember if it was the August 2005.

2 We probably had four different meetings throughout the

3 time where they talked with City officials to get approval for

4 the building, to get Bob Cashell to encourage the building

5 department to work diligently with them so they could move

6 faster.

7 Q You referenced some addendums when we were discussing

8 the July 29th, 2005, agreement.

9 A Uh-huh.

10 Q There is one that I've got identified as 65 and 66

11 that's dated August 1, 2005. It says Addendum No. 1.

12 A Addendum No. 1 was August 1, 2005.

13 Q Okay. And did you prepare this?

14 A I -- I'm trying -- I did prepare it. I'm trying to

15 think. July, August -- Because there was some stuff I got

16 back.

17 The reason I'm hesitating, there was some stuff where

18 an attorney would review and send it back and I would still

19 write it, but it was at their request. But I wrote this, yes.

20 Q Do you recall if this Addendum No. 1 was done at the

21 request of any counsel, any attorney?

22 A I think it was done at the request of Otto, but I'm

23 not a hundred percent sure of that answer.

24 Q Was it Addendum --

25 A Because it was a more defined version of what's in the

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1 A It was.
 2 Q Excuse me. And it was --
 3 A It was an updated or revised -- I cut you off. I'm
 4 sorry.
 5 Q I want to make sure you finish. Was there anything
 6 else?
 7 A No.
 8 Q And it was an appraisal that was commenced or
 9 commissioned by the buyers, correct?
 10 A Correct.
 11 Q Did you, on behalf of the Iliescus, ever obtain an
 12 appraisal?
 13 A No.
 14 Q How did you determine the purchase price?
 15 A I guess by the offer and acceptance. He offered a
 16 price and Doc accepted the price.
 17 Q You didn't evaluate or identify what you wanted before
 18 getting that offer?
 19 A Well, you're talking two different things. I think
 20 this appraisal was based on probably it moving forward. I
 21 don't know. I'd have to look at it again. But it was probably
 22 based on the fact that there would be entitlements and moving
 23 forward, whereas our sale was based on the land being sold
 24 irrespective of any entitlements.
 25 Q So you agree with the entitlements it's worth more

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1 circumstances, be able to get an extension.
 2 If you got an extension, you still fell within the
 3 same entitlements that we currently have; if you can't, then
 4 you lose them. So that's a question mark at this point.
 5 Q What is your understanding of what the entitlements
 6 are?
 7 A Entitlements are the ability to build a certain-size
 8 project on that property, basically confining the exterior of
 9 the buildings to go on the property, and then the interior
 10 would be the final map, which would be the rest of the detail
 11 that goes with it.
 12 Q It's my understanding from your testimony that you
 13 knew that there were architects involved, but that you do not
 14 recall when you first met or heard the name Mark Steppan and/or
 15 Fisher Friedman, is that correct?
 16 A You said that I knew architects. I don't know when
 17 they were anybody, any architects were involved and stuff.
 18 But I know from a practical standpoint that they would
 19 need architects involved. When they got involved whatever,
 20 yeah, I don't know.
 21 And as far as the knowing who Mark Steppan was and
 22 there was another name of a guy out of New York, those names, I
 23 mean, I heard at some point later in the process but around the
 24 time of the commission hearing-type thing.
 25 Q Did you ever attend any of the neighborhood meetings?

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1 than what the land was before the entitlements were obtained?
 2 A The entitlements would have increased the value of the
 3 property, yes, as long as it was accomplished. The
 4 entitlements go away, the land drops in value again.
 5 Q Is it your understanding that without the plans as
 6 have been approved, the number of units that can be constructed
 7 on the Court Street properties is less because of a zoning
 8 change?
 9 A Say that again.
 10 Q Are you aware that if the entitlements that have
 11 already been granted --
 12 A Uh-huh.
 13 Q -- are not used --
 14 A Okay.
 15 Q -- that the project that can be built will be
 16 significantly smaller because there's been a zoning change?
 17 That they would not be able to take advantage of that increased
 18 unit -- units?
 19 A Well, I'm aware that there's been a change in the
 20 zoning. The rest of your statement may or may not be true.
 21 And I say that strictly as hearsay through Sam
 22 Caniglia and so forth, which is saying that you could possibly
 23 get an extension. That even though the extension is running
 24 out, from what I'm being told it's November 14th, that you
 25 could possibly, because of the bankruptcy and other mitigating

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1 A No.
 2 Q Were you aware they were taking place?
 3 A The day before on the one, and I was out of town,
 4 so...
 5 Q On the one.
 6 A Well, there was one that I knew. You said did I know
 7 of any of them before they were taking place, and the answer is
 8 yes, I knew of one, but it was like the day before that I found
 9 out about it and I was not going to be an available.
 10 Q To your recollection, did your clients attend any of
 11 those neighborhood meetings?
 12 A Not that I know of.
 13 Q You never discussed them with them?
 14 A No.
 15 Q And that was -- Did you ever discuss the meetings with
 16 your clients?
 17 A No.
 18 Q Did your clients go to any of the meetings with any
 19 City personnel with respect to the project?
 20 A I don't believe so.
 21 Q Do you have an understanding that your clients were
 22 at, at least one of the presentations to either the planning
 23 commission or the City council?
 24 A They were at the planning commission meeting, yes.
 25 Q Were you present?

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1 Can you look at your tab 14 and tell me what the Bates
2 stamp is.

3 MR. MOLLATH: Bates stamp number is 133,
4 December 14th, '05, Hale Lane.

5 MS. KERN: Thank you.

6 BY MS. KERN:

7 Q Do you recall having any conversation with the
8 Iliescu with respect to this December 2005 letter regarding a
9 potential conflict of interest or a waiver of conflict, how
10 it's described in your timeline?

11 A Which is the letter that you're referring to?

12 Q I'm sorry. It's on your timeline 12/14/2005, waiver
13 of conflict letter, and then I'm assuming this is your notes,
14 "to act as attorneys for BSC, Iliescu. DeCal will act jointly;
15 however, if conflict with Iliescu, then Hale Lane will
16 represent Iliescu."

17 My question is: Do you have recollection of
18 discussing this letter with the Iliescu at or about the date
19 of that letter December of 2005?

20 A They were involved with it, weren't they, at the
21 meeting? Where did you just read that?

22 I can't really tell you whether Doc and Sonnia were at
23 that meeting. They were at one and they weren't at one, is the
24 truth of the matter, and I can't remember which is which.

25 Q My question is --

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1 A I'm sorry. Sure.

2 Q That's okay. What is LoopNet?

3 A LoopNet is a -- what should I say -- it's like a
4 listing service for commercial properties. And there was
5 another group in town that had it on LoopNet, the project, and
6 they didn't have authority to, and I called them to ask them to
7 cease and desist doing it.

8 Q Okay. In your notes it says, "Was offered by DeCal on
9 LoopNet project for sale, 25 million."

10 A Yeah. That's what the terms were on what they were
11 saying. They were doing it through Re/Max Realty, who they
12 were tied in with. But again, like I say, they didn't have
13 acknowledgment or consent of Doc to do that, which you need
14 both in order to put a listing out there.

15 Q You have the Snellgrove affidavit in your documents,
16 correct?

17 A I don't know if I do or not. But if it's there, I
18 do.

19 MR. MOLLATH: 576 is the number.

20 MS. KERN: Thank you.

21 THE WITNESS: What documents are those?

22 MR. MOLLATH: This is --

23 BY MS. KERN:

24 Q Well, it's what I've been informed today. I had your
25 file. I didn't know that's what I had. So I'm going to show

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1 A Yeah.

2 Q -- did you have any conversation or communication with
3 the Iliescu about the waiver of conflict letter that was
4 prepared by Hale Lane?

5 A I would have.

6 Q Do you recall the substance of that conversation?

7 A No. I just know I would have talked to them.

8 Q Do you know generally what it would have been about?

9 A It would have been about we need this, and I
10 would have told them someplace here, I remember, having
11 where the call from Doug Flowers referencing the signatures
12 being done. That was on 12/6. So there was that kind of
13 conversation.

14 Q Did you have any conversation with the Iliescu in
15 which you said, "Hey, there's going to be a lot of work done on
16 this property and you are -- you know, you're subject to
17 mechanic liens. You want to make sure you talk to Hale Lane
18 about protecting yourself." Did you ever have that
19 conversation?

20 A No. Not the way you said it.

21 What I had was the conversation that we need legal
22 advice throughout this because of the size of the project, and
23 that was back when they hired Hale Lane and retained them to do
24 just that.

25 Q Okay. Can I see your timeline?

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1 you 578, 579, and 580. So that was in your documents.

2 A That's something I think is one -- something I was
3 given by -- I'm assuming by Sam after the fact.

4 Q Why are you assuming that?

5 A Because there was no -- if I had known that he even
6 had a deposition, I would have been wondering what it was, as
7 to what it is.

8 Q Who had a deposition?

9 A Well, that's some kind of a legal document for what he
10 said, isn't it?

11 Q It's an affidavit.

12 A An affidavit, okay. So he wrote an affidavit on this
13 thing. I don't know when I would have received that, but it
14 was -- I don't know. I didn't go there. I didn't get it.

15 Somebody gave it to me.

16 Q When did you prepare this timeline?

17 A Oh a couple of weeks ago. And then I updated it
18 probably two days ago just to see.

19 Q Were you familiar with or are you aware of the
20 special-use permit application from January of 2006 that your
21 clients executed?

22 A I'm aware that there was a special-use permit that was
23 part of the entitlement process, right.

24 Q Correct?

25 A I'm familiar with that there was an entitlement.

EXHIBIT “15”

EXHIBIT “15”

HALE LANE

ATTORNEYS AT LAW

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

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MEMORANDUM

RECEIVED
NOV 30 2005
FISHER FRIEDMAN ASSOCIATES

TO: Calvin Baty
FROM: Sarah Class
DATE: November 14, 2005
SUBJECT: AIA Contract Review -- Owner's Issues
Our File No. 20606-0004

This memorandum identifies provisions of the AIA Contract between BSC Financial ("Owner") and Mark Steppan ("Architect") which disfavor the Owner and suggests possible revisions to these provisions.

- Section 1.1: Under Section 1.1.6, the information in Article 1.1 may be relied upon in determining the Architect's compensation, and in the event that the information changes, adjustments to the Architect's compensation may be made. Specifically, a change to the information set forth in Article 1.1 will constitute a "Change in Services" entitling the Architect to an adjustment in compensation. See Section 1.3.3.2 (stating that a change in the information contained in Article 1.1 is a change in service entitling the Architect to adjustment in compensation).

Except for general information about the project, Article 1.1 presently either omits the information regarding the Project or leaves it to further agreement. Because a change in this information could lead to compensating the Architect using the method described in Exhibit "A" (which is the method utilized for a Change in Service under Section 1.5.2), it may be advisable at this point to include more detail as to the project information, so as to avoid the classification of additional information as a "Change in Service," entitling the Architect to (presumably) increased compensation.

- Section 1.2.2.2: The Owner cannot significantly alter the budget or the budget allocated for the Cost of Work without the Architect's agreement to a corresponding change in the Project scope and quality. This gives the Architect some control over budget changes; thus the budgets should be thought through prior to signing the contract.
- Section 1.3.2: The Owner has the right to use the Architect's drawings only for purposes of "constructing, using and maintaining the project." However, if the agreement is terminated,

HALE LANE PEEK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone (702) 222-2500 | Fax (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Fax (775) 684-6001

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STEPPAN 001

the owner's right to use the drawings terminates, and it is only if the architect is "adjudged" in default that the owner may use the documents. Thus, in the event that the architect defaults (but is not adjudged in default), the Owner will not have the right to use the documents to complete the project. This language should be revised to provide that the Owner may use the documents upon any default by the Architect. ✓

- Section 1.3.6. This provision provides for a waiver of consequential damages and would preclude, for example, recovery of damages by the Owner against the Architect for items such as loss resulting from the Architect's delay. This paragraph should be deleted. ★
- Section 1.3.7.1. You may want to consider having the contract governed by Nevada law. ✓ OK ✓
- Section 1.3.7.6. You may consider making the Architect and its consultants liable for hazardous waste if caused by the ~~Architect or the consultants.~~ ?
- Section 1.3.7.9. If you anticipate assigning the agreement, we will need to change the language in this section which prohibits assignment. ✓
- Section 1.5. The terms used in the first paragraph should be defined so as to provide clarity to third parties as to their meaning.
- Section 1.5.9. If the architect's services extend beyond 32 months of the date the agreement is signed, those services will be additional costs to the Owner (presumably not included in the 5.75 percent cost). This could significantly increase the Architect's fees. OK
- Section 2.4.1. You may want to expand on what is meant by "normal structural, mechanical and electrical engineering services." More specificity will lessen the likelihood of litigation over these points.
- Section 2.8. The Owner should ensure this accurately reflects the desired services to be provided by the Architect, as any change in these services will entitle the Architect to additional compensation.

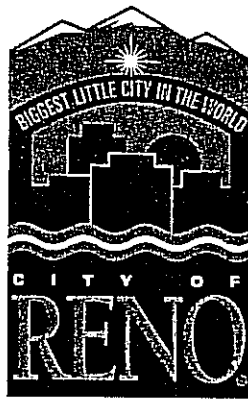
As a final note, the contract incorporates by reference the AIA Document A201, which we should also therefore review prior to signing the contract. See Section 1.1.5 and Section 2.6.1.1. We have a copy of this document from the AIA website, which we will review and let you know if we have additional suggestions.

EXHIBIT “16”

FILED
Electronically
02-03-2009:04:56:47 PM
Howard W. Conyers
Clerk of the Court
Transaction # 579452

EXHIBIT “16”

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FEB 21 2006
FISHER FRIEDMAN ASSOCIATES



FILE / COPY

John B. Hester, Director
Community Development Department
P. O. Box 1900
Reno, NV 89505
(775) 334-2435

February 14, 2006

Consolidated Pacific Development
932 Parker Street
Berkley, CA 94710

RE: LDC06-00321 (BSC Mixed Use Residential Towers)

Dear Applicant:

Your requested development proposal will be considered at the Planning Commission meeting on Tuesday, April 4, 2006, which begins at 6:00 p.m. in the City Council Chambers, City Hall, 1 East First Street.

In addition, a preliminary discussion of your proposal and comments by reviewing agencies will be held as follows:

Thursday, March 2, 2006, at 11:00 a.m.
3rd Floor Conference Room
City Hall Annex
450 Sinclair Street

Your attendance is requested at these meetings, although it is not mandatory. Lack of representation at the Planning Commission meeting may result in the tabling or denial of your proposal.

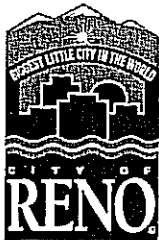
A copy of the Planning Commission meeting agenda and staff report on this project will be available online at www.cityofreno.com by 4:00 p.m. on Friday, March 31, 2006.

If you should have any questions, please feel free to contact our office at 334-2576.

John B. Hester, Director
Community Development Department

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

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



Community Development Department

MEMORANDUM

Date: February 13, 2006
To: Development Review Committee
From: Claudia Hanson, AICP, Interim Planning Manager
Subject: Development Proposals:
Planning Commission, City Council and
Site Plan Reviews – March and April, 2006

The projects summarized below are scheduled for consideration by the Reno City Planning Commission and City Council and for Site Plan Review in March and April, 2006. Please review the attached materials and notify our office of any concerns, comments or conditions of approval which you feel should be associated with these projects no later than 3:00 p.m., Wednesday, March 1, 2006. Meeting dates may change without notice.

Staff/applicant meetings are scheduled for **Thursday, March 2, 2006**, beginning at 9:00 a.m. at 450 Sinclair Street, third floor, as noted below. Your participation in the process and attendance at the meeting are greatly appreciated.

9:00 a.m. LDC06-00301 (Vintage Pointe Annexation) - This is a request for annexation of two parcels totaling ± 93.35 acres located $\pm 1,350$ feet east of Robb Drive on the south side of Interstate 80. Upon annexation the property will be zoned LLR1 (Large Lot Residential - 1 acre).

PLANNER: Chad Wilkinson, Associate Planner

NEIGHBORHOOD ADVISORY BOARD: Ward 1 - Northeast

CITIZEN ADVISORY BOARD: West Truckee Meadows

APN: 039-161-10 and 20

MEETING DATE: City Council – March 22, 2006

9:30 a.m. LDC06-00352 (New Facility at Penhall Company) – This is a request for a special use permit to allow for the construction of a $\pm 10,550$ square foot industrial building adjacent to residentially zoned property. The ± 1.58 acre site is located on the south side of Parr Boulevard, ± 220 feet west of the intersection of Parr Boulevard and Ferrari McLeod Drive in the IC (Industrial Commercial) zone.

PLANNER: Cheryl Ryan, Senior Planner

NEIGHBORHOOD ADVISORY BOARD: Ward 4 – Northeast

CITIZEN ADVISORY BOARD: None

APN NUMBER: 035-640-12

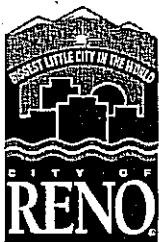
MEETING: Planning Commission - April 4, 2006

LDC06-00356 (Clearwire #23-Fire Station #5) – This is a request for a site plan review to install three (3) new antennas, three (3) BTS equipment cabinets, one (1) GPS antenna, two (2) microwave antennas on an existing $\pm 59'7"$ tall fire training tower and a ground modified equipment cabinet within a 7'x7' leased area to operate an unmanned wireless facility. The ± 1.17 acre site is located on the south side of Mayberry Drive, ± 200 feet west of its intersection with Hunter Lake Drive (1500 Mayberry Drive) in the MF14 (Multi Family – 14 du/ac) zone.

PLANNER: Kelly Sleep, Assistant Planner
NEIGHBORHOOD ADVISORY BOARD: Ward 1 – Southwest Reno
CITIZEN ADVISORY BOARD: West Truckee Meadows
APN: 010-430-16
MEETING: Site Plan Review

LDC06-00344 (Peppermill Central Plant) - This is a request for a site plan review to allow for the relocation of the Peppermill Hotel/Casino's Central Plant facilities. The proposed $\pm 22,000$ square foot facility will be located on a ± 2.68 acre site on the southeast corner of the Grove Street and Lymberry Street intersection in the CC (Community Commercial) zone.

PLANNER: Charles Fitzhugh, Associate Planner
NEIGHBORHOOD ADVISORY BOARD: Ward 2 - Central
CITIZEN ADVISORY BOARD: West Truckee Meadows
APN: 019-202-23 and portion 019-202-27
MEETING DATE: Site Plan Review



Community Development Department

MEMORANDUM

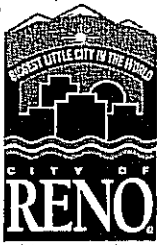
Date: February 13, 2006
To: Development Review Committee
From: Claudia Hanson, AICP, Interim Planning Manager
Subject: Development Proposals:
Planning Commission on April 4, 2006

The project summarized below is scheduled for consideration by the Reno City Planning Commission on April 4, 2006. Please review the attached materials and notify our office of any concerns, comments or conditions of approval which you feel should be associated with these projects no later than 3:00 p.m., Tuesday, February 21, 2006. Meeting date may change without notice.

The staff/applicant meeting for this project only is scheduled for **Wednesday, February 22, 2006**, beginning at 11:00 a.m. at 450 Sinclair Street, second floor, as noted below. Your participation in the process and attendance at the meeting are greatly appreciated.

11:00 a.m. LDC06-00353 (Reno Sports Connection) - This is a request for a special use permit to allow grading disturbance within a major drainageway to construct a ±72,000 square foot indoor sports recreation facility. The ±5.0 acre site is located on the west side of Old Virginia Road (11565 Old Virginia Road) ±450 feet south of the Old Virginia Road and Avelina Road intersection in the CC (Community Commercial) zone.

PLANNER: Patrice Echola, Planning Consultant, DD&A
STAFF COORDINATOR: Charles Fitzhugh, Associate Planner
NEIGHBORHOOD ADVISORY BOARD: Ward 2 - South
CITIZEN ADVISORY BOARD: Southwest Truckee Meadows
APN NUMBER: 160-060-19
MEETING DATE: Planning Commission – April 4, 2006



Community Development Department

MEMORANDUM

Date: February 13, 2006
To: Development Review Committee
From: Claudia Hanson, AICP, Interim Planning Manager
Subject: Development Proposals:
Planning Commission, City Council and
Site Plan Reviews – March and April, 2006

The projects summarized below are scheduled for consideration by the Reno City Planning Commission and City Council and for Site Plan Review in March and April, 2006. Please review the attached materials and notify our office of any concerns, comments or conditions of approval which you feel should be associated with these projects no later than 3:00 p.m., Wednesday, March 1, 2006. Meeting dates may change without notice.

A staff/applicant meeting will not be scheduled unless requested by the applicant prior to February 27, 2006. Call Tara Moran at 333-7798 to schedule an appointment.

LDC06-00349 (Verdi Market) – This is a request for annexation of two parcels totaling ± 2.0 acres located ± 130 feet north of where Interstate 80 (Exit 5) crosses over U.S. Highway 40 (2855 U.S. Highway 40). Upon annexation the property will be zoned I (Industrial).

PLANNER: Cheryl Ryan, Senior Planner
NEIGHBORHOOD ADVISORY BOARD: Ward 5 - Northwest
CITIZEN ADVISORY BOARD: Verdi
APN NUMBER: 038-850-12 and 13
MEETING DATE: City Council - April 12, 2006

LDC06-00351 (Northgate 19 Easement Abandonment) - This is a request for an abandonment of $\pm 22,738$ square feet of easement originally granted by Document No. 2250339 to enable grading operations on adjoining parcels with the development of the Mae Anne fire station. The easement encumbers portions of lots 13-18 and parcel E of the Northgate 19 subdivision, Tract Map No. 4256.

ENGINEER: Chris Robinson, Senior Civil Engineer
NEIGHBORHOOD ADVISORY BOARD: Ward 2
CITIZEN ADVISORY BOARD: West Truckee Meadows
APN NUMBER: 208-682-01
MEETING DATE: City Council – April 5, 2006

10:00 a.m. LDC06-00347 (The Sharlands Planning Unit 1) – This is a request for: (1) a tentative map to create a development consisting of 80 triplex buildings containing 240 single family units; (2) a special use permit to allow: (a) a project with more than 50 units; (b) cuts greater than 20 feet in depth and fills greater than 10 feet in height; and (c) private streets (alleys); and (3) a variance to reduce the required distance between buildings from 20 feet to 10 feet. The ±21.8 acre parcel is located at the southeast corner of the intersection of Sharlands Avenue and Mae Anne Avenue in the Sharlands PUD (Planned Unit Development) zone.

PLANNER: Beverly Straub, Assistant Planner
NEIGHBORHOOD ADVISORY BOARD: Ward 5 – Northwest
CITIZEN ADVISORY BOARD: NA
APN: 039-112-24 and 039-112-26
MEETING DATE: Planning Commission – April 4, 2006

10:30 a.m. LDC06-00346 (Markridge Properties LLC) – This is a request for a special use permit for hillside development to allow an existing parcel to be split into 3 parcels. The ±3.92 acre site is located on the southeast corner of Susileen Drive and Natalie Street with frontage on Markridge Drive, ±950 feet northeast of its intersection with Susileen Drive in the SF15 (Single Family Residential - 15,000 sq.ft.) zone.

PLANNER: Kelly Sleep, Assistant Planner
NEIGHBORHOOD ADVISORY BOARD: Ward 1 – Southwest Reno
CITIZEN ADVISORY BOARD: West Truckee Meadows
APN: 018-261-24
MEETING DATE: Planning Commission – April 4, 2006

11:00 a.m. LDC06-00321 (BSC Mixed Use Residential Towers) – This is a request for: (1) a tentative map to develop a 394 unit condominium subdivision; and (2) special use permits to allow for: (1) hillside development; and (b) cuts of 20 feet or more. In addition to the condominium units, ±20,519 square feet of retail space and ±12,336 square feet of office space will be located within two towers which are ±492 and ±374 feet tall, respectively. 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 CB (Central Business) zone.

PLANNER: Vern Kloos, Senior Planner
NEIGHBORHOOD ADVISORY BOARD: Ward 1 – Southwest Reno
CITIZEN ADVISORY BOARD: West Truckee Meadows
APN: 011-112-03, 06, 07 and 12
MEETING DATE: Planning Commission – April 4, 2006

1:00 p.m. LDC06-00342 (Cricket Communications/Toulumne Dr) – This is a request for a site plan review to allow a wireless telecommunication facility to be installed atop an electrical distribution tower and its associated cabinet equipment at the base of the tower. The ±5.63 acre site is located on the south side of Lancer Street, ±190 feet west of Tuolumne Drive in the MF14 (Multi-Family - 14 units per acre) zone.

PLANNER: Beverly Straub, Assistant Planner
NEIGHBORHOOD ADVISORY BOARD: Ward 5 – Northwest
CITIZEN ADVISORY BOARD: NA
APN: 200-340-31
MEETING DATE: Site Plan Review

1:30 p.m. LDC06-00350 (Chris Lane Subdivision) - This is a request for: (1) a tentative map to develop a seven (7) lot single family residential subdivision; and (2) a variance to reduce the minimum lot width from 50 feet to ±36 feet on Lot #5 (southwest corner lot). The ±0.70 acre site is located on the south side of Chris Lane, ±375 feet east of its intersection with Neil Road in the IC (Industrial Commercial) zone.

PLANNER: Quincy Yaley, Planning Consultant, DD&A
STAFF COORDINATOR: Kelly Sleep, Assistant Planner
NEIGHBORHOOD ADVISORY BOARD: Ward 3 - East Reno
CITIZEN ADVISORY BOARD: Southeast Truckee Meadows
APN: 020-241-50
MEETING DATE: Planning Commission – April 4, 2006

2:00 p.m. LDC06-00354 (Virginia Lake Commons) - This is a request for: (1) a tentative map to develop a 184 unit single family attached townhome subdivision; (2) special use permits for: (a) a single family attached townhome subdivision with more than 50 units in the MF30 zone; (b) private streets; and (c) a custom street image plan; and (3) a variance to reduce the minimum building separation from 20 feet to 10 feet. The ±9.6 acre site is located south of the Eastshore Drive and Lymbery Street intersection (2490 Eastshore Drive) in the MF30 (Multi Family – 30 du/ac) zone.

PLANNER: Quincy Yaley, Planning Consultant, DD&A
STAFF COORDINATOR: Charles Fitzhugh, Associate Planner
NEIGHBORHOOD ADVISORY BOARD: Ward 2 - Central
CITIZEN ADVISORY BOARD: West Truckee Meadows
APN NUMBER: 019-100-04 AND 019-100-09
MEETING DATE: Planning Commission – April 4, 2006

EXHIBIT “17”

FILED
Electronically
02-03-2009:04:56:47 PM
Howard W. Conyers
Clerk of the Court
Transaction # 579452

EXHIBIT “17”

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-second Session
March 11, 2003**

The Senate Committee on Judiciary was called to order by Chairman Mark E. Amodei, at 8:09 a.m., on Tuesday, March 11, 2003, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark Amodei, Chairman
Senator Maurice E. Washington, Vice Chairman
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care

COMMITTEE MEMBERS ABSENT:

Senator Dina Titus (Excused)

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Bradley Wilkinson, Committee Counsel
Lora Nay, Committee Secretary

OTHERS PRESENT:

The Honorable Deborah A. Agosti, Chief Justice, Supreme Court
Judge Susan Deriso, Sparks Township (Department 1), Justice of the Peace,
Washoe County
Steve G. Holloway, Lobbyist, Associated General Contractors, Framing
Contractors Association, National Association of Women in Construction
Ivan R. "Renny" Ashleman, Lobbyist, Nevada Homebuilders Association,
Southern Nevada Homebuilders Association
Fred L. Hillerby, Lobbyist, American Institute of Architects-Nevada (AIA)

JUDGE SUSAN DERISO, SPARKS TOWNSHIP (DEPARTMENT 1), JUSTICE OF THE PEACE, WASHOE COUNTY:

I am here on behalf of the Nevada Judges Association to testify in support of S.B. 203. We actually asked for this bill. As you know, small claims is the peoples' court. It allows procedure for the average person to come to court inexpensively and without an attorney to collect on monies owed. This bill addressed a weakness in the law allowing defendants to defeat the purpose of a small claim by filing a possibly frivolous or an unrelated counterclaim that could technically deprive the small claims court of its jurisdiction. This would force the small claims litigants to either hire attorneys and proceed in a higher court or dismiss their action. I do not think this is the intent of small claims. The net result deprives the small claimants of their day in court. This bill would allow the small claims judge to avert this problem by going forward with the small claims matter and severing the counterclaim for refiling in either a formal justice court action or in a district court action. This, in effect, forces the counter to settle or have it addressed in the small claims arena. In addition, this allows the small claims litigants to have their day in court without reference to the counterclaims.

This bill also allows for the litigants to stipulate to the fact they would want the case to be heard in a higher court without the judge needing to take any action. Of course, if the counterclaim is bona fide, germane, and appropriate, the small claims judge does not have to sever the case and could send it up to the appropriate court. It just allows us to sever it if we feel this person is entitled to his or her day in small claims court. There is a justice court rule allowing for formal justice court actions to be severed if a counterclaim exceeds the justice court amount. It can be severed and the justice court case remains in justice court and the counterclaim would go up to district court. There already is a justice court rule in place for justice court cases. We are hoping to have one in the small claims arena for our small claims litigants. For the record, the secretary has a copy of the justice court rule (Exhibit C) reflecting the ability to sever the claim as well as the Nevada Supreme Court opinion outlining what the court felt the Legislature intended for the people's court.

SENATOR AMODEI:

Is there any other testimony on S.B. 203? Seeing none, we will close the hearing on S.B. 203 and open the hearing on S.B. 206, and refer to the mock-up provided (Exhibit D. Original is on file in the Research Library).

SENATE BILL 206: Makes various changes to provisions relating to mechanics' and materialmen's liens. (BDR 9-755)

STEVE G. HOLLOWAY, LOBBYIST, ASSOCIATED GENERAL CONTRACTORS, FRAMING CONTRACTORS ASSOCIATION, NATIONAL ASSOCIATION OF WOMEN IN CONSTRUCTION:

I am the executive vice president for the Associated General Contractors in Las Vegas. I am here on behalf of the sponsors for S.B. 206. For the record, those sponsors are: Associated Builders and Contractors, Associated General Contractors in Las Vegas, Associated General Contractors in Northern Nevada, the Framing Contractors Association, the Mechanical Contractors Association of Nevada, the National Association of Minority Contractors, the National Association of Women in Construction, the National Electrical Contractors Association, the Nevada Association of Mechanical Contractors, the Plumbing and Mechanical Contractors of Nevada, the Sheet Metal and Air Conditioning Contractors' National Association, the Southern Nevada Air Conditioning Refrigeration Service Contractors Association, and the Southern Nevada Home Builders Association.

This bill has been 4 years in the works. It was introduced and then withdrawn last session at the request of the development community as they felt they had not had sufficient input. For the last 2 years, we have been meeting with that portion of the community and other interested parties to hammer out certain refinements in this bill. We believe this bill is fair to all those it affects, the owners, the developers, the general contractors, the subcontractors, the equipment rental companies, and suppliers, et cetera.

This bill is an outgrowth of the Venetian, the Aladdin, and the Regent. Even though we have been working on it 4 years, I would simply point out the actions involving the lien law claimants over the Venetian construction are still in court, and those who have not gone bankrupt have settled for 30 or 40 cents on the dollar. The purpose of this bill is to prohibit the prospective waiver of a lien claimant's rights, and to confirm, clarify, and standardize the procedures and forms required for a waiver and release upon payment. The procedures for recording notice of lien and a surety bond, to release a lien, and the proceedings to adjudicate a lien. If you would like, Mr. Chairman, I can go through section by section and briefly describe what each section does.

SENATOR CARE:

I will disclose my law firm represents Bovis Lend Lease LMB (Lehrer McGovern Bovis) Inc., which built phase 1 of the Venetian; although we do not represent Bovis on matters related to the construction of the Venetian. In Section 2, would it say a subcontractor is an agent of the owner? Will you elaborate on how that would be?

MR. HOLLOWAY:

This is the current language in the existing statute. We debated long over whether to continue to include subcontractor in the definition of agent of the owner. There are times when the subcontractor can or may have control of the property, the improvement, or work of improvement. At that point in time, the subcontractor would be considered an agent of the owner.

SENATOR CARE:

Section 7 is about a disinterested owner, I understand the definition, but can you tell me what recourse a disinterested owner has? For example, I once represented a landlord who owned a shopping center where an electrician was recruited by a tenant and did some work. Then the tenant skipped out and never paid the electrician. A lien was filed on the shopping center itself.

MR. HOLLOWAY:

Disinterested owners, as soon as they learn the work is being done, should file notices as disinterested owners. The existing law and the proposed changes would then absolve the disinterested owner's property of any lien claims. They need to file the notice as soon as they become aware work is being done by the tenant. What the courts look at, and unfortunately there has been no Nevada Supreme Court decision in this area, are such things as whether the owner required the tenant to do this work or whether there usually is an allowance to do the work. The court will accept the fact this is a disinterested owner, although there have been one or two cases to the contrary. Now they look for evidence the owner required the work. If it was the owner who had the contract with the contractor, then the disinterested owner does not apply. However, if the contract is between the tenant and the prime contractor or subcontractor, then generally the provisions on disinterested owner would apply and the property would be absolved of any lien.

SENATOR CARE:

On section 21, about surety, my scribbled notes say "who is this," and "why not someone licensed to issue bonds in Nevada?" Section 21 subsection 1, says: "Is included in the United States Department of the Treasury's Listing of Approved Sureties; and ..."

MR. HOLLOWAY:

Yes, this language was recommended by the surety association. We used it because it gives a little broader reach on surety bonds, so you are not necessarily in this hard market, stuck with having to have an A-plus surety rating. You can drop down to what would be termed a B rating. The U.S. Treasury keeps up with the sureties and their financial standings and posts them much better than other standard agencies you look to to approve sureties. This is why this language is included. The surety would also have to be licensed in this State to do business.

SENATOR CARE:

In section 25, there is a subsection 2 saying, "A condition, stipulation or provision in a contract or other agreement for the improvement of property or for the construction, alteration or repair of a work of improvement in this state that attempts to do any of the following is void:" and then it lists several. There is also a provision in section 26: "Any term of a contract that attempts to waive or impair the lien rights of a contractor, subcontractor or supplier is void." What if somebody actually commenced an execution of the contract and work is actually performed, then someone says this contract is void. Could this happen?

MR. HOLLOWAY:

It says the provision would be void.

SENATOR CARE:

Just the provision?

MR. HOLLOWAY:

Yes, not the entire contract.

SENATOR CARE:

In section 28, the last line in subsection 2: "If a contractor or a professional is required to be licensed pursuant the provisions of NRS [*Nevada Revised Statutes*] to perform his work, the contractor or professional will only have a

lien pursuant to subsection 1 if he is licensed to perform the work." I am wondering if there is some sort of responsibility for somebody to ascertain whether this person has a license to begin with.

MR. HOLLOWAY:

I do not believe so, Senator. This would be a defense to an owner or a developer or general contractor or one of his agents in a lien proceeding, if he could point out the contractor who filed the lien was not licensed in this State. The lien would be invalid under this paragraph.

SENATOR CARE:

I know there have been some alterations in existing law for example, as to time factors. On page 14, line 19, it says, "Within 40 days after the recording of a valid notice of completion." It used to say "timely," and you came up with 40 days. There are a couple of other provisions in the bill where the time frame has been altered or even established, why did you do that?

MR. HOLLOWAY:

Once a project is completed, the existing law provides a notice of lien must be filed in 90 days. You will have already filed your notice of right to lien. If the owner files a notice of completion, the time frame in which to file a lien is shortened to 40 days. In this State, this has always been the law; we just clarified it. The primary changes in the other notices are twofold. One, in the notice on the right to lien, we have said in the past the law has required the lien be filed within 31 days once work is commenced on the property. In this bill, you can file that notice anytime prior to the completion of work. It is only good for the 31 days prior to when you filed it for the work you did in that period and for any work you did until the completion of the work of improvement. This gives a little more flexibility on the notice of right to lien.

The second notice we have required applies to residential projects only. Fifteen days before you file your notice of lien, you must file a notice of intent to lien. This is intended to give the owner on residential projects time to meet with you if your subcontractor and the general contractor failed to pay you, even though the owner had failed to pay the general contractor, and will give you time to clear this up before a lien is filed. As the houses are completed in a residential project, you want to turn them over and be able to sell them. If you have a lien on the property, and usually the lien will apply to the whole subdivision, you need to get that cleared before you can sell houses as they are

completed. This is to give that owner-developer an additional advance notice there is someone who intends to file a lien. It will give her or him a chance to get with the general contractor, subcontractor, or supplier and get it cleared up.

SENATOR WIENER:

In section 41 on page 27 around line 14, you have added some additional language proposed, would you explain what you are hoping to accomplish and would you be able to give us an example of what this would address?

MR. HOLLOWAY:

There has been an ongoing and continuing problem in the courts. The law was not clear and the practices of the different courts varied. We made it very clear if a lien is upheld, the lien claimant will be awarded, either on his or her lien or against the surety bond if one is filed, the lienable amount found due by the court, the cost of preparing and filing the lien including attorneys fees, and any interest that may be due on that amount. In the paragraph you are referring to, we also wanted to make sure if the lien was not upheld, the court could, at its discretion, award costs and reasonable attorneys fees to the owner or other person defending against the claim. In our amendment we say "prevailing party," rather than "owner" or "person," if the court finds the lien was not pursued by the lien claimant with reasonable costs.

SENATOR CARE:

In section 46, the preferential trial, after you have filed the Rule 16.1 mandatory pre-trial conference report, the joint case conference report, then you have the notice of demand for preferential trial setting. Looking at line 17 on page 33, it says, "Any supplemental discovery responses ..." I am wondering about the discovery requests which can be done at the case conference. I know these things are going to move quickly. What is the overall time frame for discovery? When do you actually make those first requests, and any supplemental requests and when do they have to be?

MR. HOLLOWAY:

We lengthened the time for preferential trial from 30 to 60 days and gave the court 60 days to schedule the preferential trial, as opposed to 30 days under the existing law. This extends the time you had to do whatever discovery you needed once you are notified of the lien and any request for a preferential date.

Senate Committee on Judiciary
March 11, 2003
Page 10

SENATOR CARE:

In a matter like this, the discovery requests are immediate?

MR. HOLLOWAY:

If the court will sign a preferential date, yes.

IVAN R "RENNY" ASHLEMAN, LOBBYIST, NEVADA HOMEBUILDERS ASSOCIATION,
SOUTHERN NEVADA HOMEBUILDERS ASSOCIATION:

We were participants in this 2-year process, involving not only the individuals named by Mr. Holloway, but also representatives of the title community and other affected members of the community. We sincerely believe this bill will greatly improve the ability to clearly follow the lien law of Nevada and it will be of some assistance in trying to avoid some of the major problems with liens we have seen. I do practice in this area personally and our present lien law is almost unreadable. The judges have proven this many times and so have attorneys. This will be easier to work with, at least for the 2-year period. It is worth trying the compromise we have agreed to in this process.

MR. HOLLOWAY:

We have introduced a cleanup amendment. You have been given the proposed amendments (Exhibit E and Exhibit F). Legislative Counsel Bureau (LCB) has reviewed the cleanup amendment at Chairman Amodei's request. Most of the changes in the amendment are just that, they are to clear up things the drafter had missed or things we thought needed to be clarified after we read the finished product. We have discussed the two major changes.

MR. ASHLEMAN:

In all fairness to LCB, this cleanup was mostly our afterthoughts.

FRED L. HILLERBY, LOBBYIST, AMERICAN INSTITUTE OF ARCHITECTS-NEVADA (AIA):

We are here to support the S.B. 206. In fact, my client asked me to monitor this bill and as I was sitting here today some questions arose in my mind. I would at least like to put on the record the more I read the bill, it was less clear. Let me give you the scenario arising in the case of an architect who is called to perform services for someone who owns a piece of land. The architect draws a set of plans with elevations and all that sort of thing showing how a very good commercial project could be developed. The owner does not pay the architect and does not do the improvement. However, the owner uses the architect's

plans to show to a potential buyer of that piece of property. This property has been enhanced by those plans.

If you read section 9 on page 2, it does say enhancement, but then as you read the following subsections they are just talking about buildings and mines and drilling of holes. In the case I have just given you that does not occur. I look at section 24, which talks about a work of improvement, and again it means the "entire structure or scheme of improvement as a whole, including, without limitation, all work, materials and equipment ..." I am not finding things in here an architect would have a lien right against a piece of property no dirt had ever been turned upon, but for which he had, in fact, provided services that did enhance the potential value of the property to the subsequent owner. You could look at the agent of the owner, an engineer, a land surveyor. These are also people who could provide services that would improve the value of the land or enhance the value of the land. The original owner may never do anything to move a piece of dirt, but may use those plans to show and enhance the value of property as it is sold. As you are considering these amendments, I would like this question on the record. I do not want to slow down the progress of this bill because they have done a lot of work and we would like to see it passed and the architects included.

VICE CHAIRMAN WASHINGTON:

I understand what you are saying. Even though they are listed in section 2 as the agent of owner, conceptually you have a plan or an architect a developer could use to serve a plot of dirt or piece of land to a perspective buyer and then not get paid for it.

MR. HILLERBY:

I am concerned the way this new language is, he might not have a right to.

MR. ASHLEMAN:

In that regard we did not change the act. The language Mr. Hillerby is concerned about is existing language. It does not have anything to do with our changes. Our recollection is if you have a contract to design a building on a piece of property, this is the type of improvement or enhancement which will allow the filing of a lien.

VICE CHAIRMAN WASHINGTON:

So, it is current language then?

Senate Committee on Judiciary
March 11, 2003
Page 12

MR. ASHLEMAN:
That is right.

VICE CHAIRMAN WASHINGTON:
I guess the problem is solved. Is that all right Mr. Hillerby or would you still prefer ...

MR. HILLERBY:
I am not sure the old law handled this, so let me verify and come back again. I have no intent to delay this bill.

VICE CHAIRMAN WASHINGTON:
If you work with Mr. Holloway and Mr. Ashleman and bring back some type of language, I am sure the Chairman will entertain it. With no further testimony we will close the hearing on S.B. 206.

CHAIRMAN AMODEI:
Returning to S.J.R. 5, the first bill we heard today, proposing to amend the constitution to allow the Legislature to establish an intermediate appellate court, to start the procedure to do that. What is the pleasure of the committee?

SENATOR WIENER MOVED TO DO PASS SENATE JOINT RESOLUTION 5.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TITUS WAS ABSENT FOR THE VOTE.)

CHAIRMAN AMODEI:
Moving to S.B. 203 concerning the separation and adjudication of certain small claims actions, what is the pleasure of the committee?

SENATOR CARE MOVED TO DO PASS S.B. 203.

SENATOR WIENER SECONDED THE MOTION.

EXHIBIT “18”

FILED
Electronically
02-03-2009:04:56:47 PM
Howard W. Conyers
Clerk of the Court
Transaction # 579452

EXHIBIT “18”

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session
May 13, 2005**

The Committee on Judiciary was called to order at 8:17 a.m., on Friday, May 13, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Ms. Barbara Buckley
Mr. John Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Warren B. Hardy II, Clark County Senatorial District No. 12

STAFF MEMBERS PRESENT:

René Yeckley, Committee Counsel

[Steve Holloway, continued.] After meeting with the surety associations, we limited the bonds for liens to the face amounts of those bonds. We also provided that you must file against the bond within nine months of when it is recorded. Currently, the surety associations in the industry are having a problem, because the courts have allowed people to come in as late as six years after a bond has been recorded and file against it. This is strange, since in Chapter 108 of NRS, you only have six months after a project is completed to file your liens, and then the bond is used to bond around those liens, so that the liens then attach to the bonds rather than the surety.

A second thing we have attempted to address is confusion regarding change work, which is always the subject of most litigation in our industry.

Finally, a bill was brought before this Committee earlier in the Session. We assured Chairman Anderson that we would meet with the sponsors of that bill, which died in this Committee, and we would try to take care of their problem. They wanted to lease property in Boulder City to a power company that wished to build another facility. It was a \$440-million project. It didn't seem appropriate to them that this particular lessee, who had the financial means, should either have to post a bond, which would have been for \$660 million, or set up a construction control account.

We have made provision for the owner, as a disinterested owner, to waive their rights to file a notice of non-responsibility and therefore put the lessee in the place of the owner. The protection to the contractor in those cases is that they can then lien the real property, the ground itself. They do not need the benefit of either the surety or the construction control account.

Chairman Anderson:

Are we hurting the contractors and subcontractors who depend upon this? They could go out of business if there isn't a bond.

Steve Holloway:

No, we are not. The way we have written S.B. 343, the land itself would become lienable and serve as at least partial collateral, as well as any improvements that had been made on that land.

Chairman Anderson:

Even in a place where the underlying owner is the city, such as the case in Boulder City?

Steve Holloway:

Yes, sir. If they filed a waiver, then they are waiving their immunity to be liened for that property. This also applies to other entities such as the Airport Authority, which is also leasing land through private developers.

Richard Peel, Legislative Advocate representing the Sheet Metal Air Conditioning Contractors of America, the National Electrical Contractors of America, and the Mechanical Contractors of America:

These three trade organizations have a number of union subcontractors as members. In addition to that, I have a host of contractors and subcontractors that our law firm represents. We have been actively involved in getting contractors' and subcontractors' laborers paid for work, materials, and equipment furnished for the improvement of projects located in the state for a number of years. I personally have experience with respect to the Venetian, the Aladdin, the resort of Summerlin, and most of the big projects you have heard about in the newspapers where there has been controversy regarding payment. One of the things we have learned is that our mechanics' lien statute is there for a purpose. It helps to get people paid.

In 2003 we did a major overhaul of the statute, which is there for a purpose. It is there to assist people who have improved real property so that they can get paid for their efforts. That is something that has proven to work over the years. In fact, our Nevada Supreme Court has consistently held that our lien law should be liberally construed in favor of lien claimants.

When the Aladdin started having its financial woes, my firm recorded approximately 125 mechanics' liens on behalf of about 30 separate contractors and subcontractors who had not been paid. As a result of the liens that were recorded, every one of my clients ended up getting either full payment or partial payment through the lien process. I would like to say that the lien process does work. Do we need to have some clarifications of the ambiguities and so forth that currently exist? Yes. Mr. Holloway spoke of some of the problems with surety bonds and the surety industry in general, and we do need to have some cures to the current problems that exist.

Section 12 confirms that a lien claimant's lien rights pertain to labor, materials, and equipment furnished, as well as that to be furnished. That is an important clarification in the statute, because many people go to great expense to purchase or fabricate materials for the improvement of the land, and they should be able to lien for that. Sections 12 and 13 confirm that a lien claimant has a lien for additions, changes, and extras whether priced lump sum, unit price, or tracked on a time and materials basis. This is a clarification of the

2003 legislation, when we made it clear that we did have the right to lien for extra changes and additions.

[Richard Peel, continued.] Section 13 confirms that the 15-day notice of intent to lien, which is applicable to residential projects and includes apartment houses, does not pertain to commercial projects. Section 14 confirms that a lien for closure action will not be staked pending an appeal, which allows the lien claimant to go ahead and have his case adjudicated while the appeal on a challenge to a lien is pending.

Section 15 requires property owners to serve the lessee and lessee's prime contractor with a notice of nonresponsibility that the owner may have caused to be recorded. This allows the prime contractor to then notify other contractors and lien claimants of the existence of the notice of nonresponsibility. Subsections 4 and 5 of Section 15 allow a lessee to obtain the removal of liens that may be recorded against tenant improvements by prospectively recording surety bonds or by establishing a construction control fund for the security of the lien claimant. The Chair had asked about this and asked whether this was satisfactory security. We believe it is. We think that either the land, the construction control funds, or a prospective surety bond would be a good way to secure lien claimants and the right to get paid.

Section 17 modifies the definition of interest and provides that the prevailing lien payment be paid at 4 percent over prime. Subsection 4 also allows an owner to opt out of the requirement that a lessee provide either a prospective surety bond or, alternatively, a construction control fund for the security of the lien claimant. Mr. Holloway briefly touched on this, but owners both on private property and where a public body is leasing the property for a nongovernmental purpose would be able to opt out such as that the lessee is not required to have that construction control fund or the surety bond. The land itself would be the security to lien claims.

Section 18 allows lien claimants to join an ongoing lien for closure action by filing a statement of facts. Sections 19 and 20 confirm that a surety liability and a surety bond are limited to the penal sum, as Mr. Holloway discussed. Section 19 allows a principal to record a surety bond prospectively in an amount equal to one-and-a-half times the amount of the prime contract. Section 25 confirms that a provision in a contract is against public policy and is void and unenforceable, if the provision requires a contractor or subcontractor to waive or release damages, delays, or impacts under certain circumstances or conditions.

[Richard Peel, continued.] Section 26 limits joint check payments to a lien claimant and another joint payee in the same chain of privity. Section 26 also modifies the four waivers and release forms that our industry currently uses for releasing or discharging your rights to lien. It makes certain that you are only releasing the amount of the payment received.

Finally, Section 2 defines consequential damages in more detail. These are the main highlights that the Chairman had asked for with respect to the bill.

Assemblyman Horne:

In Section 5 of S.B. 343, concerning construction control, it calls for a provision that shall disburse money to lien claimants. It seems they would be obligated to do this prior to any other litigation. If there is a dispute of payment, would they pay this anyway?

Richard Peel:

The answer to your question is that the word "meritorious" in our amendment has been replaced with the word "legitimate." If you look at the definition of the word legitimate in *Black's Law Dictionary* or in *Webster's Dictionary*, it talks about a viable claim or a claim with merit. We believe that the word legitimate should go in there. If the construction control believes that particular lien claim is not legitimate, they have the right to go ahead and interplead the funds attributable to that lien claim to the court. The construction control in later provisions is entitled to be reimbursed for the reasonable cost in doing so. That way they are not going to be on the hook for wrongfully paying it, unless they pay a nonlegitimate claim.

To answer your question: yes, the construction control would be required to pay lien claims that may arise during the course of the project that are legitimate.

Assemblyman Horne:

If we are going to allow this construction controller the authority to make the determination on whether a lien is legitimate or not, who are going to be the construction controllers?

Richard Peel:

They currently exist in the industry. Almost every project of any considerable size uses a construction control. For example, I just built a building, and my bank required me to use Nevada Construction Services as my construction control. They do a decent job in going through and making sure that they have all the paperwork to protect the lender, the owner, and also to make sure that the work has been performed out there on the job. It is a normal and customary course that is currently being utilized.

Assemblyman Horne:

In Section 17, subsection 2, where you increase the interest rate plus 4 percent, you're increasing it from 2 percent?

Richard Peel:

That is correct.

Assemblyman Horne:

Why?

Richard Peel:

Our interest rates are so low right now, it is actually cheaper for many owners not to pay their debts and obligations, because the money that they are able to save or realize from not paying the debts and obligations is less expensive than it would be to borrow it out in the open market. So, we raised it in order to try and create a disincentive for nonpayment of monies that may be owed for work, materials, and equipment on a project. It is not too high, in our belief. In fact, we think it is a fair amount that will encourage owners to more promptly pay.

Assemblywoman Buckley:

I don't have a lot of sympathy for some of these folks that get work done on their property and then don't pay for it. However, NRS 108 applies also to a single-family homeowner who may get work done on their home by a fly-by-night contractor who then puts a lien on their home. What I would like for you to do is walk through the bill changes with that scenario in mind and tell me how those types of situations would be handled. I am worried about the 1.5 times amount for a single-family homeowner. The lease situation only applies in a commercial context, so that seems fine; but I'd like to focus on any other provision in NRS 108 that may affect a bad contractor with a single-family homeowner.

Richard Peel:

The sections that I think would answer your concerns are located throughout the bill. If a single-family, natural person homeowner has a concern regarding a lien that has been placed on their property, they have a right under NRS 108.2275 to challenge that lien by way of what is called an "order to show cause." That particular statute has been around since 1995. It has worked to the extent that the lien is not meritorious and was not timely recorded, meaning that notice had not been properly given pursuant to the statute. That is one of the mechanisms available. As you correctly note with respect to the lessee aspect of it, that really doesn't come into play, but we really didn't change the surety bond aspect as it pertains to the riddance of liens that may be recorded against real property in the future.

[Richard Peel, continued.] We added a new provision that allowed you to record surety bonds prospectively so that liens would attach to that surety bond rather than the land. With respect to a homeowner, they still have the right to get a surety bond to get rid of liens against their own property. As for a natural person, they are treated, to some extent, similar to other types of owners of property, and knowing that, if they are going to have people work on their property, they need to get waivers and releases. In fact, the Contractor's Board does a very good job in NRS 624.600 of requiring contractors to notify natural person homeowners of their rights and what steps they should take in order to protect their property. It is a statutory mandate that general contractors on a residential project have to give these notices. That is another place that they can be educated or notified of what their rights are.

If they get their waivers and releases, make sure who is on the project, and utilize the statutory remedies available through the Contractors Board, natural persons have a lot more remedies than commercial owners do, with respect to mechanics' liens.

Assemblywoman Buckley:

The 1.5 surety amount would apply to them, too?

Richard Peel:

The 1.5 surety amount that you are talking about has always been in the statutes since the date that the mechanics' lien statute enacted the right to record a mechanic's lien release bond. That is really what it was. That came up over 30 years ago. We did not change or modify that surety amount with respect to a natural person homeowner.

Assemblywoman Buckley:

With regard to the release of that amount, was that the language change?

Richard Peel:

If you are going to build a custom home and you do not want any liens to attach to your property, you could have your general contractor obtain and record a prospective mechanic's lien release bond, and that bond would need to be one-and-a-half times the amount of the prime contract. That would give you the protection of knowing that your property would not be subject to liens, and instead, those liens would attach to that bond.

Assemblyman Horne:

Why did you want to remove the 15-day notice requirement for commercial construction?

Richard Peel:

In 2003, when we were negotiating the mechanics' lien statute revisions, the Southern Nevada Home Builders had a concern that they would like to get notice prior to the date that the lien is actually recorded. Through discussions and negotiations, that language was inserted in 2003. We are not changing anything with respect to the language. What we have modified is simply to clarify that apartment houses are a residential project as set forth in that particular subsection of NRS 108.226, and therefore, apartment houses would need to also be the subject of the 15-day notice of intent to lien, because they do pertain to residential structures. With respect to commercial projects, they have never been required to give a 15-day notice.

Starting out with Section 2, there are a couple of changes to that particular provision that would delete the word "or" and add a comma, and delete the word "significant" and add the word "impact." With respect to Section 4, which is the section that deals with a lessee's obligations in the event that it is leasing real property, we have modified several of the provisions and deleted certain language that was set forth, mainly as a result of discussions and negotiations. Certain other groups felt that the language that was set forth in subsection 2 needed to be revised. We did that by adding a new subsection 4, which is discussed on page 3 of the amendment (Exhibit E), and that is the main highlight of that particular section.

With respect to Section 5, which is discussed on page 4 of the amendment, we discuss what type of notice needs to be given by a construction control and who it needs to be given to. We also discuss what a construction control's obligations are in subsection 5, on page 4. With respect to Section 12, which modifies NRS 108.222, we made certain lien rights pertain to materials, equipment, and work furnished, as well as that to be furnished. On page 5 of our amendment (Exhibit E), we have also made certain that lien rights would apply to additional, extra, or changed work, materials, or equipment. This is a term of art in the industry, and it is very important that this language be put into the draft in that format.

Chairman Anderson:

Would you like the bill drafter to come fairly close to your language? Is that what you are trying to say?

Richard Peel:

Yes. In Section 13, we have cleaned up the actual form that is being used to record a notice of lien by adding the words "additional, extra, or changed" in subsection 1. The rest of the changes set forth are to clarify and make certain that you have a lien for work, materials, and equipment to be furnished. In

subsection 7, that applies to Mr. Horne's question regarding commercial versus residential, and we have added the words "nonresidential" versus the word "commercial" as it is currently set forth. Section 15 modifies the statute that pertains to the notice of nonresponsibility and provides that an owner must give that notice to a prime contractor and a lessee. It also provides the method for the prime contractor to give notice to the lower tier trades. In subsection 2, we have modified the definition of "disinterested owner." We believe the current language that is set forth in the statute has too many exceptions to the exception. We are trying to make certain that it is understood and a court can easily understand what the intent of the Legislature was.

[Richard Peel, continued.] Section 16 has the same type of cleanup work with respect to lien rights from materials, work, and equipment to be furnished. With respect to Section 24, which is the notice of right to lien section, we are asking that the changes that were proposed in the first reprint be restored to the current statutory language as set forth in subsection 3. With respect to Section 25, we are asking that the language that was set forth be changed to our proposed language. This would relate to delays, acceleration, disruption, or impact-type events that may arise with respect to a project.

Section 26, subsection 1 relates to the joint pay rule, and we are asking a change be made of that. We added a new section on the last page of our proposed amendment that would modify the definition of owner to include the state or political subdivision of the state, or an incorporated city or a town, if they lease property and it is being used for a nongovernmental purpose, and also to clarify that if a private person owns land and leases it to a governmental body, that particular land is also subject to mechanics' liens. In subsection 2, which defines what an owner is not, we have clarified that if the land being leased is the subject of a governmental purpose, it would not be the subject of an owner, meaning the definition of an owner.

Assemblywoman Ohrenschall:

In which section did you use the phrase "term of art"?

Richard Peel:

It was number 5 on page 5 of the amendment (Exhibit E). The words we are asking to have inserted are "including any additional, extra, or changed" work, materials, or equipment.

Assemblywoman Ohrenschall:

That is a term of art in the industry?

Richard Peel:

When you talk about additional, extra, or changed work, those are significant phrases with respect to construction practices.

Assemblywoman Ohrenschall:

What exactly does that mean within the industry?

Richard Peel:

It is work that is outside the scope the contractor or subcontractor has contracted for. It is in addition to the original contract.

Assemblywoman Ohrenschall:

Thank you. I just wanted to be sure I understood.

Chairman Anderson:

On page 3 of the amendment (Exhibit E), relating to the changes in number 4 of your number 15—the reference to NRS 108.245—“within 10 days after the owner’s receipt of a notice of right to lien or 10 days after the date the owner records...” Is that consistent with other sections in the statutes?

Richard Peel:

Yes. This is simply providing that if an owner chooses to opt out, they would give a copy of that notice of waiver of NRS 108.234 to any lien claimants that may serve that owner with a notice of right to lien during the course of the project.

Chairman Anderson:

We are not cutting down the window of opportunity for somebody. This already exists in current statute?

Richard Peel:

No, Mr. Chairman.

Renny Ashleman, Legislative Advocate, representing the Southern Nevada Home Builders Association:

We wish to emphasize the importance of having the waiver be something that is optional on behalf of the landowner, because we are bringing public bodies into this, and we don’t want them to be automatically waiving their right to be immune from liens. For the first time, we probably have this so that a notice of nonresponsibility actually could work, so that an owner might have some rights in these matters. If we make an automatic waiver of it, we have destroyed the value of a notice of nonresponsibility.

[Renny Ashleman, continued.] We think this more carefully balances things. It leaves the question of the waiver and which way you might have a notice of nonresponsibility done as a matter of negotiations, and that is where we appropriately think it should be. I am principally worried about protecting the governments in this area, and I might add in that regard that I am on the State Public Works Board and that I also represent the City of Henderson. Because of the lateness of the negotiations here, I wasn't able to get official authority from them on this issue, but I am certain that they would find, as I do, that it is extremely important that it be a matter of a waiver and not automatic.

Karen Dennison, Legislative Advocate, representing Semptra Generation, San Diego, California:

We represent the lessee's point of view and are in complete agreement with what Mr. Ashleman said regarding the fact that where you have a lease, the owner would have the discretion to waive or not waive its rights under the notice of nonresponsibility statute. We feel that in a commercial setting, as these normally are, the bargaining power between the owner and the lessee would be sufficient, so that the owners could protect themselves in other ways by requiring the lessee to provide guarantees, bonds, or other forms of security. We are in complete support of the amendment (Exhibit E) and especially with respect to what Mr. Ashleman said.

Vicki Mayes, City Manager, City of Boulder City, Nevada:

We feel the compromises reached through the amendments here today are good balances that protect our City's interest, yet protecting the interests of the contractors and subcontractors. We fully support the amendments that have been presented this morning.

Chairman Anderson:

This Committee, while recognizing the unique nature of Boulder City, would still like the City to play by the State's rules. We want to make sure contractors, homeowners and, particularly, subcontractors are protected. The City feels that their needs will be met?

Vicki Mayes:

They will, and we agree completely.

Jack Jeffrey, Legislative Advocate, representing the Southern Nevada Building and Construction Trades Council:

We support S.B. 343. It is important for the health of the industry. It is important that our people be paid.

Michael Newman, Legislative Advocate, representing the National Association of Industrial and Office Properties (NAIOP) and Trammell Crow Company, Las Vegas, Nevada:

We appreciate the work that has gone into this bill and support the bill in most regards. There are certain provisions of the bill that cause us concern, primarily those which require a lessee to post a surety bond and to establish a trust account. Our concern is very specific. There are instances in which folks hold ground leases for large parcels of land for multiple years, and our concern relates to the fact that the term "lessee" is not clearly defined to exclude those ground lessees.

The second issue we have a concern with is the fact that disbursements for construction distribution accounts are defined, as Mr. Peel said, as being payable once a legitimate claim has been made. We do not feel that the term "legitimate" has been properly or appropriately defined, and we would like to have a discussion on that.

Chairman Anderson:

I have a letter that was addressed to Mr. Holloway and signed by Mr. Rice (Exhibit F). We have distributed that. Are your concerns raised in this letter?

Michael Newman:

They are generally raised in that letter. We appreciate the chances we had to talk with Mr. Holloway; however, our concerns are not adequately addressed.

Chairman Anderson:

Do you have a written document you are planning on submitting?

Michael Newman:

We posed all of those concerns in detail to Mr. Holloway. This letter does represent those concerns. We can prepare something additional and submit it within a couple of hours if necessary.

Robert A. Snow Jr., President, Thomas and Mack Development Group, Las Vegas, Nevada:

I would like to use this letter (Exhibit F) as the format over the next couple of minutes. My first point regards ground leases. Our proposed language and the language we have discussed with Mr. Holloway would indicate that if there is a ground lease of 10 years or greater, the ground lessee would be termed a noninterested or disinterested owner. The people sitting here with us and our firm, combined, have built over ten million square feet of industrial offices, which have a value of \$1 billion or greater. We are the lessees of ground leases

with the Department of Aviation. We feel this particular area has not been covered to our satisfaction.

[Robert Snow, continued.] My second point regards the distribution from construction distribution accounts. In talking to Nevada Construction Services this morning and to Ann Dwyer, the senior vice president, she indicated that the word "legitimate," in her opinion, is somewhat subjective and would make it difficult for her to automatically distribute on a claim made by a party that has liened the property. The language we proposed to Mr. Holloway would indicate that the distributing service would do so upon a court decision that it is a legitimate claim and could then be paid out of the construction services.

My third point, which deals with finance, has been met and we appreciate that being struck. The fourth point in the letter indicates the posting of the required surety bond or funding of a construction account automatically renders the landlord a disinterested party. We believe if the lessee of space, whether it is retail, office, or industrial, posts this bond or funds a construction account, the landlord, including the long-term lessee, should be exempt from further language.

In Section 15, the process of posting a notice of nonresponsibility is very cumbersome. In fact, preliminary lien notices regarding the Department of Aviation's ground leases sometimes go to the ground lessee, being the Department of Aviation, and sometimes to the ground lessor, being ourselves as the developers. We would like to see the word "or" placed under paragraph 14(a).

Chairman Anderson:

Mr. Snow, if you wish to put this proposed amendment in, you need to put it in writing and submit it right away. Did you raise these concerns when the bill came out of the Senate several weeks ago? [Mr. Snow answered in the affirmative.] Did you raise those questions during the Senate hearing on S.B. 343? [Mr. Snow answered in the negative.] Why not?

Robert Snow:

Because we received notice very late and could not put our thoughts together at that point.

Chairman Anderson:

When S.B. 343 passed from the Senate to the Assembly, did you have anyone participating up here? On the face of the bill it states that the bill was introduced on March 24, 2005. How come you didn't have somebody here participating?

Michael Newman:

When we read S.B. 343 the first time we saw the word "lessee," and quite frankly, it did not dawn on us that the word lessee was not so clearly defined as to exclude ground lessees and ground leases. Typically, that term would refer to someone who is leasing space in an office or a retail center and building out tenant improvements, not building infrastructure and physical buildings and so forth. When we realized that the term could be interpreted differently than we had anticipated, we contacted Steve Holloway immediately. It has been about three weeks since we began these conversations.

Steve Holloway:

I would like to point out that I have been trying to work with NAIOP for the last three weeks. They are right. They did contact me shortly after this bill passed into the Assembly. We have tried to incorporate as many of their concerns as we can.

Chairman Anderson:

I think it would make the Committee feel more comfortable if their concerns were addressed. I don't think any of us like to see a bomb dropped at the last second, especially when everything we are dealing with needs to be out of Committee a week from today. This is not an exempt bill.

Steve Holloway:

I'll be happy to do that.

Chairman Anderson:

We are adjourned [at 10:53 a.m.].

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Attaché

RESPECTFULLY SUBMITTED:

Terry Horgan
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 13, 2005

Time of Meeting: 8:17 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
S.B. 172	B	Fidelity National Title	Proposed Amendments to S.B. 172
S.B. 444	C	Bob Faiss/Palms Casino Resort	Proposed Amendments to S.B. 444
S.B. 444	D	Bob Faiss/Palms Casino Resort	Proposed Amendments to S.B. 444
S.B. 343	E	Senator Warren B. Hardy, II / Associated General Contractors	Proposed Amendments to S.B. 343
S.B. 343	F	Robert A. Snow/National Association of Industrial and Office Properties	Letter to Steve Holloway with issues and concerns regarding S.B. 343

EXHIBIT “19”

FILED
Electronically
02-03-2009:04:56:47 PM
Howard W. Conyers
Clerk of the Court
Transaction # 579452

EXHIBIT “19”

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

SAM A. CANIGLIA
President

September 1, 2005

Mayor Robert A. Cashell, Sr.
City of Reno
P.O. Box 1900
Reno, NV 89505

Dear Bob:

I want to take this opportunity to thank you for taking time out of your busy day to meet with Dick Johnson and myself last Thursday August 25, 2005, regarding my upcoming project on Court and Island Streets. And then again, on Monday August 29, 2005, on such short notice, you afforded my partner, architects and some of my staff an additional opportunity to meet with you and John Hester, the Director of Community Development. With this type of support our project is sure to be a success.

On a personal note, I asked Marcia after our Monday meet how your wife was doing and she informed me that she is doing well. That's GREAT.

Again, many thanks for your time and support for our upcoming project.

Sincerely,

Sam A. Caniglia

SAC/ad

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EXHIBIT “20”

FILED
Electronically
02-03-2009:04:56:47 PM
Howard W. Conyers
Clerk of the Court
Transaction # 579452

EXHIBIT “20”

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

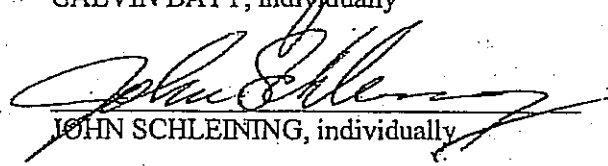
By: 

Calvin Baty
Manager

Dated: December 8, 2006


CALVIN BATY, individually

Dated: December 8, 2006


JOHN SCHLEINING, individually

Subj: FW: BSC Financial and Individual Indemnities
Date: 12/12/2006 2:50:59 PM Pacific Standard Time
From: choward@halelane.com
To: rjohnson@metzkerjohnson.com, rkj4702@aol.com

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

From: Craig Howard
Sent: Tuesday, December 12, 2006 8:15 AM
To: 'djohnson@metzkerjohnson.com'
Cc: Calvin Bosma (E-mail); Michele Powell (E-mail)
Subject: BSC Financial and Individual Indemnities

Dick:

Attached below is the executed Indemnity Agreement regarding the Architect's Mechanic's Lien. Please forward to Dr. Iliescu.

As you know, BSC Financial is attempting to close the purchase of Property shortly and payoff the entire amount of the lien even though some of the Schematic Drawings are not completed.

Please call if questions regarding the Indemnity.

Craig

R. C. <<BSC Indemnity Agreement.pdf>> aig Howard, Esq.

Hale Lane Peek Dennison and Howard

5441 Kietzke Lane, 2nd Floor

Reno, Nevada 89511

Phone: (775) 327-3000

Fax: (775) 786-6179

Visit our website at www.halelane.com

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ILIESCU000336

EXHIBIT “21”

FILED
Electronically
02-03-2009:04:56:47 PM
Howard W. Conyers
Clerk of the Court
Transaction # 579452

EXHIBIT “21”

HALE LANE

ATTORNEYS AT LAW

5441 Kibitz 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. Dermison
R. Craig Howard
Stephen V. Novacek
Richard L. Elmore
Richard Bennett
Robert C. Anderson
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N. Patrick Flanagan
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Dora V. Djiliazova
Simon Johnson*
Sarah E. L. Chao
Helen E. Mandrosian

Of Counsel

Roy Farrow
Pauline Ng Lee
Andrew Pearl

*Admitted in 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) 322-2500 | Facsimile (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-8000 | Facsimile (775) 684-6001

00MA1PCDOCSHLRND00CSW966241:00MA1PCDOCSHLRND00CSW966241

JA0794

ILIESCU000133

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

EXHIBIT “22”

FILED
Electronically
02-03-2009:04:56:47 PM
Howard W. Conyers
Clerk of the Court
Transaction # 579452

EXHIBIT “22”

samcaniglia

From: "Sarah Class" <sclass@halelane.com>
To: <samcaniglia@sbcglobal.net>
Cc: "Danielle Bacus-Aragon" <dbacusaragon@halelane.com>
Sent: Tuesday, November 29, 2005 2:57 PM
Subject: AIA Contract – Additional Language

Sam:

I enjoyed meeting you this morning. As discussed, below is suggested language to add to section 1.3.2.2 of the B141:

For purposes of this Section 1.3.2.2, Architect shall be deemed in default if: (a) Architect shall fail to keep or perform any of the terms, obligations covenants, agreements or conditions contained herein, and such default continues for a period of thirty (30) days after notice by Owner 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) Architect 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 provision 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 Architect.

I will call Nathan when I receive the proposed modifications to the building code. Please let me know if you have any questions or need further assistance.

Sarah

Sarah E.L. Class, Esq.
Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
Telephone: (775) 327-3000
Facsimile: (775) 786-6179

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11/30/2005

JA0797
STEPPAN 003

samcaniglia

From: "Sarah Class" <sclass@halelane.com>
To: "Calvin Baty" <calvin@decalcustomhomes.com>
Cc: "samcaniglia" <samcaniglia@sbcglobal.net>; "Danielle Bacus-Aragon" <dbacusaragon@halelane.com>; "Doug Flowers" <dflowers@halelane.com>
Sent: Friday, November 18, 2005 12:01 PM
Subject: RE: AIA Contract

Calvin-

141

As indicated in my last message, the AIA B~~151~~ contract that you sent us incorporates additional terms and conditions from a separate AIA document (the A201). This is the "General Conditions" contract, which, in addition to the B151 and the construction contract, forms part of the agreement between the parties. My assistant Danielle will be emailing you a sample of this document for your reference. My comments on the A201 are as follows:

1. Paragraph 2.2.1 -- You may not want to have to furnish financial information to the contractor. Also under paragraph 14.1.1 the owner's failure to provide this information may entitle contractor to terminate the contract. ✓
2. Paragraph 3.2.3 -- You should delete the word knowingly from the last line of this paragraph (as it would seem to preclude recovery for the contractor's negligence).
3. Paragraph 3.3.1 -- This paragraph gives the architect authority to direct the contractor to proceed with work even if the contractor determines it is unsafe, but makes the owner solely responsible for any resulting damage. This paragraph should be revised so that either the architect should be responsible for the damage, or the owner should have the authority to direct the contractor to proceed with work. ✓
4. Paragraph 3.10.3 -- Contractor should perform the work in accordance with the most recent approved schedule submitted to owner and architect.
5. Paragraph 3.18.1 -- The contractor's indemnity in this paragraph should cover loss of use in addition to the other delineated items; also, we should remove the limitation that restricts the indemnity to negligent acts of the contractor. ✓
6. Paragraph 4.3.10 -- This paragraph limiting the owner's recovery of consequential damages should be deleted; you may want to include in your construction contract a provision for liquidated damages in the event the contractor fails to perform on time and in accordance with the construction contract. ✓
7. Paragraph 4.6.4 -- The owner should be able to join the contractor and the architect in a single action. The language in this paragraph precluding joinder should be deleted, and the paragraph should provide that joinder is permitted. The same changes should be made to paragraph 1.3.5.4 of the AIA B151. ✓
8. Paragraph 5.2 -- This provision should be redrafted so that the owner has the absolute right to approve or disapprove the subcontractors performing work on the project (the language referring to reasonable objection should be removed).
9. Paragraph 6.2.3 -- The owner is assuming responsibility for the costs incurred by the contractor for the acts of a separate contractor. This should be acceptable only if the owner can recover the cost from

11/21/2005

JA0798
STEPPAN 004

the contractor that causes the loss.

10. Paragraph 10.3.3 – The owner's indemnity should not include losses in any way caused by the indemnified parties (the language presently only excludes owner's indemnity from losses caused by the negligence of the indemnified parties). In paragraph 10.5 the language referring to negligence should also include gross negligence or willful misconduct.

11. Paragraph 11.4.1.1 – It may or may not be feasible for the owner to obtain the insurance coverage required by this paragraph.

12. Paragraph 12.2.2.1 – This paragraph provides that if the owner does not make a claim against the contractor within the first year following substantial completion of the project, the owner waives the right to do so. This provision should be deleted. The reference to the 1-year period in paragraph 4.2.1 should also be deleted.

13. Paragraph 13.2.1 – If you want to have the flexibility to assign the contract, this provision prohibiting assignment will need to be removed.

14. Paragraph 14.2.1 -- I would delete the language "persistently and repeatedly" in subsection 1, the word "persistently" in subsection 3, and the word "substantial" in subsection 4.

15. Paragraph 14.2.4. If the owner terminates for cause, any savings in completing the work should not have to be paid to the defaulting contractor.

Also I have an additional comment on the B151: you may want to require that the architect design the project within the budget (i.e. that he redraft the plans at no additional cost if the lowest bid exceeds the budget). This may take some negotiation with the architect if it is something that you want (since presumably he purposely did not include this provision). As requested below, I will work with Sam in implementing any changes that you would like.

Thanks

Sarah

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

From: Calvin Baty [mailto:calvin@decacustomhomes.com]

Sent: Wednesday, November 16, 2005 5:01 PM

To: 'Sarah Class'

Cc: 'samcaniglia'

Subject: RE: AIA Contract

Sarah,

Thank you for the noted suggestions. I will have my partner Sam Caniglia contact you directly about implementing your suggestions in final form.

Thanks,

Calvin

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

From: Sarah Class [mailto:sclass@halelane.com]

Sent: Monday, November 14, 2005 6:04 PM

11/21/2005

JA0799
STEPPAN 005

EXHIBIT “23”

EXHIBIT “23”

HALE LANE

ATTORNEYS AT LAW

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

FACSIMILE TRANSMITTAL SHEET

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

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

MESSAGE:

Greetings:

RETURN TO: Danielle Aragon

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

HALE LANE PEEK DENNISON AND HOWARD

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==ODMA\PC\DOCS\HLR\NOD\DOCS\49730411

JA0801

ILIESCU000135

Acknowledgement

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

Iliescu:

Date: 12-15-05

John Iliescu, Jr.
John Iliescu, Jr.

Date: 12-15-05

Sonnica Santee Iliescu
Sonnica Santee Iliescu

Date: 12-15-05

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

Date: 12-15-05

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

Baty:

Date: _____

Calvin Baty

Consolidated:

Consolidated Pacific Development, Inc.,
a Nevada corporation

Date: _____

By: _____
Sam A. Caniglia, President

Stephen C. Mollath
Nevada Bar No. 922
PREZANT & MOLLATH
6560 SW McCarran Boulevard, Suite A
Reno, NV 89509

ORIGINAL

FILED

2009 MAR 31 AM 9:48

HOWARD W. CONYERS

BY *[Signature]*
DEPUTY

Telephone: (775) 786-3011
Telecopier: (775) 786-1354

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

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

MARK B. STEPPAN,

Case No. CV07-01021

Plaintiff,

Department No. B6

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,

Consolidated with:

Case No. CV07-00341

Department No. B6

Third-Party Plaintiffs,

v.

CONSOLIDATED PACIFIC
DEVELOPMENT, INC., a Nevada
Corporation; DECAL OREGON, INC., an
Oregon Corporation; CALVIN BATY,

1 individually; JOHN SCHLEINING,
2 individually; HALE LANE PEEK
3 DENNISON AND HOWARD
4 PROFESSIONAL CORPORATION, a
5 Nevada professional corporation, dba
6 HALE LANE; KAREN D. DENNISON;
7 R. CRAIG HOWARD; JERRY M. SNYDER;
8 and DOES I thru X,

9 Third-Party Defendants.

10
11 **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY**
12 **JUDGMENT AND OPPOSITION TO DEFENDANT'S CROSS-MOTION FOR**
13 **PARTIAL SUMMARY JUDGMENT**

14 COMES NOW Plaintiffs, JOHN ILIESCU JR., SONNIA SANTEE, ILIESCU, AND JOHN
15 ILIESCU JR. AND SONNIA ILIESCU AS TRUSTEES OF THE JOHN ILIESCU, JR. AND
16 SONNIA ILIESCU 1992 FAMILY TRUST (hereinafter "ILIESCU"), by and through their
17 counsel, Stephen C. Mollath, Esq. of PREZANT & MOLLATH, and hereby submit the following
18 reply in support of their Motion for Summary Judgment and oppose the cross-motion of
19 defendant MARK B. STEPPAN ("STEPPAN"). This opposition is made and based on NRCP
20 56, NRS § 108.221 et seq., the pleadings, papers and transcripts on file herein, and the
21 following memorandum of points and authorities.

22 DATED this 26th day of March, 2009.

23 **PREZANT & MOLLATH**

24 By 

25 Stephen C. Mollath, Esq.
26 Attorney for ILIESCU
27
28

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I. INTRODUCTION

STEPPAN is asking this court to hold that his failure to serve a notice of intent to lien falls within an exception to the statutory rule. Mechanic's lien laws are intended to balance the rights of owners and contractors. Even though those laws are liberally construed to secure payment for those who improve the property of the owner, a lien claimant should at least be compelled to provide statutory notice of his intent to lien so that the owner has a clear opportunity to exercise his rights and understand his potential liability. The rule in most jurisdictions require a claimant's strict compliance with the procedural requirements of mechanic's lien statutes before granting liberal application of the statutes' remedial provisions.

An exception to notice was carved out to protect subcontractors who might not be able to discover the correct name or identity of property owner. STEPPAN has not asserted that he did not know or could not discover ILIESCU's identity. In fact, he knew of ILIESCU and his address. Additionally, Consolidated Pacific Development (CPD), and its subsequent assignee BSC (hereafter collectively referred to as "BSC") were contractually required to inform STEPPAN of the correct parties to lien, upon STEPPAN's request.¹ AIA Agreement § 1.2.2.1 (Exhibit 4 to Motion for Summary Judgment). That clause requires STEPPAN to take the first step to secure his rights under the contract. Similarly, Nevada statutes require STEPPAN to take the first step to secure his lien rights. Under these circumstances the proper question is not what ILIESCU knew about STEPPAN and when he knew it, but what STEPPAN knew about ILIESCU and when he knew it.

¹ ILIESCU was never informed of the Assignment of the Purchase Contract from CPD to BSC until after the Mechanic's Lien was recorded. It was BSC who contracted with STEPPAN, not CPD.

1 This case does not arise out of the same, more easily understandable, circumstances
2 as the lessor-lessee cases STEPPAN relies upon. Under the Agreements giving rise to the
3 instant vendor-vendee relationship, BSC was required to assume all the costs of development.
4 This allocation of risks is fair because otherwise if BSC failed to obtain approval, or failed to
5 obtain financing, ILIESCU not only would be deprived of his benefit of the bargain, but he
6 would be left with the financial burdens of a failed project that he did not initiate or control.
7

8 Unlike the lessor and lessee cases, where the lessee has a substantial, open, and in
9 some cases, recorded, interest in the property, BSC did not have even an equitable interest in
10 the property until the zoning approval condition was met (See Agreement ¶ 39(F)(Exhibit 2 to
11 Motion for Summary Judgment) and such interest would not mature until it closed escrow and
12 purchased the property. It cannot be assumed that ILIESCU would know that STEPPAN
13 would or could assert a lien for services performed before the contract became binding on the
14 parties, particularly when no construction had begun.
15

16 A chronology of the events in this case is helpful:

17 1. July 29, 2005, ILIESCU and CPD enter into the Purchase Agreement. The
18 Agreement provides:

19 31. Access to Property:

20
21 Seller agrees to provide access to the property to Buyer, inspectors, appraisers, and all
22 other professionals representing Buyer. Buyer shall indemnify, defend and hold Seller
23 harmless from any lien, loss, claim, liability, or expense, including (without limitation)
24 reasonable attorneys' fees and costs, arising out of or in connection with its activities
(including, without limitation, Buyer's agents and employees, and independent
25 contractors retained by or acting on behalf of Buyer (collectively, "Buyer's Agents") on
the Property. . . .

26 39. Additional Terms and Conditions:

27 . . .
28

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

4 Variance, Special Use Permit, Tentative Map, Zone change and Land Use Designations

5 2. January 17, 2006, ILIESCU signs owner's affidavit allowing Sam Caniglia to file
6 development-related applications with the City of Reno.

7 3. April 21, 2006, BSC and STEPPAN enter into the AIA Agreement. The AIA
8 Agreement provides at § 1.2.2.1:

9 Unless otherwise provided under this Agreement, the Owner shall provide full
10 information in a timely manner regarding requirements for and limitations on the
11 Project. The owner shall furnish the Architect, within 15 days, after receipt of a written
12 request, information necessary and relevant for the Architect **to evaluate, give notice
13 of, or enforce lien rights.**

14 AIA Agreement (Exhibit 4 to Motion for Summary Judgment).

15 4. October 4, 2006, project approved by Reno City Council.

16 5. November 7, 2006, Notice and Claim of Lien recorded by STEPPAN.

17 6. December 8, 2006, ILIESCU and BSC enter into indemnity agreement, pursuant
18 to the advice of HALE LANE, ILIESCU's and BSC's counsel.²

19 7. April 25, 2007, BSC files for bankruptcy protection; BSC claims its right to
20 purchase ILIESCU's property as its main asset.

21 8. BSC's bankruptcy dismissed because of its inability to obtain financing, ILIESCU
22 retains ownership of all equitable and legal interests in the property.

23
24
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26
27 ² ILIESCU is never advised that BSC will file bankruptcy nor the essential facts surrounding the Notice of Lien and
28 the inherent conflicts of interest that existed when HALE LANE represented both ILIESCU and BSC. These
issues are the subject of the Third Party Complaint filed by ILIESCU against HALE LANE.

II. DISCUSSION OF LAW

A. The Mechanic's Lien Statutes Should Not Be Construed To Condone A

Failure To Comply With Essential Elements Of The Statute. Mechanic's lien statutes are enacted and construed to strike a balance between the rights of workmen and materialmen who furnish labor and material for the improvement of real estate against the unfairness arising from the foreclosure of mechanics liens on property of unsuspecting owners. See Dolder v. Griffin, 323 N.W.2d 773, 780 (Minn. 1982) (buyers were owners entitled to right to lien notice because they had obtained an interest in the property enforceable by specific performance):

The balance is achieved by applying the following rule:

Mechanic's lien laws are strictly construed as to the question whether a lien attaches, but are construed liberally after the lien has been created. While the Mechanic's Lien Act is to be liberally construed as a remedial act, yet mechanics' liens exist only by virtue of the statute creating them, and such statutes must be strictly followed with reference to all requirements upon which the right to a lien depends.

Id. citing Annot., 76 A.L.R.3d 605, 618 (1977). Among the many cases applying this reasoning are: Everitt Lumber Co. v. Prudential Ins. Co., 660 P.2d 925, 926 (Colo. Ct. App. 1983) (subcontractor's failure to file an affidavit of service of notice of intent on main contractor fatal to his claim in spite of contractor's actual knowledge of subcontractor's intent); Crock Constr. Co. v. Stanley Miller Constr. Co., 613 N.E.2d 1027, 1031 (Ohio 1993) ("Failure to submit an itemized statement in accordance with these mandatory statutory requirements precludes relief as a matter of law on the basis of a mechanic's lien."); Tefco Constr. Co. v. Cont'l Cmty. Bank & Trust Co., 829 N.E.2d 860, 866 (Ill. App. Ct. 1st Dist. 2005) (where contractor failed to meet the statutory prerequisites to enforce its claim for lien the court would not liberally construe the Act to afford contractor a remedy because its claim for lien was

unenforceable); Tri-County Plumbing & Heating v. Levee Restorations, Inc., 720 P.2d 247, 254-255 (Mont. 1986) (contractor's lien given priority where he had complied with all the statutory requirements and had only made a good-faith mathematical error in the amount of the lien).

STEPPAN relies on Fondren v. K/L Complex, 106 Nev. 705, 800 P.2d 719(1990) to support his argument that he has an enforceable lien even though he failed to serve either a right to lien notice *or* a notice of intent to lien. In Fondren, the Supreme Court stated "[s]ubstantial compliance with the technical requirements of the lien statutes is sufficient to create a lien on the property where, as here, the owner of the property receives actual notice of the potential lien claim and is not prejudiced." Id. at 709, 800 P.2d at 721. This statement indicates that **both** substantial compliance with the statute **and** actual notice of the potential lien claim are required to validate a lien when a lien claimant has failed to serve a right to lien notice on the property owner. Additionally the Supreme Court recently stated:

[T]he complete failure to meet a specific requirement was found not to constitute substantial compliance. For example, in Schofield v. Copeland Lumber, [101 Nev. 83, 692 P.2d 519 (1985).] this court held that a supplier failed to substantially comply with the mechanic's lien statute because its notice to the property owner completely failed to include any information about the material terms of the supplier's agreement with the contractor. This court noted the statute's purpose of securing payment to those who furnish material, recognized the policy favoring liberal construction to effect this purpose, and recalled that

[v]ery general statements of the terms, times given and conditions of a contract have been accepted as being in substantial compliance with the statute. However, we do not think that a notice of lien may be so liberally construed as to condone the total elimination of a specific requirement of the statute. **Thus, typically, failure to even attempt to comply with a statutory requirement will result in a lack of substantial compliance.**

1 Las Vegas Convention & Visitors Auth. v. Miller, 124 Nev. Adv. Rep. 62, 191 P.3d 1138, 1148
2 (2008). The Court held that to claim substantial compliance a party is required "to have at
3 least attempted to satisfy each element in the statute." Id.

4 NRS § 108.245 is clear "that every lien claimant **shall** . . . deliver in person or by
5 certified mail to the owner of the property a notice of right to lien . . . Id. (emphasis added).
6 NRS § 108.226 unequivocally states that "a notice of lien for the construction of . . . a
7 multifamily residence . . . **may not be perfected or enforced** unless the 15-day notice of
8 intent to lien has been given. Id. (emphasis added). In this case there is no evidence that
9 STEPPAN attempted to satisfy the statutory requirements of a right to lien notice or a notice of
10 intent to lien. Accordingly, this Court does not need to reach the issue of whether ILIESCU
11 had actual notice of when STEPPAN began work on the project to decide that his lien is
12 unenforceable because STEPPAN's lien is void as a matter of law.
13
14

15 **B. STEPPAN Has Not Shown That ILIESCU Had Actual Knowledge STEPPAN**
16 **Had Commenced Work On The Project.** A finding of actual notice requires evidence of
17 some obvious and unmistakable contact or communication with the person alleged to have
18 received such notice. See Ryan v. Grayson Serv. (In re Rincon Island Ltd. Pshp.), 253 B.R.
19 880, 887 (Bankr. C.D. Cal. 2000) ("Actual notice" is defined as 'notice given directly to, or
20 received personally by, a party.');" In re Smith, 119 B.R. 714, 722 (Bankr. D.N.D. 1990) (actual
21 notice defined as "express information of a fact"). Where actual notice is required, imputed or
22 substitutionary notice is not sufficient. See, Comstock & Davis, Inc. v. G.D.S. & Assoc., 481
23 N.W.2d 82, 85 (Minn. Ct. App. 1992). "[Actual notice] is not to be conclusively presumed or
24 legally imputed to [a party] merely because of the mental condition or the knowledge of
25 another person, however related to him." Id.; see also Master Asphalt Co. v. Voss Constr.
26
27
28

1 Co., 535 N.W.2d 349, 354 (Minn. 1995) (The actual knowledge requirement of Minn. Stat. §
2 514.06 (1994)--in the sense of a landowner possessing sufficient information to justify the
3 burden of posting notice to avoid attachment of a lien--requires more than general awareness
4 on the part of the landowner that improvements to the property are contemplated by the
5 tenant.)

6
7 STEPPAN expects this Court to find ILIESCU had actual knowledge of his services
8 from "a general awareness" that BSC was intending to seek development approvals for the
9 property gleaned from documents and circumstances where neither STEPPAN nor his work
10 were the primary subject matter. The cases cited by STEPPAN in support of its argument that
11 ILIESCU had actual knowledge can be distinguished from the instant case because they all
12 involve some concrete evidence, personally observed by the owner, of work being done on the
13 property. In Duffield Constr., Inc. v. Baldwin, 2004 SD 51 (S.D. 2004), the landlord not only
14 knew that the oil tank on his property was leaking and discussed the necessary repairs with
15 his lessee, but he saw the replacement tank on his property, indicating that work on the
16 property had begun. Id. at P12. Similarly, in Thirteenth St. Corp. v. A-1 Plumbing & Heating
17 Co., 640 P.2d 1130 (Colo. 1982), the president of the lessor corporation was in the building
18 while construction was in progress, and the court found that the nature and extent of the
19 improvements being made were obvious. Id. at 1133. In contrast, no work had been
20 performed on the ILIESCU property to put ILIESCU on actual notice that STEPPAN's lien
21 could attach. Compare, Aladdin Heating Corp. v. Trustees of Cent. States, 93 Nev. 257, 260,
22 563 P.2d 82, 84 (1977) (for purposes of determining priority, lien for architectural services
23 could only relate back to the time when visible signs of construction appeared to inform
24 prospective lenders inspecting the premises that liens had attached).

1 Application of the exception created by Fondren also requires a finding that the owner
2 was not prejudiced by the lien claimant's failure to send a right to lien notice. Id. at 709, 800
3 P.2d at 721. Prejudice should be presumed from such a failure. NRS § 108.234 provides an
4 owner with a narrow but important statutory right to protect his property from liens resulting
5 from work and material authorized by a third party. In the absence of clear, unequivocal
6 notice, whether in the form of a right to lien notice, the commencement of construction, or
7 direct contact and communication, the owner is deprived of his opportunity to exercise his
8 right. The deprivation is particularly acute in this case where a developer gambles with the
9 owner's property to obtain development approval and financing, with the participation of
10 STEPPAN, then walks away from the failed transaction and files bankruptcy, leaving the
11 owner with nothing.
12

13
14 STEPPAN's failure to serve a right to lien notice also deprives ILIESCU of a statutory
15 limit on an owner's responsibility. NRS § 108.245(6) provides that upon service of the right to
16 lien notice, a claimant has a right to a lien for work and services provided within the 31 days
17 prior to the date of notice is given, as well as for services rendered thereafter to completion.
18 Failure to give the right to lien notice gives the claimant an opportunity to assert a lien from the
19 first day he did work whether or not the owner had actual notice of the claimant's work at that
20 time. STEPPAN is claiming that he first provided services on April 21, 2006, which is the day
21 the AIA contract was executed. See Lien of Mark Steppan (Exhibit 5 to Motion for Summary
22 Judgment). In this situation, if a lien claimant is allowed to assert that an owner has actual
23 knowledge of the work performed, without an any proof that he attempted to comply with the
24 notice requirements of the statute, advantages are gained both in his ability to assert a lien
25 and the scope of the lien. Such constitutes an incentive to further noncompliance. This result
26
27
28

1 is unacceptable. ILIESCU could not know when the AIA contract was executed, what work
2 was to be done, and the value thereof.

3 C. ILIESCU Cannot Be Bound By The Participating Owner Doctrine. The cases
4 STEPPAN relies on involve lessors and lessees, where materials and labor benefiting the
5 lessee's interest generally inure to the benefit of the fee. In those cases, granting the claimant
6 a lien on the owner's fee interest is justified because the benefit rendered is obvious and
7 permanent. For example, in Duffield, cited by STEPPAN, replacement of the leaking oil tank
8 and remediation of the spill were of clear and permanent benefit to the property, and the
9 owner would receive once he paid to release the lien. Id. at P10. In Thirteenth St. Corp., the
10 improvements were even more extensive, consisting of the addition of a large storage room
11 over an alley parking lot, the removal of an upstairs ceiling, installation of skylights, relocation
12 of doors in structural walls, the complete reconstruction of the bars and kitchen areas and the
13 replacement of heating, plumbing, and electrical systems. Id. at 1132. Besides involving
14 projects too large and involved to go unnoticed by the owner, the value these improvements
15 added to the owner's property justified the imposition of a lien. STEPPAN argues that the
16 value of ILIESCU's property has been enhanced by the approvals obtained through the zoning
17 process. Considering the current financial unlikelihood that anyone would want to either
18 develop or finance a \$160,000,000 condominium project in downtown Reno, his assertions of
19 added value are pure speculation.
20
21
22

23 A court must look to the agreements between the vendor and vendee to determine
24 whether the improvements were made for the interest or to the benefit of the owner, or
25 whether such improvements were required by the contract, to determine whether the
26 participating owner doctrine applies. See, e.g. Centerbrook, Architects & Planners v. Laurel
27
28

1 Nursing Services, Inc., 620 A.2d 127 131-132 (Conn. 1993); Tuttle & Associates v. Gendler,
2 467 N.W.2d 881, 885 (Neb. 1991). In both Centerbrook and Gendler vendees hired architects
3 to do planning for property under contract of sale for development, and in both cases the sales
4 were conditioned on the buyer's obtaining certain approvals. In both cases the courts found
5 that liens did not attach because the approval requirement and other conditions of the contract
6 were for the benefit of the vendee, not the vendor.
7

8 The Connecticut court stated "if the permits had not been secured, it would have been
9 Laurel, not [the vendor], that would have had the choice of either waiving the condition and
10 closing on the property or terminating the contract. It was Laurel, not [the vendor] that sought
11 to use the property as a day-care center." Centerbrook, 620 A.2d at 131-132. To like effect,
12 the Nebraska court stated:
13

14 Tuttle argues that the rezoning and PUD applications were required by Gendler, who
15 would enjoy the benefit of fulfillment of the condition and payment of the purchase
16 price. The argument is specious. The requirement for rezoning was for the benefit of
Ameracorp [the vendee]. If rezoning could not be obtained to the satisfaction of
Ameracorp, Ameracorp was not required to complete the sale.

17 Gendler, 467 N.W.2d at 886.
18

19 BSC was not required to complete the sale if the project was not approved. BSC
20 wanted the property for a condominium development. BSC assumed all the responsibility, and
21 significantly, all the cost, of due diligence, obtaining approvals and financing for the project
22 (See Agreement at ¶¶ 8 A-D, 8 6.21, 28 , 29, 31, 39 E-F). Nothing in the Agreement indicates
23 that ILIESCU ever consented to pay any cost of the project, and nothing in the Agreements
24 indicates that ILIESCU had any control over BSC such that an agency relationship would
25 arise. See Hamm v. Arrowcreek Homeowners' Ass'n, 183 P.3d 895, 902 (Nev. 2008) ("An
26 agency relationship results when one person possesses the contractual right to control
27
28

another's manner of performing the duties for which he or she was hired."). Gendler, 467 N.W.2d at 885. Even the contract provision promising one of the penthouse apartments to ILIESCU as consideration for the sale inured to the benefit of BSC. Such provision allowed BSC to divert \$2.2 million in cash from the sales price to other expenses at the beginning of the project. In essence, it was a "pre-sale" of a unit to ILIESCU.

NRS § 108.226 provides:

1. To perfect his lien, a lien claimant must record his notice of lien in the office of the county recorder of the county where the property or some part thereof is located in the form provided in subsection 5:

(a) Within 90 days after the date on which the latest of the following occurs:

(1) The completion of the work of improvement;

(2) The last delivery of material or furnishing of equipment by the lien claimant for the work of improvement; or

(3) The last performance of work by the lien claimant for the work of improvement;

It appears from the date of STEPPAN's lien, November 7, 2006, STEPPAN was using October 4, 2006, the date the City Council approved BSC's project, as the date of his last performance of work for the purposes of NRS § 108.226. It is also evident that in order to have plans to submit to the City for approval, STEPPAN must have done the bulk of his work prior to October 4, 2006. October 4, 2006, was also the date on which the first condition of approval for the formation of the purchase contract was fulfilled. STEPPAN had completed the bulk of his work before ILIESCU knew BSC was involved and before BSC had acquired any equitable interest in the property.³

³ This chronology presents a situation in which it benefits STEPPAN to ignore the right to lien statute and assert a lien based on ILIESCU's alleged actual knowledge because he could not claim a lien for work performed more than 31 days prior to his filing of the right to lien notice. Attached hereto and marked Exhibits 1, 2 and 3 are excerpts from the Depositions of David Snellgrove, Mark Steppan and Richard Johnson indicating no question exists that ILIESCU had no knowledge of the architect's contract or work.

1 Some courts hold that "a lien is invalid unless the party requesting the work is the owner
2 of the property or has an equitable interest in that property." New Eng. Sav. Bank v. Meadow
3 Lakes Realty Co., 706 A.2d 465, 473 (Conn. 1998). There is also Nevada authority an
4 equitable conversion occurs only when a contract for the sale of real property becomes
5 binding upon the parties. The purchase contract only became binding upon the date the City
6 Council approved the zoning for the condominiums. Herndon v. Grilz, 112 Nev. 873, 877, 920
7 P.2d 998, 1001(1996).
8

9 **D. Any Knowledge Acquired By Hale-Lane In Its Representation Of CPD or**
10 **BSC Should Not Be Imputed To ILIESCU.** If it were not for ILIESCU's claims against HALE
11 LANE, the memorandum and similar communications from Sara Class to BSC regarding the
12 AIA contract and similar communications would certainly be protected by the attorney-client
13 privilege. See Memorandum dated November 14, 2005 (Exhibit 15 to Opposition to Motion for
14 Summary Judgment) and e-mail dated November 29, 2005 (Exhibit 22 to Opposition to Motion
15 for Summary Judgment). Information contained in confidential communications from one
16 client in the course of representation cannot be freely shared with another client, especially
17 where, as here, the attorneys and the parties were already aware of a potential conflict of
18 interest. See Letter dated December 14, 2005 (Exhibit 21 to Opposition to Motion for
19 Summary Judgment).
20
21

22 It would have been unethical and grossly improper for counsel engaged in the trial or
23 defense of a case to have imparted to third persons information as to the cause
24 entrusted to them which might be calculated to lead such third persons to step in and
25 claim such property for themselves and so add another difficulty to the cause or
26 persons they were representing before the Court. Such is not the duty of counsel
27 employed to represent his client with single purpose and undeviating loyalty to the
28 interests of his client alone. There was not only no duty upon such counsel to disclose
to the library, even if they were aware of it, the fact that the library might have an

adverse interest to the interests they were representing, but it was their duty not to disclose it before the termination of the museum cause.

Charleston Library Soc. v. Citizens & Southern Nat'l Bank, 23 S.E.2d 362 (S.C. 1942).

There is an obvious conflict of interest between a third party contracting for services and a disinterested owner, especially where the project may be abandoned or the third party may declare bankruptcy. In such an event, the lien claimant will then look to his lien rights rather than pursue his contract claim or a claim in bankruptcy. ILIESCU has already been injured by HALE LANE's dual representation. HALE LANE did not warn ILIESCU that he was not fully protected from third-party attempts to enforce liens, whether valid or not, or by the indemnity provisions of the Agreement, as long as he was the record owner of the property. It would be a miscarriage of justice for this Court to impute HALE LANE's dual representation and conflict of interest knowledge of the details of the AIA contract to ILIESCU for purposes of enforcing the lien against ILIESCU.

There are further limitations on HALE LANE's knowledge of STEPPAN's identity (which still must be distinguished from knowledge that he intended to assert a lien against ILIESCU's property, which is the knowledge that give rise to the owner's obligation to file a notice of nonresponsibility). The rule articulated in Skiff-Murray v. Murray, 793 N.Y.S.2d 243 (N.Y. App. Div. 3d Dep't 2005), cited by STEPPAN, states that the information acquired by the agent can only be imputed to the principal if it was in the agent's mind when he or she was acting on the principal's behalf. Id. at 246.

It is a question of fact whether HALE LANE had information in mind about STEPPAN when it acted on ILIESCU's behalf, and thus this issue cannot be decided on summary judgment.

1 **E. ILIESCU's Positions Are Not Inconsistent And There Are No Grounds For**
2 **Judicial Estoppel.** There is nothing inconsistent in ILIESCU's defenses and claims in this
3 and the related action. In light of STEPPAN's obvious failure to serve a right to lien notice, as
4 required by statute, ILIESCU is entitled to claim that STEPPAN has no valid lien and,
5 therefore, ILIESCU was not required to file a notice of nonresponsibility to avoid it. When
6 STEPPAN invokes the actual knowledge exception to the statutory obligation to send a right to
7 lien notice, ILIESCU may assert that such exception does not apply because he had no such
8 actual knowledge.
9

10 ILIESCU is also entitled to claim (1) that HALE LANE should have anticipated that third
11 party STEPPAN under contract with BSC would file a lien, valid or invalid, against ILIESCU's
12 property, and (2) that to avoid having to defend such an action, HALE LANE should have
13 advised ILIESCU to serve and record notices of nonresponsibility preemptively, and (3) that
14 HALE LANE was negligent in not doing so.⁴ That claim is entirely consistent with ILIESCU's
15 position that he was unaware that he was under a legal obligation to serve and record such
16 notices and that he received no statutory or actual notice of such an obligation.⁵
17

18 Even if ILIESCU's positions could be considered inconsistent, the Nevada Rules of Civil
19 Procedure specifically permit alternative and inconsistent pleadings. NRCP 8(e)(2). Our
20 Supreme Court has also stated that inconsistent pleadings in separate actions cannot be
21 regarded as admissions:
22

23
24
25 ⁴ The statute of limitations begins to run in an attorney malpractice action when the plaintiffs knew or should
26 have known of damages sustained even though the underlying litigation continued. *Kopicko v. Young*, 114 Nev.
27 1333, 1337 n.3, 971 P.2d 789, 791 n.3 (1998). Thus it was both appropriate and prudent for ILIESCU to file his
28 action against HALE LANE during the pendency of the lien claim.

⁵ Bear in mind ILIESCU was still represented by HALE LANE at the time ILIESCU was advised by HALE LANE to
take those legal positions in the initial action HALE LANE filed on ILIESCU's behalf (CV07-00341).

1 An additional contention is that the prior complaint constituted a party admission that
2 the trial court erroneously excluded from evidence. This contention is without merit
3 under the circumstances of the instant case. The general rule is that inconsistent
4 statements made in a prior proceeding are admissible as party admissions or for the
5 purpose of impeachment. Whittlesea Blue Cab Co. v. McIntosh, 86 Nev. 609, 472 P.2d
356 (1970). In this case, however, the prior proceeding was an action for damages
arising out of the same accident involved herein against a defendant that Spiegelman
had attempted to join in the instant action. Cf. Spiegelman v. Gold Dust Texaco, *supra*.

6 Had joinder been granted, respondent's alternative theories of recovery clearly could
7 not have been used as admissions, negating each other. HN1 Nevada Rule of Civil
8 Procedure 8(a) specifically permits a plaintiff to assert inconsistent claims for relief. To
9 treat such claims as admissions would defeat the purposes of the liberal pleading
10 provisions of NRCP 8 and render them a trap for the unwary. Parrish v. Atchison,
11 Topeka and Santa Fe Railway Co., 152 F.Supp. 158, 166 (S.D.Cal. 1957). ***We***
perceive no reason why a different rule should apply when alternative,
inconsistent theories are advanced in separate actions, based on the same
transaction, which the litigant tries unsuccessfully to join.

12 *Auto Fair v. Spiegelman*, 92 Nev. 656, 658, 557 P.2d 273, 275 (1976) (emphasis added).

13 STEPPAN's argument that ILIESCU should be penalized for doing something that is
14 specifically allowed by the Nevada rules and was advised to do so by HALE LANE is without
15 merit.
16

17 III. CONCLUSION

18 STEPPAN did not attempt to comply with two major statutory requirements to perfect
19 his lien, specifically the service of a notice of right to lien and service of a 15-day notice of
20 intent to lien. His failure should not be condoned, especially where he has failed to produce
21 any proof that ILIESCU had actual notice of the work he was performing. STEPPAN's
22 remaining contentions are without merit and therefore ILIESCU respectfully requests that this
23 Court grant summary judgment in favor of ILIESCU and deny STEPPAN's Cross-motion for
24 summary judgment.
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1 The undersigned does hereby affirm that the preceding document does not contain the
2 social security number of any person.

3 DATED this 26th day of March, 2009.

4 **PREZANT & MOLLATH**

5
6
7 By _____

8 Stephen C. Mollath, Esq.
9 Attorney for ILIESCU
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP Rule 5(b), I certify that I am an employee of PREZANT & MOLLATH
3 and that on this 30th day of March, 2009, I served the foregoing document(s) on the party(s)
4 set forth below by:
5

6 X Placing an original or true copy thereof in a sealed envelope placed for collection
7 and mailing in the United States Mail, at Reno, Nevada, postage prepaid,
8 following ordinary business practices.

9 Personal delivery.

10 Facsimile (FAX).

11 Federal Express or other overnight delivery.

12 Reno/Carson Messenger Service.

13 addressed as follows:

14 Gayle Kern, Esq.
15 5421 Kietzke Lane, Suite 200
16 Reno, NV 89511

17 Judy Otto, Esq.
18 1610 Montclair Ave., Suite B
19 Reno, NV 89509

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23 Reno, NV 89519

24 Steve Harris, Esq.
25 BELDING HARRIS & PETRONI
26 417 W. Plumb Lane
27 Reno, NV 89509
28

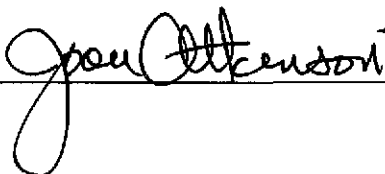


EXHIBIT INDEX

- | | |
|-----------|--|
| Exhibit 1 | Deposition of Mark Steppan, September 29, 2008 |
| Exhibit 2 | Deposition of David Snelgrove, November 18, 2008 |
| Exhibit 3 | Deposition of Richard K. Johnson, September 29, 2008 |

CV07-00341 DC-5900007135-033
JOHN ILIESCU ETAL VS. MARK 12 Pages
District Court 03/31/2009 09:48 AM
Washoe County 3795
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EXHIBIT 1

EXHIBIT 1

JA0823

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

-oOo-

JOHN ILIESCU, JR., SONNIA)	
SANTEE ILIESCU, AND JOHN)	
ILIESCU JR., AND SONNIA)	
ILIESCU AS TRUSTEES OF THE)	Case No. CV07-00341
JOHN ILIESCU, JR., AND SONNIA)	(Consolidated with Case No.
ILIESCU 1992 FAMILY TRUST,)	CV07-01021)
)	
Plaintiffs,)	
)	Dept. No. 6
vs.)	
)	
MARK B. STEPPAN,)	
)	
Defendant.)	
)	

DEPOSITION OF MARK STEPPAN

MONDAY, SEPTEMBER 29, 2008

RENO, NEVADA

SUNSHINE REPORTING SERVICES
151 COUNTRY ESTATES CIRCLE RENO NEVADA 89511
REPORTED BY: SUSAN CULP CCR #343

CERTIFIED COPY

JA0824

Page 2

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(775) 324-5930
gaylekern@kernltd.comDisposition of Original Depo: Original transcript to Mr.
Mollath for signature.Disposition of Exhibits: Attach original exhibits to original
transcript, copies to copies.

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PAGE

EXAMINATION BY MR. MOLLATH

4

EXHIBITS

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Page 4

BE IT REMEMBERED that on Monday September 29, 2008, at the hour of 1:58 p.m. of said day, at the offices of Gayle Kern, Ltd., 5421 Kietzke Lane, Suite 200, Reno, Nevada, before me, SUSAN CULP, a notary public, personally appeared MARK B. STEPPAN, who was by me first duly sworn, and was examined as a witness in said cause.

-o0o-

MARK B. STEPPAN,
called as a witness, having been duly sworn,
testified as follows:

EXAMINATION

BY MR. MOLLATH:

Q Would you please state your name for the record.

A Mark Bantam Steppan.

Q What is your current business, profession, or occupation?

A I'm an architect.

Q How long have you been an architect?

A I've worked in the profession since I graduated school, and I was licensed, I believe, in 1987.

Q On or about September of 2005, who were you employed by?

A Fisher Friedman and Associates.

Page 5

Q Okay. And what is Fisher Friedman and Associates?

A It's an architectural firm.

Q And where are they located?

A Emeryville, California.

Q And how many architects are in Fisher Friedman?

A Currently or at that time?

Q At that time.

A And you're referring to two thousand what?

Q September of 2005.

A Okay. Around six or seven licensed architects.

Q How many were licensed in September 2005 in the state of Nevada?

A One.

Q And who was that?

A Me.

Q Okay. Who is Mr. Nathan Ogle?

A He is the vice-president of Fisher Friedman Associates.

Q And is he licensed in Nevada?

A No.

Q On September -- In September of 2005, had you had an occasion, on behalf of yourself or Fisher Friedman or Mr. Ogle, to make contact with a company called Consolidated Pacific Development?

A A gentleman from Consolidated came into our office and

Page 6

1 met with us, and that was Sam Caniglia.
 2 Q And what was the date of that?
 3 A I don't remember a specific date. It was in the
 4 September '05 timeframe.
 5 Q September '05. Now, let me backup for a little
 6 housekeeping matter.
 7 Do you have a file on the transaction that's the
 8 subject matter of this litigation? Separate and apart from
 9 your litigation file, but a file that Fisher Friedman or
 10 yourself maintains concerning this particular project and job.
 11 A We have many folders of documents, whether they are a
 12 contract or copies of drawings at the office. That's standard
 13 practice.
 14 Q Okay. Now, was this -- was this file or a group of
 15 documents created sometime after Sam Caniglia contacted your
 16 firm in September of '05?
 17 A There would have been nothing prior to his
 18 communicating with us.
 19 Q All right. So the start of your document record
 20 concerning this Reno project would have started sometime in
 21 September of '05?
 22 A If I'm correct of that being the month, that's right.
 23 Q Okay. Now, would that -- Would I be correct in
 24 assuming that that file would contain all the correspondence
 25 concerning the project between you and the developer, that

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1 idea.
 2 MR. MOLLATH: Okay. I'd like to have that file, in
 3 its entirety, Bates stamped.
 4 MS. KERN: Well, I'll take a look at it and see if
 5 there's anything that I need to identify under privilege law.
 6 BY MR. MOLLATH:
 7 Q Okay. Now, in September of '05, when you had -- your
 8 firm had the meeting with Sam Caniglia, who was present at that
 9 meeting?
 10 A If I remember correctly, it would be Sam, and Tony
 11 Iamesi, representing Consolidated, and from Fisher Friedman, et
 12 cetera, would have been Rodney Friedman, Nathan Ogle, myself,
 13 and I don't remember if David Tritt was there or not.
 14 Q And what was discussed at that initial meeting in
 15 September of '05 with Sam Caniglia and Tony Inozzi?
 16 A Iamesi.
 17 Q Iamesi, okay.
 18 A I-a-m-e-s-i, I think.
 19 Q What was discussed at that meeting?
 20 A The concept of doing a fantastic project in Reno.
 21 Q Did they tell you the status of the ownership of the
 22 ground upon which that project was proposed to be developed?
 23 A I cannot tell you that they mentioned at the time of
 24 that first meeting that it was in the process of being
 25 purchased, that that's what they were working on, or whether

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1 being Consolidated Pacific?
 2 A I cannot directly speak to all of the documents that
 3 would be in the office. I could not tell you if all
 4 communications between people other than myself and Sam would
 5 be there. I would assume so.
 6 Q Okay. So this file that starts in September of '05
 7 would contain, I assume, any correspondence between your firm
 8 and anybody who you were working with on the project?
 9 A I believe so.
 10 Q Okay. It would contain any correspondence with -- or
 11 submittals to any governmental agencies?
 12 A I believe so.
 13 Q Would it contain the contractual documents between
 14 your firm and the developer, whoever contracted with you?
 15 A Yes.
 16 Q All right. Would it contain any contracts with
 17 third-party consultants that you hired, such as audio/visual
 18 people, engineers, electrical engineers? In other words,
 19 subcategories in the building profession?
 20 A They would be there if we had hired somebody.
 21 Q Okay. Right.
 22 MR. MOLLATH: Counsel, do you have any problem with
 23 arranging for the Bates stamping of the entire file of
 24 Fisher Friedman and providing that to me?
 25 MS. KERN: I'll take a look at it first. I have no

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1 that came in a later conversation.
 2 Q Did you have an understanding at the first meeting
 3 that they did or did not own the property that was going to be
 4 the subject of this development?
 5 A I do not remember at this time.
 6 Q Okay. At any point in time subsequent to the
 7 September 5th -- or the September of '05 meeting, did you or
 8 your firm make a determination whether that property was owned
 9 or not owned by Consolidated Pacific Development?
 10 A Yes. There was some point thereafter where we knew
 11 that it was not owned at that time or currently by the people
 12 that we were contracted in with.
 13 Q How long after September 5th did your firm or yourself
 14 make a determination that they did or did not own the property?
 15 A I can't answer that, because as I just said
 16 previously, I can't remember if that was discussed at the
 17 September meeting or not. So had it been discussed in
 18 September, that's when it would have been. Had it been after
 19 that, it could have been later in September or in October, when
 20 we were signing the original letters of starting to design the
 21 project.
 22 Q Okay. But at some point in time after the September
 23 initial engagement meeting, it was made aware to you that the
 24 property was not owned by Sam Caniglia's group, it was owned by
 25 somebody else.

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1 A At some point in that general timeframe.

2 Q Okay. Did Sam Caniglia or his group make available to
3 you the transactional documents by which they were going to
4 acquire the property from the owner?

5 A I do not remember seeing anything.

6 Q At any point in time prior to the execution of the
7 contract, which was, I believe, October of 2005, the
8 architectural contract, did Sam Caniglia or his group indicate
9 to you who in fact was the owner of the property?

10 A I -- At this moment I don't remember any particular
11 time of when that was discussed.

12 Q At some point in time did you find out who the owner
13 of the property was?

14 A Yes.

15 Q Okay. And what point in time, after the September
16 meeting, did you find out who the owner was?

17 A I could not tell you.

18 Q What level of detail did you know about the owner of
19 the property?

20 A I knew his name is Dr. John Ilescu, and that he was
21 local to Reno. But as to any more of that, I don't remember
22 what else might have been discussed in my presence or not in my
23 presence.

24 Q Okay. How much after September of '05, if you can
25 recall, did you find out that Dr. Ilescu was the owner of the

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1 planning department, walk around the site, drive around Reno,
2 present ideas to the planning department, get their take on
3 things.

4 That was a combination of Fisher Friedman and Sam and
5 Tony, and I don't remember whom else was up here. Possibly Cal
6 Bosma. And we met with a couple of people at the planning
7 department.

8 Q Was any representatives of Wood Rodgers present during
9 those meetings?

10 A I think David Snellgrove might have been, but I don't
11 remember for sure.

12 MR. MOLLATH: Let's have marked as next in order an
13 AIA document with Bates stamp document numbers 108 through 132.
14 (Exhibit 1 was marked.)

15 BY MR. MOLLATH:

16 Q Let me show you what has been marked as Exhibit No. 1,
17 which is an AIA document dated, on the first page, the 31st of
18 October 2005, but in the body of the document it has an
19 execution date of April 21, 2006.

20 Do you see that on the very last page?

21 A Yes.

22 Q Okay. So am I correct in my assumption from your
23 testimony a moment before, that the actual execution of the
24 Exhibit 1, AIA Standard Form Agreement between Owner and
25 Architect, was April 21st of 2006, but it was effective October

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1 property?

2 A As I said earlier, I don't know when exactly that was,
3 because that still goes back to the same concept of whether or
4 not the people we were working with owned the property or not.

5 Q Okay. All right. Now, what relationship did you have
6 with Wood Rodgers concerning this project?

7 A They were a consultant to Consolidated/BSC, provided
8 services for them, I believe, for civil and helping -- and
9 maybe not for civil, but helping to get the entitlement process
10 done.

11 Q And when did you first come into information that Wood
12 Rodgers was going to be the consultant dealing with the
13 entitlements in Reno, Nevada for this project? In other words,
14 when did they first come up on your radar screen?

15 A I don't really remember.

16 Q Okay. Now, did you have an occasion, at any time
17 prior to the execution of the contract in October of 2005, to
18 meet with any representatives of the City of Reno concerning
19 the project?

20 A Well, I don't know that that contract was executed in
21 October. I think that contract was executed in April of '06,
22 but we did have a letter of agreement to start designing in
23 October.

24 I believe at that same time, or similar to that time,
25 we came up to Reno to meet with representatives from the

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1 31st of '05? Is that what I'm hearing?

2 A Uh-huh, uh-huh.

3 Q So on October 31st of '05 --

4 A I'm sorry, yes.

5 Q So as of October 31st of '05, this document was not
6 yet in existence?

7 A As a completed document, that is correct.

8 Q As a completed document?

9 A That's correct.

10 Q And it was not in existence as an executed document.

11 A Correct.

12 Q Now, was there another document or letter of
13 understanding or engagement that you had with the developers of
14 this project prior to the Exhibit 1 being executed on
15 April 21st, 2006?

16 A Yes.

17 Q Okay. Tell me about that document.

18 A There was probably at least one single-page letter
19 discussing the general synopsis of the proposed project and
20 that we were going to start designing it, and it was signed by
21 me, and I believe it was signed by Sam, and that would have
22 been in October of '05.

23 Q Okay. So that, or a variant of that document,
24 governed the relationship of the parties -- that being your
25 firm, your architectural firm, and the developers -- between

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1 Development?

2 **A** I believe we had counsel. I do not know for sure if
3 the counsels talked to each other directly, but I'm pretty sure
4 we had counsel.

5 **Q** Would it be fair, then, to state that the Exhibit 1,
6 the standard form agreement between owner and architect dated
7 as of 31st of October 2005, was the culmination of a
8 negotiation process between your architectural firm and its
9 lawyers and the lawyers in client BSC Financial Consolidated
10 Pacific?

11 **A** Yes.

12 **Q** Okay. Now, during the period of time from
13 October 31st, 2005, to April 21st, 2006, did you ever have any
14 contact with or discuss this project with Dr. or Mrs. Iliescu?

15 **A** Personally?

16 **Q** You personally.

17 **A** No.

18 **Q** When is the first time you ever met Dr. or
19 Mrs. Iliescu, or either one of them?

20 **A** I have seen Dr. Iliescu at one of the case meetings
21 down at court here in Reno, and that was the only time that I
22 have seen him.

23 **Q** Okay. Do you know whether any member of your firm had
24 any professional contact, other than medical, with Dr. Iliescu,
25 on this project, relative to -- these lawyers, you've got to be

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1 **A** I stated earlier for the record, I came up with
2 representatives of our firm and BSC to meet with the planning
3 department, discuss the project, look at the site, drive
4 around, check out the, you know, surrounding areas.

5 **Q** Okay. Okay. And then I'm assuming that other members
6 of your firm came up to Reno on various occasions during that
7 period of time to familiarize themselves or do work concerning
8 the project?

9 **A** I don't know how many more visits were made in that
10 specific timeframe, but there certainly were probably some
11 other visits made in that time, as well as post-April --

12 **Q** Okay.

13 **A** -- by other people, yes.

14 **Q** Okay. So obviously after April 21st of 2006 up and
15 through the time of the approval of the project by the City
16 council, there were visits also by you and your firm?

17 **A** There were visits, correct.

18 **Q** Would your billing records show who was in town or
19 what services they provided during the period of time from
20 October of '05 through the time of the approval by the City
21 council in November of '06?

22 **A** They may or may not show specifics about someone being
23 out of town. They would probably just be showing a record that
24 the person was working on a project. The timecard may or may
25 not say they happened to be gone on a side visit that day or

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1 specific -- relative to this project between the period of
2 October 31st, 2005, and April 21st, 2006?

3 **A** I really don't know if there was any.

4 **Q** All right. Do you know of any?

5 **A** No.

6 **Q** During this same period of time, October of '05
7 through April of '06, did you have any personal contact
8 concerning this project with Mr. Dick Johnson on behalf of
9 Dr. Iliescu?

10 **A** I did not talk to him at that time, no.

11 **Q** When is the first time you talked to Mr. Johnson?

12 **A** It probably was at the same.

13 **Q** At the court hearing?

14 **A** Yeah, yeah.

15 **Q** Okay. In regards to this project, how many trips did
16 you make to Reno, concerning this project, between
17 October 31st, 2005, and April 21st, 2006?

18 **A** Are you questioning how many trips were made by
19 representatives of the firm or me myself personally?

20 **Q** I'm going to ask first as to you and then I'll ask
21 about the firm.

22 **A** I was -- it was either one or two.

23 **Q** And tell me about, the best of your recollection
24 generally, what did you do on those one or two trips to Reno
25 during that period of time?

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1 just go to the planning department. It's possible, but not
2 everybody records time sheets that way.

3 **Q** Does your staff routinely record, in job files, a
4 diary or a calendar of the time and work spent on a particular
5 day on a project? In other words, transpose your daily work
6 calendar into the job file, so if somebody wanted to determine
7 what work was done on what date by what person by looking at a
8 calendar, could they do that?

9 **A** Generally not.

10 **Q** Okay. Now, I notice on the first page of the
11 contract you're the only one that signed this contract and the
12 contract is not signed by the firm; is that correct?

13 **A** It is signed by me, that's correct.

14 **Q** But it's not signed by or on behalf of Fisher Friedman
15 and Associates or Nathan Ogle?

16 **A** Correct.

17 **Q** Is that a function of the requirements of the Nevada
18 State Architectural Board that requires a contract to be with
19 an architect that is licensed in the state?

20 **A** That's correct.

21 **Q** So the purpose for having you on this contract is the
22 requirements of the state architectural board --

23 **A** Correct.

24 **Q** -- for your licensing?

25 **A** Correct.

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1 and design work than just the entitlement process and
2 submissions through Wood Rodgers to get the special use permits
3 and the various approvals, correct?

4 **A** There's a lot more to SD than design and entitlement.

5 **Q** Correct. What I'm trying to determine is, what
6 portion of the SD is related to or represents the entitlement
7 process?

8 **A** I don't think I could break the percentage out.

9 **Q** Why couldn't you break the percentage out?

10 **A** Because so much of it is looped together when you're
11 doing work for entitlements at the same time you're developing
12 the design. How do I make the distinction between part of
13 these hours was developing the entitlement drawing at the same
14 time I'm also developing the design? I don't know how to make
15 the distinction.

16 **Q** Fair enough. Let's assume the entitlements were
17 obtained. Obviously additional work has to be done on the
18 schematic design after the entitlement.

19 **A** Not necessarily.

20 **Q** How about in this case?

21 **A** No. We got very complete schematic design package
22 that the entitlements were granted on and we were ready to move
23 to the next phase.

24 **Q** Now, at what point in time did you stop providing
25 services in the schematic design phase of this project?

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1 **A** I don't believe we stopped in the schematic design
2 phase of the process. We stopped after submitting the invoices
3 for a hundred percent schematic design, after receiving
4 entitlements, and we've been waiting to get the payment in
5 order to be able to move into design development.

6 **Q** Okay. So are you telling me, then, that at the point
7 in time that the entitlements were obtained your firm had
8 completed the SD, or schematic design process?

9 **A** That's what I believe.

10 **Q** Okay.

11 **A** Gail will correct me if she knows something to the
12 contrary from reading these documents.

13 **Q** Would your internal documents allow us to determine
14 whether or not all schematic design work, as contemplated, was
15 completed as of the date the entitlement was granted?

16 **A** I don't know that there's a direct -- that you would
17 find a direct relationship to November 15th, or whatever the
18 exact date is, but the -- the minute that an invoice is sent
19 off for a hundred percent schematics --

20 **Q** Uh-huh.

21 **A** -- and that the billings are all adjusted, or figured
22 out, based on that, that tells me we decided that all the work
23 was performed.

24 **Q** And who would that -- who was that billing sent to?

25 **A** I'd have to look on the invoice. I don't remember who

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1 specifically was listed on the invoice. It might have gone to
2 Cal Bosma at deCal to try to get paid at that time. I might
3 have gone through Sam. I don't really remember. I don't send
4 out the invoices.

5 **MR. MOLLATH:** Let's have marked as next in order
6 No. 2, three pages called Applicant Affidavit 142, 143 and 144.
7 (Exhibit 2 was marked.)

8 **BY MR. MOLLATH:**

9 **Q** Let me show you what has been marked as Exhibit 2.

10 Have you ever seen the Applicant Affidavits, those
11 three pages that I've showed you in Exhibit 2, before today?

12 **A** Yes, I've seen them.

13 **Q** Did you see those affidavits on or before February of
14 2006?

15 **A** I really don't remember if I saw them in looking
16 through the application package at that time or later than
17 that.

18 **Q** Okay.

19 **A** That's two years ago.

20 **Q** Okay. But you don't have any recollection of
21 seeing -- do you have any recollection of seeing these prior to
22 the submission of the application for any entitlements for the
23 project?

24 **A** I don't remember not seeing it at that time, either.

25 **Q** Okay.

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1 **A** So, no, I couldn't say specifically.

2 **Q** Okay. Fair enough.

3 Did you or any member of your firm, if you know, have
4 any specific contact with Dr. Iliescu concerning the execution
5 of the second and third pages of Exhibit 2, that being Bates
6 stamped Page 143 and 144?

7 **A** I'm not aware of any direct contact between anyone at
8 the office and Dr. Iliescu --

9 **Q** Okay.

10 **A** -- over this. I imagine the contact would have been
11 to Wood Rodgers, and that we would have seen the package
12 multiple times that it was being produced.

13 **Q** Was the Wood Rodgers package given to you in draft
14 form before it was submitted?

15 **A** I believe so, yes.

16 **Q** So you had occasion to review --

17 **A** Yes.

18 **Q** -- that prior to its submission?

19 **A** Oh, yes.

20 **Q** All right. So you had occasion, then, to be able to
21 see Exhibit 2, the Applicant Affidavits for the project, prior
22 to the submission for the entitlements for the project?

23 **A** I assume so.

24 **Q** All right. And it's your understanding that as part
25 of a -- this application, that these Applicant Affidavits had

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1 **A Yeah. I don't remember any conversations about it.**
2 **Q** Okay. The other question I have is: If you look at
3 the drawings that are attached to -- Well, let's go to -- Let
4 me get a little more specific on this.
5 Let's go to Page No. 173, and I'm assuming this page
6 is a project data summary that is gleaned from your schematic
7 design as to square footage and tabulation, things like that.
8 **A Yes.**
9 **Q** And what I'm trying to reconcile is the application
10 date is February 7th of 2006. And we all know that the
11 application was submitted, in fact, in two parts: One, I
12 believe, February 1st or 2nd, and one February 7th.
13 Why are the dates on the drawings dated June 1st? If
14 you go and look -- you have a date --
15 **A There's a whole variety of dates on here.**
16 **Q** They are all subsequent to February?
17 **A Uh-huh.**
18 **Q** And if you go farther on to the end of the document,
19 you have April 7th, 2008. And the question I have for you is:
20 How come there are dates on all the drawings that accompany an
21 application of February 7th that are a number of months later
22 than February 7th?
23 **A It's quite possible.**
24 **Q** If you have an explanation.
25 **A I don't know for sure other than I have a feeling**

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1 there was -- there were additional submissions. I believe
2 there's other ones after February 7th.
3 But many times you have placeholders for the floor
4 plans in an application and you can refill in with more
5 up-to-date versions of the plans.
6 **Q** Okay.
7 **A It depends on the timing of everything. So many times**
8 **you -- and many application processes you in-fill and replace**
9 **outdated sheets. That would be one explanation, in any case.**
10 **MS. KERN:** Counsel, can you tell me where you saw
11 April 2008?
12 **MR. MOLLATH:** Yes. No. April 2006.
13 **MS. KERN:** Thank you.
14 **MR. MOLLATH:** Did I say '8?
15 **MS. KERN:** Yes.
16 **MR. MOLLATH:** I'm losing my mind. It's old age
17 creeping up.
18 **MS. KERN:** No.
19 **MR. MOLLATH:** I understand that.
20 **BY MR. MOLLATH:**
21 **Q** Now, let me ask you this: At any time did you, as the
22 architect of record, and I'm assuming the supervising architect
23 with Fisher Friedman, make an effort to provide a copy of the
24 contract, that being Exhibit 1, to Dr. and Mrs. Iliescu to let
25 them know what was happening relative to their property? Did

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1 that idea ever pop into your head?
2 **A I could not tell you if it popped into anybody else's**
3 **head.**
4 **Q** Would it be fair to say that the contract, with all
5 the financial details of what was going to be done, the
6 schematic drawings, the fee schedule and everything else, was
7 never provided to Dr. and Mrs. Iliescu in connection with this
8 project?
9 **A I can only answer to what we may or may not have**
10 **provided. And I can say we may or may not -- I'm not aware we**
11 **provided it to Dr. Iliescu. I cannot speak to anybody else.**
12 **Q** Fair enough. Now, in regard to Exhibit 3, the
13 tentative map and special-use permit application, do you know
14 whether that application was ever provided to Dr. and
15 Mrs. Iliescu at any time in the processing of this application?
16 **A I don't -- I do not know specifically what was made**
17 **available to them during the processing of the application or**
18 **what was in Wood Rodgers' office when these things -- when the**
19 **affidavits were signed. I understand that they certainly**
20 **were -- there was a product at that time, so I cannot say what**
21 **was provided or not by others.**
22 **Q** All right. But to the best of your knowledge,
23 yourself or Fisher Friedman Associates did not provide to
24 Dr. Iliescu or Mrs. Iliescu a copy of the tentative map and
25 special use application on their property.

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1 **A No. That -- excuse me -- that is correct, we have**
2 **not. I'm not aware that we provided it, nor would it have been**
3 **normal process to do so unless requested by our client. Our**
4 **direct client contractually was BSC/Consolidated.**
5 **Q** Did BSC/Consolidated ever require you not to provide
6 Dr. and Mrs. Iliescu with the contract for architectural
7 services or the application for tentative map and special-use
8 permit?
9 **A I'm not aware they asked or didn't ask.**
10 **Q** Okay. Now, in the -- let's turn -- let's see, where
11 are we? Okay.
12 **MR. MOLLATH:** Let's have marked as next in order the
13 Community Development Department memorandum and related
14 documents Bates stamped Iliescu 2003 through 324. And some of
15 these are double-sided.
16 **MS. KERN:** I have to -- I wrote down the wrong number.
17 I wrote down 2003.
18 **MR. MOLLATH:** I mean 203 through 324. There's too
19 many zeroes there.
20 (Exhibit 4 was marked.)
21 **BY MR. MOLLATH:**
22 **Q** Could you take a look at Exhibit 4 for a moment and
23 familiarize yourself generally what it contains.
24 **A Okay.**
25 **Q** Okay. I would represent to you that that contains the

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1 Q Would you agree with me that at some point in
2 time between October 31st of 2005, when you first had the
3 meeting with Sam Caniglia, and April 21st, 2006, the date that
4 the contract -- the AIA contract was executed, that
5 Fisher Friedman, as a group or entity, knew that Dr. and
6 Mrs. Iliescu owned the property and it wasn't owned by
7 Consolidated or deCal or BSC?
8 A I -- yes, I'm sure that we knew that our client did
9 not currently own the land.
10 Q And -- and did you know whether Wood Rodgers knew that
11 Dr. Iliescu and Mrs. Iliescu owned the property and it wasn't
12 owned by BSC or Sam Caniglia or Consolidated Pacific?
13 A I don't know that I can say how they thought about it.
14 I would have assumed so, but I --
15 Q Okay.
16 A -- as I had no personal discussion with them about it,
17 I can't speak for them.
18 Q Okay. So there was nothing that would prohibit your
19 firm from notifying Dr. Iliescu that your firm was doing work
20 on this project that effected his property during the period of
21 time of October of '05 through April of '06?
22 A I suppose you could say no, that there's nothing that
23 would have prohibited it. I don't know that it would have been
24 standard practice directly to do so, but I don't know that -- I
25 haven't heard anything that would have prohibited it.

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1 Q Okay. There was nothing that would have prevented or
2 been an obstacle for Fisher Friedman to determine, certainly by
3 April 21st, 2006, that the property was owned by Dr. and
4 Mrs. Iliescu. Would that be a correct statement?
5 A Uh-huh, yes.
6 Q And certainly there would be nothing that would
7 prohibit or impede or otherwise interfere with Fisher Friedman
8 determining what the address of Dr. and Mrs. Iliescu was in
9 Reno, Nevada.
10 A I suppose not.
11 Q All right. And there would be nothing preventing or
12 inhibiting or otherwise interfering with Fisher Friedman from
13 notifying Dr. and Mrs. Iliescu that you had entered into a
14 contract with BSC to provide design services on a piece of
15 property that they were selling to BSC or some other entity.
16 That could have been done very easily, couldn't it?
17 MS. KERN: I'm going to object to the extent that
18 you're implying, by your question, that it wasn't done. Our
19 records reflect that they did know about it and they knew
20 exactly who it was.
21 MR. MOLLATH: I'm talking about notifying him in
22 writing in some shape, manner, or form is something that could
23 have been done, certainly, by April 21st, 2006.
24 MS. KERN: And I'm going to interject the -- I don't
25 think you're implying that, but I just want the record to be

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1 clear there clearly is a writing that evidences their name with
2 the name of the architects prior to that time. So I don't want
3 there to be an implication that your question is somehow
4 ignoring the documentation that already exists.
5 MR. MOLLATH: I assume you're talking about the
6 fly-over and the boards with the name of the architects and all
7 that.
8 MS. KERN: That's some of it. But there's also some
9 other additional. There's some additional documentation that
10 Wood Rodgers has. There's additional documentation they
11 executed with the names of the architects on the application,
12 those type of things.
13 MR. MOLLATH: I understand that.
14 MS. KERN: Okay.
15 BY MR. MOLLATH:
16 Q But separate and apart from documents that are in the
17 entitlement file, all right, there is nothing that would have
18 prevented Fisher Friedman from knowing, certainly by
19 April 21st, 2006, that Dr. and Mrs. Iliescu owned the property,
20 and that your contracting developer did not own it, that you
21 could ascertain the address in Reno, Nevada, of Dr. and
22 Mrs. Iliescu, and you could have sent them some type of written
23 document or notice that you were undertaking architectural
24 services in connection with their property. That is something
25 certainly you were capable of doing.

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1 A Yes. I assume so.
2 MR. MOLLATH: Okay. Let's have marked as next in
3 order the Notice of Claim of Lien.
4 (Exhibit 5 was marked.)
5 BY MR. MOLLATH:
6 Q Okay. I'll show you what has been marked Exhibit 5,
7 Notice of Claim of Lien. And I'm assuming that this notice was
8 authorized to be filed and recorded. I should say recorded,
9 not filed, by your office to Gail Kern; is that correct?
10 A Correct.
11 Q And who authorized Gail Kern to file the Notice of
12 Claim of Lien from your office? Was it you or your accounting
13 department?
14 A It was probably a combination of Rodney Friedman and
15 myself.
16 Q Okay. And this is a result of a refusal to pay
17 certain agreed-upon invoices by BSC Financial, care of
18 Consolidated Pacific, pursuant to the contract which is
19 Exhibit 1, right?
20 A I would change that. "Refusing," to me, implies lack
21 or conflict with what is owed. They weren't refusing to pay
22 through the fact of disagreement with fees owed. There was a
23 lack of payment or an inability to pay. That is different than
24 refusing.
25 Q Okay. The distinction is well-taken.

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1 the two applications at or about the time
2 of the receipt of the owner's affidavit."

3 Do you see that?

4 **A I see that.**

5 **Q** Do you have any independent knowledge that Dr. Iliescu
6 or Mrs. Iliescu, or anybody associated as an agent of
7 Dr. Iliescu, saw architectural drawings on or about the time of
8 the owner affidavits being executed in January? Which is
9 Exhibit 2, I think.

10 **A I don't have knowledge of what other people may or may**
11 **not have done.**

12 **Q** Okay. Do you have any information on anything related
13 to whether Dr. and Mrs. Iliescu and/or Dick Johnson, leaving
14 lawyers aside for a moment, had any information concerning the
15 work that Fisher Friedman or yourself was doing on this project
16 prior to the time of the filing of the lien?

17 **A So if you're talking about the availability to see**
18 **documents at Wood Rodgers' office, and the ability to see the**
19 **presentations, or to be at any of the public meetings, or any**
20 **of the other times when the project was exhibited, discussed,**
21 **Power Points shown, et cetera, fly-throughs, et cetera, I can't**
22 **speak to whether or not they were there or not there as I**
23 **wasn't at those occurrences. There were certainly lots of**
24 **opportunities to see the project and to see the names of my**
25 **name and Fisher Friedman.**

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1 **Q** So I want to be clear on this because this is an
2 important point: As I understand the position that you've
3 taken in this litigation, relative to the mechanic's lien and
4 relative to Dr. and Mrs. Iliescu's knowledge of the existence
5 of the work that yourself and/or Fisher Friedman were doing
6 architecturally on this project that is related to their
7 ability, that being Dr. and Mrs. Iliescu's and their agents'
8 ability, to be able to observe by looking at public documents
9 and attending public hearings, that your firm was the firm that
10 was providing architectural work to the project. I mean, is
11 that kind of in a nutshell?

12 **MS. KERN:** He can answer -- I'm totally lost by your
13 question, so I don't know if he is, but --

14 **MR. MOLLATH:** I'm trying to be really careful here.

15 **THE WITNESS:** No.

16 **BY MR. MOLLATH:**

17 **Q** You don't have today, as you sit here, any specific
18 knowledge that somebody told Dr. and Mrs. Iliescu that
19 Fisher Friedman or yourself or any other architect was
20 providing architectural services to this project prior to the
21 filing of the mechanic's lien. Told.

22 In other words, information -- you don't have any
23 information, that you know of as you're sitting here today,
24 that you can tell me that, "Yes, I think Mr. Jones told Dr. and
25 Mrs. Iliescu or told Dick Johnson that Fisher Friedman and

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1 myself or Mr. Ogle was providing architectural services."

2 **MS. KERN:** To his knowledge. I mean, I don't want to
3 bind -- I don't want to limit what other information is already
4 out there as able to be produced with respect to other people
5 and then you say, oh, look, he testified that there wasn't
6 anyone.

7 **MR. MOLLATH:** No. I'm just talking about this
8 gentleman sitting in this chair today, and what I want to know
9 is: Does he have any information within his possession or
10 knowledge, as he sits here today, looking back, you know, going
11 back through the archives in the little gray cells, that you
12 know of somebody, anybody, that told Dr. Iliescu and
13 Mrs. Iliescu or Dick Johnson, "Fisher Friedman Associates,
14 myself, or Mr. Ogle, or another architect is doing
15 architectural work on your property prior to the filing and
16 recordation of the mechanic's lien."

17 **MS. KERN:** Other than what you've already been
18 provided.

19 **MR. MOLLATH:** Other than, you know, what he mentioned
20 about public documents and a Power Point presentation at public
21 hearings and things like that. I want to know whether he knows
22 of any living, breathing person, that he knows of, that told
23 Dr. or Mrs. Iliescu, or any one of their agents, that your firm
24 was doing architectural work on their project. I don't know
25 how clear I can be. A living, breathing person.

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1 **MS. KERN:** Other than Mr. Snellgrove, who's given an
2 affidavit in this case.

3 **MR. MOLLATH:** Other than Mr. Snellgrove.

4 **THE WITNESS:** I don't know that I personally know more
5 about anybody else having specifically told Dr. Iliescu who was
6 the architect, other than David. As -- I don't know if anyone
7 else did or didn't.

8 **MR. MOLLATH:** Okay.

9 **DOCTOR ILIESCU:** My faith in human nature.

10 **MR. MOLLATH:** The only --

11 **THE WITNESS:** But, see, you're being very specific,
12 and you're being specific for a reason, and your specificity is
13 about my knowledge of someone specifically telling him, coming
14 out and saying, "Hey, these are the architects working on your
15 project," or "your site," sorry.

16 **BY MR. MOLLATH:**

17 **Q** Yeah. Somebody that you personally know because you
18 were physically there when that person told Dr. Iliescu, or
19 somebody in the course of business in the administration of
20 this particular job has told you, "I told Dr. Iliescu about
21 this, where they can find these architects," you know of no
22 other living, breathing person who may have done that except
23 for Mr. Snellgrove.

24 **A I'm not aware of any. That's not come to light**
25 **directly to me, okay? But again, I don't know -- I don't hear**

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1 everything. There may be somebody, so...

2 Q I want to know what you know today.

3 What I'm hearing is the only living, breathing person

4 that you know of that has said in some shape, manner or form

5 that Dr. Iliescu personally knew who the architects was or

6 were, were Mr. Snellgrove. That's all you know in that

7 regard.

8 MS. KERN: Without limitation.

9 MR. MOLLATH: I just want to know. Is that a correct

10 statement?

11 THE WITNESS: As far as I know.

12 BY MR. MOLLATH:

13 Q Okay. And would Mr. Ogle know any more than you or

14 may know more than you?

15 A He may or he may not. I can't speak for that. He

16 hasn't told me.

17 Q Okay.

18 A I don't know that he's met Dr. Iliescu personally. He

19 may have seen him at the meeting. I can't say that they spoke,

20 and I don't know if he has heard of any other record.

21 Q Do you know whether any member of your organizations,

22 that architectural organization down in

23 Emeryville California --

24 A Yes.

25 Q -- has ever spoken, at any time prior to this

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1 litigation, has ever spoken with Dr. or Mrs. Iliescu at any

2 time concerning the architectural work that was done on this

3 property?

4 A Not that I remember.

5 Q Okay. And you know of no written letter, notice,

6 document or otherwise, that was sent by Fisher Friedman or

7 yourself to Dr. Iliescu, prior to the recording of the notice

8 of lien, that Fisher Friedman or yourself was going to lien

9 their property for nonpayment by the developer?

10 In other words, you didn't send them any notice that

11 says, "Hey, we are working on your project. We are spending

12 money, and if we don't get paid we are going to lien your

13 property." That wasn't done, was it?

14 A Although, I would say we were working on BSC's project

15 on his property, I'm not aware of a letter.

16 MR. MOLLATH: Okay. Let's continue this deposition to

17 a point where I get all the documents. Do I need to do a

18 formal document production for all these documents?

19 MS. KERN: It's my understanding you want whatever

20 file we have -- you don't want all the drawings --

21 MR. MOLLATH: I don't care about architectural

22 drawings or stuff from CAD or disks or anything else. I'm

23 talking about the hard transmittal letters, contracts, e-mails,

24 you know, that kind of stuff. I don't care about the drawings.

25 MS. KERN: And the amended claim of lien.

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1 MR. MOLLATH: And the amended claim of lien. The

2 application, the hard copy of the application for the

3 entitlements.

4 MS. KERN: You were provided a disk.

5 MR. MOLLATH: I was?

6 MS. KERN: Yes.

7 MR. MOLLATH: And what's on that disk?

8 MS. KERN: It's the fly-by, that's been referred to as

9 the fly-by and the Power Point.

10 MR. MOLLATH: I've got all that.

11 MS. KERN: Okay. Because we've produced all of that.

12 Okay.

13 MR. MOLLATH: Yeah. I know about that.

14 MS. KERN: Okay.

15 MR. MOLLATH: What I'm talking about is those little,

16 you know, paper files that are sitting in file drawers that

17 have all the stuff in them.

18 MS. KERN: Okay.

19 MR. MOLLATH: Okay. That's what I need.

20 MS. KERN: Okay.

21 MR. MOLLATH: And if you want to, you can Bates stamp

22 it.

23 MS. KERN: Yeah.

24 MR. MOLLATH: But I think it's probably wise, in this

25 litigation, to just give it to me --

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1 MS. KERN: It makes it a lot easier to Bates stamp

2 it.

3 MR. MOLLATH: -- and just Bates stamp everything.

4 MS. KERN: Yeah, I will.

5 MR. MOLLATH: And I probably will want to take the

6 deposition of Snellgrove.

7 MS. KERN: Okay.

8 MR. MOLLATH: And we probably --

9 MS. KERN: My October is a nightmare.

10 MR. MOLLATH: I'm going to be going to Hawaii,

11 anyway.

12 MS. KERN: I mean, it really is a nightmare.

13 MR. MOLLATH: Don't worry, I won't set it in October.

14 We'll coordinate a date on that.

15 MS. KERN: I've got eight arbitrations.

16 MR. MOLLATH: That's all I've got.

17 DOCTOR ILIESCU: I appreciate your honesty. It makes

18 me feel better. Nothing to do with me, it's just people, and I

19 feel somebody that's an architect has that kind of integrity.

20 THE WITNESS: You're welcome.

21 DOCTOR ILIESCU: You can count on it from me.

22 MR. MOLLATH: That's all I've got for the time

23 being. I appreciate your time, and get you out of here an

24 hour early.

25 THE WITNESS: You're fine.

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1 MR. MOLLATH: Send the original to Ms. Kern.
2 MS. KERN: Thank you.
3 (Whereupon the deposition concluded at 3:54 p.m.)
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MARK STEPPAN

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

5 I, SUSAN CULP, a notary public in and for the County
6 of Washoe, State of Nevada, do hereby certify:

7 That on Monday the 29th day of September 2008, at the
8 hour of 1:58 p.m. of said day, at the offices of Gayle Kern,
9 Ltd., 5421 Kietzke Lane, Suite 200, Reno, Nevada, personally
10 appeared MARK STEPPAN, who was duly sworn by me to testify the
11 truth, the whole truth, and nothing but the truth, and
12 thereupon was deposed in the matter entitled herein;

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

16 That the foregoing transcript, consisting of pages 1
17 through 75, is a full, true, and correct transcript of my
18 stenotype notes of said deposition to the best of my knowledge,
19 skill, and ability.

20 DATED: At Reno Nevada this 7th day of October 2008.
21
22
23

24
25

SUSAN CULP CSR #343

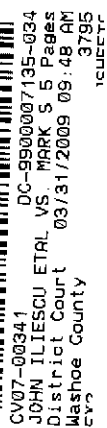


EXHIBIT 2

EXHIBIT 2

JA0835

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

-oOo-

MARK B. STEPPAN,

Case No. CV07-01021

Plaintiff,

Dept. No. B6

vs.

JOHN ILIESCU, JR., SONIA ILIESCU,
as Trustees of the JOHN ILIESCU,
JR., AND SONNIA ILIESCU 1992
FAMILY TRUST AGREEMENT, et al.,

ORIGINAL

Defendants.

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

Consolidated with

Case No. CV07-00341

Department No. B6

Third-Party Plaintiffs,

vs.

CONSOLIDATED PACIFIC DEVELOPMENT,
INC., a Nevada corporation, et al.,

Third-Party Defendants.

DEPOSITION OF
DAVID SNELGROVE

Tuesday, November 18, 2008

Reno, Nevada

Reported by: KIMBERLY J. WALDIE, NV CCR #720, RPR
CALIFORNIA CSR #8696

1 A I wanted to point out to him what the
2 application itself was, show him as much as I reasonably
3 could so that he had a general nature of the application
4 and what was being requested on his property.

5 Q Okay. And did Dr. Iliescu ask you any
6 questions or tell you anything?

7 A I seem to recall a comment about the size of
8 the building. But beyond that, nothing that I recall in
9 particular.

10 Q Did you tell Dr. Iliescu or discuss with
11 Dr. Iliescu how the architect fit into the application
12 process?

13 A We didn't have any specific conversations about
14 the architect.

15 Q Now, on paragraph seven of the affidavit, it
16 says: Both the January 17, 2006 and February 7, 2007
17 Applications contained building elevations and/or
18 building floor plans containing the name of the project
19 architect, Mark Steppan, and the architectural design
20 consultant, Fisher Friedman. You see that?

21 A Uh-huh.

22 Q It says: It is my recollection that
23 Dr. Iliescu saw the architectural drawings as provided
24 in the two applications at or about the time of the
25 receipt of the Owner affidavits.

1 A That's correct.

2 Q Now, what -- tell me what you believe
3 Dr. Iliescu saw at this five-minute meeting that you had
4 where he came in and signed the Owner's affidavit?

5 A With a Tentative Map or Special Use Permit
6 Application that is submitted to the city of Reno, in
7 addition to the reduced copies, there are full-size
8 copies of maps that are required to go in, and we had
9 those on the table. I believe some of those were folded
10 up. And I recall opening some up. Whether they were
11 engineering or whether they were architectural, I don't
12 recall in specific. But the maps were there and shown
13 and present.

14 Q Okay. But you have no idea whether Dr. Iliescu
15 specifically saw the name of the project architect or
16 the architectural design firm and focused on that?

17 A No, I couldn't answer that.

18 Q Okay. And you didn't tell him or engage in a
19 dialogue with him concerning on this particular page,
20 this is the architect, and this is his name, and things
21 like that?

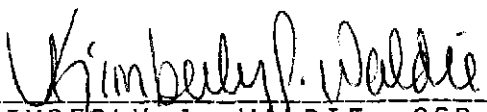
22 A No, I did not.

23 Q Okay. So essentially all you -- you are really
24 telling us is that there were architectural drawings on
25 the table at the time Dr. Iliescu came in to sign his

1 I, KIMBERLY J. WALDIE, a Certified Shorthand
2 Reporter licensed in the State of California and the
3 State of Nevada, do hereby certify that on Tuesday,
4 November 18, 2008, at the offices of Prezant & Mollath,
5 6560 SW McCarran Blvd., Ste. A, Reno, Nevada, personally
6 appeared DAVID SNELGROVE, who was duly sworn to testify
7 and deposed in the matter entitled herein; that said
8 witness was duly sworn by me; that, before the
9 proceedings' completion, the reading and signing of the
10 deposition was requested by the deponent; that the
11 foregoing transcript, consisting of pages 1 through 56,
12 is a true and correct transcript of the stenographic
13 notes of testimony taken by me in the above-captioned
14 matter to the best of my knowledge, skill and ability.

15 I further certify that I am not an attorney or
16 counsel for any of the parties, nor a relative or
17 employee of any attorney or counsel connected with the
18 action, nor financially interested in the action.

19 Dated at Reno, Nevada, this 24th day of
20 November, 2008.

21
22 
23 KIMBERLY J. WALDIE, CSR No. 8696
24 NV CCR #720, RPR
25

CV07-00341 DC-9900007135-035
JOHN ILIESCU ETAL VS. MARK S 7 Pages
District Court 03/31/2009 09:48 AM
Washoe County 3795
Eva ISSUED

EXHIBIT 3

EXHIBIT 3

JA0840

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

-oOo-

JOHN ILIESCU, JR., SONNIA)
SANTEE ILIESCU, AND JOHN)
ILIESCU, JR., AND SONNIA)
ILIESCU AS TRUSTEES OF THE) Case No. CV07-00341
JOHN ILIESCU, JR., AND SONNIA) (Consolidated with Case No.
ILIESCU 1992 FAMILY TRUST,) CV07-01021)

Plaintiffs,)

) Dept. No. 6

vs.)

MARK B. STEPPAN,)

Defendant.)

DEPOSITION OF RICHARD K. JOHNSON

MONDAY, SEPTEMBER 29, 2008

RENO, NEVADA

SUNSHINE REPORTING SERVICES
151 COUNTRY ESTATES CIRCLE, RENO, NEVADA 89511
REPORTED BY: SUSAN CULP, CCR #343

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1 company.

2 Q Who at the title company?

3 A Maryann Infantino.

4 Q And what was your conversation with Maryann Infantino?

5 A What she knew about these liens and the pre-liens and
6 that kind of stuff. Because her husband actually was a
7 licensed contractor and I thought she might know, and she was
8 privy to this information. She's the one that actually got --
9 Like I said, she's the one I got the notice from. How she got
10 it is beyond me, first. I would have thought the Iliescus
11 would have got it first.

12 Q What did you understand, from your conversations with
13 Ms. Infantino, regarding the mechanic lien?

14 A That people need to notify you if they have -- file an
15 intent to lien, and give you a name and address and so forth of
16 who it is before they are allowed to file a lien so that you
17 have time to go in and file some kind of paper saying, "No, I'm
18 not responsible, that guy is responsible."

19 Q But you all knew that work was going to be done on the
20 property, right? That wasn't a surprise, was it?

21 A Well, what's the work? I don't know what they were
22 doing. We were never privy to what they were doing
23 specifically.

24 Q Until we got to the point of the commission hearings
25 and the meeting prior to that, with the mayor and a couple of

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1 supportive of the project.

2 Wasn't that the purpose of the August 2005 meeting
3 with the mayor?

4 A I think that's kind of what I just said. Politically
5 talked with them and made sure they were in agreement.

6 Q You say that it was a very --

7 A There was no votes. You couldn't get into a lot of
8 stuff into those meetings, nor could you have a lot of the
9 councilmen at a lot of the meetings because there's laws
10 against that.

11 Q How was the project presented by you or Mr. Caniglia?

12 A Oh, by Caniglia. I didn't know the project to present
13 it.

14 Q But you were there and you heard what Mr. Caniglia
15 said?

16 A Correct.

17 Q Okay. How did he describe it?

18 A They did a fly-over, which was an aerial program, like
19 a plane was coming through and going over the town and you
20 could see a mock-up of a building as you came up to it, and
21 they showed some life pictures showing different angles of the
22 river, and what would be seen from the different angles north,
23 east, south and west.

24 Q And this was the August 2005 meeting?

25 A It was one of the meetings I attended. I don't

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1 the council members, to -- I attended one or two of those where
2 they gave a fly-over and that type of thing to show what they
3 were doing. That's the first that we were given any indication
4 of what it is.

5 Q Well, you met with the mayor and Mr. Caniglia on
6 August 25th of 2005, didn't you?

7 A That's what I just said. Those were the first
8 meetings where we had any idea of what was going on.

9 Q And who was present during that August meeting with
10 the mayor and Mr. Caniglia? Anyone else?

11 A Couple of guys that I don't know who they were. I
12 assume they were the staff. Bob Cashell was there, a guy from
13 Wood Rodgers was there, myself, Sam.

14 Q What was the substance of that conversation?

15 A It was more shake your hand, "Here's what is going on.
16 We are going to be developing a big project."

17 And I asked Dick, because he asked me to call and set
18 up the meeting with Cashell, I asked Dick to get us down here
19 just so we can answer any questions. It was pretty broad. It
20 was, "Here, we are going to do this big project and Reno is
21 going to be excited about it." It was a courtesy meeting with
22 the mayor to let him know what it was.

23 Q Well, in the letter dated July 14, 2005, there was a
24 specific reference by Mr. Caniglia that he wanted some period
25 of time to contact the City and make certain they are

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1 remember if it was the August 2005.

2 We probably had four different meetings throughout the
3 time where they talked with City officials to get approval for
4 the building to get Bob Cashell to encourage the building
5 department to work diligently with them so they could move
6 faster.

7 Q You referenced some addendum when we were discussing
8 the July 29th, 2005, agreement.

9 A Uh-huh.

10 Q There is one that I've got identified as 65 and 68
11 that's dated August 1, 2005. It says Addendum No. 1.

12 A Addendum No. 1 was August 1, 2005.

13 Q Okay. And did you prepare this?

14 A I -- I'm trying -- I did prepare it. I'm trying to
15 think. July, August -- Because there was some stuff I got
16 back.

17 The reason I'm hesitating, there was some stuff where
18 an attorney would review and send it back and I would still
19 write it, but it was at their request. But I wrote this, yes.

20 Q Do you recall if this Addendum No. 1 was done at the
21 request of any counsel, any attorney?

22 A I think it was done at the request of Otto, but I'm
23 not a hundred percent sure of that answer.

24 Q Was it Addendum --

25 A Because it was a more defined version of what's in the

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1 A It was.
 2 Q Excuse me. And it was --
 3 A It was an updated or revised -- I cut you off. I'm
 4 sorry.
 5 Q I want to make sure you finish. Was there anything
 6 else?
 7 A No.
 8 Q And it was an appraisal that was commenced or
 9 commissioned by the buyers, correct?
 10 A Correct.
 11 Q Did you, on behalf of the Iliescus, ever obtain an
 12 appraisal?
 13 A No.
 14 Q How did you determine the purchase price?
 15 A I guess by the offer and acceptance. He offered a
 16 price and Doc accepted the price.
 17 Q You didn't evaluate or identify what you wanted before
 18 getting that offer?
 19 A Well, you're talking two different things. I think
 20 this appraisal was based on probably it moving forward. I
 21 don't know. I'd have to look at it again. But it was probably
 22 based on the fact that there would be entitlements and moving
 23 forward, whereas our sale was based on the land being sold
 24 irrespective of any entitlements.
 25 Q So you agree with the entitlements it's worth more

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1 circumstances, be able to get an extension.
 2 If you got an extension, you still fell within the
 3 same entitlements that we currently have; if you can't, then
 4 you lose them. So that's a question mark at this point.
 5 Q What is your understanding of what the entitlements
 6 are?
 7 A Entitlements are the ability to build a certain-size
 8 project on that property, basically confining the exterior of
 9 the buildings to go on the property, and then the interior
 10 would be the final map, which would be the rest of the detail
 11 that goes with it.
 12 Q It's my understanding from your testimony that you
 13 knew that there were architects involved, but that you do not
 14 recall when you first met or heard the name Mark Steppan and/or
 15 Fisher Friedman; is that correct?
 16 A You said that I knew architects. I don't know when
 17 they were anybody, any architects were involved and stuff.
 18 But I know from a practical standpoint that they would
 19 need architects involved. When they got involved whatever,
 20 yeah, I don't know.
 21 And as far as the knowing who Mark Steppan was and
 22 there was another name of a guy out of New York, those names, I
 23 mean, I heard at some point later in the process but around the
 24 time of the commission hearing-type thing.
 25 Q Did you ever attend any of the neighborhood meetings?

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1 than what the land was before the entitlements were obtained?
 2 A The entitlements would have increased the value of the
 3 property, yes, as long as it was accomplished. The
 4 entitlements go away, the land drops in value again.
 5 Q Is it your understanding that without the plans as
 6 have been approved, the number of units that can be constructed
 7 on the Court Street properties is less because of a zoning
 8 change?
 9 A Say that again.
 10 Q Are you aware that if the entitlements that have
 11 already been granted --
 12 A Uh-huh.
 13 Q -- are not used --
 14 A Okay.
 15 Q -- that the project that can be built will be
 16 significantly smaller because there's been a zoning change?
 17 That they would not be able to take advantage of that increased
 18 unit -- units?
 19 A Well, I'm aware that there's been a change in the
 20 zoning. The rest of your statement may or may not be true.
 21 And I say that strictly as hearsay through Sam
 22 Caniglia and so forth, which is saying that you could possibly
 23 get an extension. That even though the extension is running
 24 out, from what I'm being told it's November 14th, that you
 25 could possibly, because of the bankruptcy and other mitigating

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1 A No.
 2 Q Were you aware they were taking place?
 3 A The day before on the one, and I was out of town,
 4 so...
 5 Q On the one.
 6 A Well, there was one that I knew. You said did I know
 7 of any of them before they were taking place, and the answer is
 8 yes, I knew of one, but it was like the day before that I found
 9 out about it and I was not going to be an available.
 10 Q To your recollection, did your clients attend any of
 11 those neighborhood meetings?
 12 A Not that I know of.
 13 Q You never discussed them with them?
 14 A No.
 15 Q And that was -- Did you ever discuss the meetings with
 16 your clients?
 17 A No.
 18 Q Did your clients go to any of the meetings with any
 19 City personnel with respect to the project?
 20 A I don't believe so.
 21 Q Do you have an understanding that your clients were
 22 at, at least one of the presentations to either the planning
 23 commission or the City council?
 24 A They were at the planning commission meeting, yes.
 25 Q Were you present?

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1 said if there was any chance to have an outside patio garden
2 for Sonnia, that's -- he would really like to have that. And
3 based on that, I'm assuming it's the 7th floor. That's where
4 it cut back on the drawing that he showed me. It was just an
5 eight-and-a-half by eleven drawing, but...

6 Q I'm going to show you what was marked as 338, 339, and
7 340, which is a letter from the Hale Lane law firm. This was
8 in your files, as I understand it?

9 A If it's in what was copied, it was in my files. Okay.

10 Q Is that the letter that you referred to earlier in
11 your testimony in which if there was a conflict that the
12 Iliescus would be the, quote, primary client, something to that
13 effect?

14 A That would be one of the things it would have brought
15 out. And the indemnity, I think, also stated that, if I
16 remember correctly.

17 Q Prior to these two documents, then, in about the time
18 period of December of '06, was there any earlier communication
19 or correspondence from Hale Lane with respect to their dual
20 representation of the buyers and sellers?

21 A Don't know.

22 Q Do you have any recollection of any other
23 communication, other than what we've been looking at that's
24 dated December of '06?

25 A Of Hale Lane -- And say it again.

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1 Q Of Hale Lane identifying that the Iliescus would be
2 their primary or -- I don't know what other word that you used.
3 The client that they would give preferential treatment to as
4 opposed to the buyers of the property?

5 A To me, it's -- They hired Hale Lane way back in
6 September of '05.

7 Q "They" being the Iliescus?

8 A Yes.

9 Q But at that time did -- do you have any documentation
10 or are you aware of any documentation from the Hale Lane law
11 firm with respect to a potential conflict of interest?

12 A Not that I recall.

13 Q Okay. What you recall is the indemnity and this
14 letter in the late '06 timeframe?

15 A Right.

16 Q Okay.

17 A The thing that's confusing me when you're asking is if
18 an attorney takes on a client they are responsible to that
19 client. So when they started back in September, did I say it
20 was, of '05, they were their primary client for this starting
21 then.

22 Q Well, I don't disagree with you.

23 A Okay. So that's why I'm confused when you were saying
24 that.

25 Q I'm referring -- I'm trying to follow up on your

Page 80

1 testimony --

2 A Yeah.

3 Q -- in which you said that a clarification at some
4 point was made by the Hale Lane, and I just want to make sure
5 that I'm in the right timeframe.

6 A A problem created a clarification of what started way
7 back when.

8 Q Okay. You said that you had a lot of communications
9 with Mr. Caniglia over the last several years, correct?

10 A Uh-huh. Uh-huh.

11 Q Is that a "Yes"?

12 A That's a yes.

13 Q And is it your testimony that even when he was working
14 towards getting the project put together you never had a
15 conversation with him with respect to the architects that were
16 designing the penthouse that your client wanted as part of the
17 purchase price?

18 A I did not.

19 Q Is it because the name of the architects didn't matter
20 to you, just the fact that they were going to be putting
21 together a design that would have a penthouse that would be
22 part of the purchase price?

23 A Well, I didn't know if they were in-house or out of
24 house people that were doing it, and the reality is it really
25 wasn't any of my business. My job was selling their property

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1 to this person and watching out for the best interest of my
2 client. And that's what I was trying to do.

3 Beyond that, I was more worried about timelines. Are
4 you on track to close within the parameters of the contract
5 that we have? Are you going to be prepared? Are you going
6 through with it?

7 Q Will you look back at Addendum No. 1, please. It's --

8 A What's --

9 Q It's Iliescu 67 on the Bates stamp.

10 A Oh, I'm sorry. Uh-huh.

11 What page was that? I'm sorry.

12 Q 67 in the lower right-hand corner.

13 A Okay. Addendum 1. Uh-huh. It says, "See Addendum
14 2." That's what I said. Addendum 1 and Addendum 3 followed
15 each other immediately.

16 Q I want you to look at what appears to be additional
17 terms and conditions, 39(H). Do you see that on the page?

18 A Yeah. Hard for me to read, but I can see it.

19 Q Me, too. But it says and refers to the fact that the
20 penthouse that is part of this purchase price that the Iliescus
21 wanted, that they would have the ability to review floor plans
22 that had been drawn by the architect, correct?

23 A That -- That would be drawn by the architect, yes.

24 Uh-huh.

25 Q And that if they then decided that they didn't like

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1 Can you look at your tab 14 and tell me what the Bates
2 stamp is.
3 MR. MOLLATH: Bates stamp number is 133,
4 December 14th, '05, Hale Lane.
5 MS. KERN: Thank you.
6 BY MS. KERN:
7 Q Do you recall having any conversation with the
8 Iliescus with respect to this December 2005 letter regarding a
9 potential conflict of interest or a waiver of conflict, how
10 it's described in your timeline?
11 A Which is the letter that you're referring to?
12 Q I'm sorry. It's on your timeline 12/14/2005, waiver
13 of conflict letter, and then I'm assuming this is your notes,
14 "to act as attorneys for BSC, Iliescu. DeCal will act jointly;
15 however, if conflict with Iliescu, then Hale Lane will
16 represent Iliescu."
17 My question is: Do you have recollection of
18 discussing this letter with the Iliescus at or about the date
19 of that letter December of 2005?
20 A They were involved with it, weren't they, at the
21 meeting? Where did you just read that?
22 I can't really tell you whether Doc and Sonnia were at
23 that meeting. They were at one and they weren't at one, is the
24 truth of the matter, and I can't remember which is which.
25 Q My question is --

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1 A Yeah.
2 Q -- did you have any conversation or communication with
3 the Iliescus about the waiver of conflict letter that was
4 prepared by Hale Lane?
5 A I would have.
6 Q Do you recall the substance of that conversation?
7 A No. I just know I would have talked to them.
8 Q Do you know generally what it would have been about?
9 A It would have been about we need this, and I
10 would have told them someplace here, I remember, having
11 where the call from Doug Flowers referencing the signatures
12 being done. That was on 12/6. So there was that kind of
13 conversation.
14 Q Did you have any conversation with the Iliescus in
15 which you said, "Hey, there's going to be a lot of work done on
16 this property and you are -- you know, you're subject to
17 mechanic liens. You want to make sure you talk to Hale Lane
18 about protecting yourself." Did you ever have that
19 conversation?
20 A No. Not the way you said it.
21 What I had was the conversation that we need legal
22 advice throughout this because of the size of the project, and
23 that was back when they hired Hale Lane and retained them to do
24 just that.
25 Q Okay. Can I see your timeline?

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1 A I'm sorry. Sure.
2 Q That's okay. What is LoopNet?
3 A LoopNet is a -- what should I say -- it's like a
4 listing service for commercial properties. And there was
5 another group in town that had it on LoopNet, the project, and
6 they didn't have authority to, and I called them to ask them to
7 cease and desist doing it.
8 Q Okay. In your notes it says, "Was offered by DeCal on
9 LoopNet project for sale, 25 million."
10 A Yeah. That's what the terms were on what they were
11 saying. They were doing it through ReMax Realty, who they
12 were tied in with. But again, like I say, they didn't have
13 acknowledgment or consent of Doc to do that, which you need
14 both in order to put a listing out there.
15 Q You have the Snellgrove affidavit in your documents,
16 correct?
17 A I don't know if I do or not. But if it's there, I
18 do.
19 MR. MOLLATH: 578 is the number.
20 MS. KERN: Thank you.
21 THE WITNESS: What documents are those?
22 MR. MOLLATH: This is --
23 BY MS. KERN:
24 Q Well, it's what I've been informed today. I had your
25 file. I didn't know that's what I had. So I'm going to show

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1 you 578, 579, and 580. So that was in your documents.
2 A That's something I think is one -- something I was
3 given by -- I'm assuming by Sam after the fact.
4 Q Why are you assuming that?
5 A Because there was no -- if I had known that he even
6 had a deposition, I would have been wondering what it was, as
7 to what it is.
8 Q Who had a deposition?
9 A Well, that's some kind of a legal document for what he
10 said, isn't it?
11 Q It's an affidavit.
12 A An affidavit, okay. So he wrote an affidavit on this
13 thing. I don't know when I would have received that, but it
14 was -- I don't know. I didn't go there. I didn't get it.
15 Somebody gave it to me.
16 Q When did you prepare this timeline?
17 A Oh a couple of weeks ago. And then I updated it
18 probably two days ago just to see.
19 Q Were you familiar with or are you aware of the
20 special-use permit application from January of 2006 that your
21 clients executed?
22 A I'm aware that there was a special-use permit that was
23 part of the entitlement process, right.
24 Q Correct?
25 A I'm familiar with that there was an entitlement.

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1 A That's what he represented to me, uh-huh.
2 Q When is the last time you had any communication with
3 Stevens?
4 A Probably Friday.
5 Q Just this past Friday?
6 A Uh-huh.
7 Q Is that a yes?
8 A That's a yes, uh-huh.
9 Q Thank you.
10 A You're stealing my notes.
11 Q I'm going to make a copy, but I'm going to give it
12 back to you. I don't steal anything.
13 MS. KERN: At the present time we'll leave this open
14 to be reconvened, if necessary, after being able to review the
15 file, but I do not have any further questions at the present
16 time.
17 MR. MOLLATH: I don't have any questions.
18 (The following proceedings were held out of
19 the presence of the witness.)
20 MS. KERN: We have a housekeeping matter to do with
21 respect to Mr. Johnson's depo.
22 MR. MOLLATH: Uh-huh.
23 MS. KERN: There is no Exhibit 4. We had
24 originally marked it before, but I ended up not talking about
25 it or introducing it at all. So when you see the exhibits, you

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1 will not have an Exhibit 4, and it was intentional there wasn't
2 one.

3 MR. MOLLATH: No problem. I can live with that.
4 (Whereupon the deposition concluded at 12:31 p.m.)
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RICHARD K. JOHNSON

Page 96

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)
4
5 I, SUSAN CULP, a notary public in and for the County
6 of Washoe, State of Nevada, do hereby certify:
7 That on Monday, the 29th day of September 2008, at
8 the hour of 9:55 a.m. of said day, at the offices of Gayle
9 Kern Ltd., 5421 Kietzke Lane Suite 200 Reno, Nevada,
10 personally appeared RICHARD K. JOHNSON, who was duly sworn by
11 me to testify the truth, the whole truth, and nothing but the
12 truth, and thereupon was depose in the matter entitled herein;
13 That said deposition was taken in verbatim stenotype
14 notes by me, a Certified Shorthand Reporter, and thereafter
15 transcribed into typewriting as herein appears;
16 That the foregoing transcript, consisting of pages 1
17 through 96, is a full, true and correct transcript of my
18 stenotype notes of said deposition to the best of my knowledge,
19 skill and ability.
20 DATED: At Reno Nevada this 7th day of October 2008.
21
22
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24
25

SUSAN CULP CSR #343

1 Code 3370

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5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 JOHN ILIESCU JR., et al.,

Case No. CV07-00341

10
11 Plaintiffs,

Dept. No. 6

12 vs.

13 MARK B. STEPPAN,

14 Respondent.
15 _____/

16 AND ALL RELATED MATTERS.
17 _____/

ORDER

18 The action stems from a question of if the Applicants had knowledge the
19 Respondent and his firm were performing architectural services for the benefit of the project
20 in question. The Applicants ("Applicants" or "Iliescu") filed a motion for partial summary
21 judgment on Mark Steppan's ("Respondent") claim for foreclosure of mechanic's lien. The
22 Respondent opposed the motion and filed a cross motion for partial summary judgment to
23 foreclose on the mechanic's lien.

24 The Applicants argue that they were never served with notice of right to lien as
25 required under NRS 108.245(1). They further argue the Applicants did not have actual
26 notice of construction on the project or of the identify of the Respondent. *Fondren v. K/L*
27 *Complex Ltd.*, 106 Nev. 75, 800 P.2d 719 (1990).

28 //

1 The Respondent argues that Iliescu did have actual notice from the land sale
2 agreement that the buyer would be hiring several design professionals, including architects.
3 Iliescu was also made aware at the public meetings that the Respondent was the architect
4 for this project. Since the Applicants knew that the construction project was underway, they
5 should have filed a notice of non-responsibility as required under NRS 108.234. See
6 *Fondren supra* at 721. The Respondent also alleges that the Applicants' counsel reviewed
7 the contract on the project and therefore had knowledge of the architect's identity and this
8 knowledge is imputed to the Applicants. *Lange v. Hickman*, 92 Nev. 41, 544 P.2d 1208
9 (1976).

10 The Applicants respond that the Respondent did not even attempt to comply with the
11 statutory requirements which results in a lack of substantial compliance. *Las Vegas*
12 *Convention & Visitors Auth. v. Miller*, 124 Nev. Adv. Rep.62, 191 P.3d 1138 (2008). The
13 Applicants further argue that there has been no evidence to prove that Iliescu has actual
14 knowledge of the Respondent's architectural services. Iliescu also argues that there is a
15 question whether Iliescu's prior counsel had Respondent's information in mind when it was
16 acting on Iliescu's behalf.

17 "Summary judgment is appropriate under NRCP 56 when the pleadings, depositions,
18 answers to interrogatories, admissions, and affidavits, if any, that are properly before the
19 court demonstrate that no genuine issue of material fact exists, and the moving party is
20 entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev.
21 2005).

22 "A factual dispute is genuine when the evidence is such that a rational trier of fact
23 could return a verdict for the nonmoving party." *Id.*

24 The Applicants, specifically Iliescu, viewed the architectural drawings as well as
25 attended meetings where the design team presented the drawings. The Court finds even
26 though Iliescu alleges he did not know the identity of the architects who were working on
27 the project, he had actual knowledge that the Respondent and his firm were performing
28 architectural services on the project.

1 Accordingly, the motion for partial summary judgment is denied. The cross motion
2 for summary judgment is granted.

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4 DATED: This 22 day of June, 2009.

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DISTRICT JUDGE

CERTIFICATE OF SERVICE

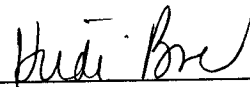
I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 11 day of June, 2009, I electronically filed the foregoing with the
Clerk of the Court system which will send a notice of electronic filing to the following:

SALLIE ARMSTRONG, ESQ.

GAYLE KERN, ESQ.

Further, I certify that I deposited in the county mailing system for postage and
mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing
addressed to:

Stephen C. Mollath, Esq.
Prezant & Mollath
6560 SW McCarran Blvd., Ste. A
Reno NV 89509


Heidi Boe
Judicial Assistant

CV07-00341
DC-9900011861-008
JOHN ILIESCU ETAL VS. MARK S. 7 Pages
District Court 10/07/2009 04:54 PM
Washoe County 1165
TAPRINCF

1165

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FILED

2009 OCT -7 PM 4:54

HOWARD W. SNYDER

BY *[Signature]*
DEPUTY

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiffs,

vs.

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

Defendants.

CONSOLIDATED

Case No.: CV07-00341

Dept. No.: B6

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

Third-Party Plaintiffs,

vs.

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

Third-Party Defendants.

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

1 JOHN SCHLEINING,

2 Cross-Claimant,

3 vs.

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

7 Cross-Defendant.

8 JOHN SCHLEINING,

9 Third-Party Plaintiff,

10 vs.

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

13 Third-Party Defendants.

14
15 **ANSWER TO THIRD PARTY COMPLAINT**

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

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

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

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

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

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

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

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

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

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

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

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

3 **FIRST CLAIM FOR RELIEF**

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

7 **SECOND CLAIM FOR RELIEF**

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

11 **THIRD CLAIM FOR RELIEF**

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

15 **FOURTH CLAIM FOR RELIEF**

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

19 **FIFTH CLAIM FOR RELIEF**

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

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

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

26 **SIXTH CLAIM FOR RELIEF**

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

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

3 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

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

28

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

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

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

10 WHEREFORE, Hale Lane pray as follows:

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

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

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

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

18 DATED: October 7, 2009

19
20
21 BY: 

David R. Grundy
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6005 Plumas Street, Suite 300
Reno, Nevada 89519
Phone No.: (775) 786-6868
Attorneys for Third Party Defendants Hale
Lane, Dennison, Howard and Snyder

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CERTIFICATE OF MAILING

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

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