IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondent.

Electronically Filed
Nov 21 2018 11:54 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 VI

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.
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Counsel for Appellants

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		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 VI**, was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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

An employee of Albright, Stoddard, Warnick & Albright

FILED
Electronically
01-09-2013:04:57:12 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3453782

Document Code: 3980

HOY & HOY, P.C.
Michael D. Hoy (NV Bar 2723)
4741 Caughlin Parkway, Suite Four
Reno, Nevada 89519
775.7868000 (voice)
775.786.7426 (fax)

Attorneys for: Mark B. Steppan

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; John Iliescu, Jr. and Sonnia Santee Iliescu, as trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST, Plaintiffs, vs. MARK B. STEPPAN, Defendant.	Consolidated Case Nos. CV07-00341 and CV07-01021 Dept. No. 10
And Consolidated Action and Related Third-party Claims.	

Stipulation and Order

Through counsel, the parties stipulate as follows:

Recitals

1. On September 1, 2011, this Court entered an Order granting a defense motion for summary judgment on third-party claims asserted by John Iliescu, Jr., Sonnia Santee Iliescu, and the John Iliescu, Jr. and Sonnia Santee Iliescu 1992 Family Trust (collectively "Iliescu") against Hale Lane Peek Dennison and Howard, P.C. dba Hale Lane, Karen D. Dennison, R. Craig Howard, and Jerry M. Snyder (collectively "Hale Lane Defendants"). Also on September 1, 2011, the Hale Lane Defendants filed a Memorandum of Costs.

HOY & HOY

2. On October 27, 2011, this Court entered an Order granting a motion to dismiss Steppan's claims against Iliescu. On November 1, 2011, Iliescu filed a Memorandum of Costs. On November 7, 2011, Steppan filed a Motion to Retax Costs, which was fully briefed and submitted on December 2, 2011. This Court did not rule on Steppan's Motion to Retax Costs.

3. On November 14, 2011, Iliescu filed a Motion for Attorney Fees. The motion was not fully briefed or submitted.

4. While this case was on appeal to the Nevada Supreme Court, on June 7, 2012, this Court entered an Order Certifying Intent to Grant Motion for Reconsideration of the earlier orders granting defense summary judgment in favor of the Hale Lane Defendants and dismissal in favor of Iliescu. Following a Supreme Court Order Granting Motions for Remand, on September 27, 2012, this Court entered an Order granting reconsideration of the September 1, 2011 and October 27, 2011 Orders.

Stipulation

1. The foregoing recitals are true.

2. Hale Lane Defendants' September 1, 2011 Memorandum of Costs is withdrawn as moot.

3. Iliescu's November 1, 2011 Memorandum of Costs, and Steppan's November 7, 2011 Motion to Retax Costs are withdrawn as moot.

4. Iliescu's November 14, 2011 Motion for Attorney Fees is withdrawn as moot.

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HOY & HOY

Dated November 05, 2012.

HOY & HOY, PC
4741 Caughlin Parkway, Suite Four
Reno, Nevada 89519
(775) 786-8000

Michael D. Hoy (NV 2723)
Attorneys for Mark B. Steppan

Dated November 05, 2012.

COWAN LAW OFFICE
10775 Double R Boulevard
P.O. Box 179525
Reno, Nevada 89521
(775) 786-9111

Gordon M. Cowan (NV Bar 1781)
Attorneys for John Iliescu, Jr., Sonnia Iliescu, and the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement

Dated November 8, 2012.

LEMONS GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
Reno, Nevada 89519
(775) 786-6868

for David R. Grundy (NV 864) #9555
Attorneys for Hale Lane Peek Dennison and Howard, P.C. dba Hale Lane, Karen D. Dennison, R. Craig Howard, Jerry M. Snyder, and Holland & Hart, LLP

Order

Good cause appearing,

IT IS SO ORDERED.

Dated ~~November~~ January 8, 2013.

District Court Judge

HOY & HOY

FILED
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Joey Orduna Hastings
Clerk of the Court
Transaction # 3534067

4050
David R. Grundy, Esq. SBN 864
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Telephone: (775) 786-6868
Facsimile: (775) 786-9716

Attorneys for Third Party Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

CONSOLIDATED

Case No.: CV07-00341

Dept. No.: 10

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

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.

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

Third party plaintiffs John Iliescu, Jr. and Sonia Iliescu, individually and as trustees of the John Iliescu Jr. and Sonia Iliescu Family Trust (collectively "Iliescu") hereby stipulate with

LEMONS, GRUNDY & EISENBERG
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THIRD FLOOR
RENO, NV 89519
(775) 786-6868

the following Third party defendants: Hale Lane Peek Dennison & Howard, a Professional Corporation, dba "Hale Lane," and Karen D. Dennison, R. Craig Howard and Jerry M. Snyder ("Hale Lane Partners") as follows:

RECITALS

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

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

C. Guided by the law as established under *Nevada Medical Liability Insurance Co. v. Semenza*, 104 Nev. 666, 668, *K.J.B., Inc. v. Drakulich*, 107 Nev. 367 (1991) and *Kopicko v. Young*, 114 Nev. 1333 (1998), the parties have agreed to the terms of this stipulation and urge the court to enter an order consistent herewith.

D. These parties entered into a stipulation to stay the case on or about December 13, 2007; however, no Order was entered thereon.

STIPULATION

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

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

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

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

Dated: ~~November~~ Jan 31, 2013, 2012

GORDON COWAN, ESQ.
Attorney for Third Party Plaintiffs

MICHAEL D. HOY, ESQ.
Attorney for Plaintiff Mark Steppan

11 Feb 2013

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

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

ORDER

It is ordered:

1. All claims asserted against the Hale Lane Partners are hereby dismissed without prejudice;

2. These proceedings are hereby stayed as against Hale Lane for all purposes until such time as a final judgment is entered in the primary case between plaintiff, Steppan, and defendant, Iliescu, *provided that*, during such stay, (a) Hale Lane shall participate in any settlement conference if ordered to do so by the court; (b) Hale Lane may assert dispositive motions against Iliescu and file points and authorities in support thereof; and (c) Hale Lane may participate in court hearings consistent herewith.

DATED: February 13, 2013

DISTRICT JUDGE

LEMONS, GRUNDY & EISENBERG
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(775) 786-6868

FILED
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04-09-2013:11:49:59 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3647417

2540
David R. Grundy, Esq. SBN 864
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Telephone: (775) 786-6868
Attorneys for Third Party Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

CONSOLIDATED

Case No.: CV07-00341

Dept. No.: 10

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

Third-Party Plaintiffs,

vs.

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

Third-Party Defendants.

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RENO, NV 89519
(775) 786-6868

JOHN SCHLEINING,

Cross-Claimant,

vs.

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

Cross-Defendant.

_____/

JOHN SCHLEINING,

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

_____/

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Second Stipulation to Stay Proceedings Against Defendant Hale Lane and Order to Stay and to Dismiss Claims Against Defendants Dennison, Howard and Snyder Without Prejudice was entered on February 14, 2013. A copy of said Second Stipulation is attached hereto as **Exhibit 1**.

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

Dated: April 9, 2013.

BY: _____

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

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RENO, NV 89519
(775) 786-6868

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on April 9, 2013, I e-filed a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** with the Clerk of the Court through the Court's electronic filing system and notice will be sent electronically by the Court to the following:

MICHAEL D. HOY, ESQ.
for Mark Steppan

GREGORY WILSON, ESQ.
for John Schleining

The following people have not been served electronically and have been served by mail:

GORDON COWAN, ESQ.
10775 Double R Blvd.
P.O. Box 17952
Reno, NV 89521
786-6111

Attorney for John Iliescu, Jr. and Sonnia Iliescu

Susan G. Davis

Susan G. Davis

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6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

INDEX OF EXHIBITS

Exhibit No.	*Description*	*Length of Exhibit*
1	Second Stipulation to Stay Proceedings Against Defendant Hale Lane and Order to Stay and to Dismiss Claims Against Defendants Dennison, Howard and Snyder Without Prejudice	3 pages

FILED
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05-09-2013:01:55:27 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3715397

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

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,

Plaintiffs,

vs.

MARK B. STEPPAN,

Defendant.

_____/

AND RELATED MATTERS.

_____/

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

Dept. No: 10

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT

Presently before the Court is a Motion For Partial Summary Judgment filed by Defendant MARK B. STEPPAN (hereinafter "Defendant") on October 21, 2011. On February 11, 2013, Plaintiffs JOHN ILIESCU, JR. AND SONNIA ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT AND JOHN ILIESCU, INDIVIDUALLY (hereinafter "Plaintiff") filed an Opposition To Motion For Partial Summary Judgment. On February 21, 2013, Defendant filed a Reply In Support Of Motion For

Partial Summary Judgment. On April 2, 2013, Defendant filed a Request For Submission, thereby submitting the matter for the Court's consideration.

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

The evidence and any reasonable inferences drawn from it must be viewed in a light most favorable to the nonmoving party. *Lipps v. S. Nev. Paving*, 116 Nev. 497, 498, 998 P.2d 1183, 1184 (2000). However, the nonmoving party may not avoid summary judgment by relying "on the gossamer threads of whimsy, speculation, and conjecture." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002) (quoting *Collins v. Union Fed. Sav. & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983). The nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial. *Pegasus*, 118 Nev. at 713, 57 P.3d at 87.

After reviewing the facts of this case, and based upon the evidence available for trial, the Court believes that partial summary judgment is appropriate. Plaintiff has failed to demonstrate to the Court the existence of any genuine issue of material fact. On June 22, 2009, the Honorable Brent Adams entered an Order denying Plaintiff's Motion For Partial Summary Judgment. In that Motion, Plaintiff argued that they were never served with notice of right to lien as required under NRS 108.245(1). They also argued that they did not have actual notice of construction on the project or of the identity of the Respondent. The Court in that case found that even though Plaintiff alleged they did not know the identity of the architects who were working on the project, they had actual knowledge that Defendant and his firm was performing architectural services on the project.

In this case, Defendant moves for partial summary judgment stating that where, as here, the Lien Claimant's compensation is fixed by an express contract, the lien secures the amount specified

in the contract. NRS 108.222(1)(a). Defendant further asserts that as a matter of law, the secured amount is not equal to either a subjective value to the landowner or a hypothetical market value for services rendered.

This Court agrees with Defendant, that as a matter of law, the mechanic's lien secures the fixed fee specified in Lien Claimant's written contract.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion For Partial Summary Judgment is **GRANTED**.

DATED this 8 day of May 2013.

ELLIOTT A. SATTLER
District Judge

CERTIFICATE OF MAILING

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

GREGORY WILSON, ESQ. for JOHN SCHLEINING

ALICE CAMPOS MERCADO, ESQ. for JERRY SNYDER, HALE LANE PEEK DENNISON HOWARD, R. HOWARD, KAREN DENNISON

THOMAS HALL, ESQ. for JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. & SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, and JOHN ILIESCU, JR., individually

STEPHEN MOLLATH, ESQ. for SONNIA ILIESCU, JOHN ILIESCU, JR.

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

MICHAEL HOY, ESQ. for MARK STEPPAN

And mailed, postage paid to the following:

Gordon Cowan, Esq.
Cowan Law Office
P.O. Box 17952
Reno, NV 89521

DATED this 9 day of May, 2013.

Sheila Mansfield
SHEILA MANSFIELD
Judicial Assistant

ORIGINAL

CV07-00341 DC-9900047637-091
JOHN ILIESCU ETAL VS MARK S 9 Pages
District Court 07/19/2013 02 35 PM 2280
Washoe County

CODE: 2280
C. NICHOLAS PEREOS, ESQ.
Nevada Bar #0000013
1610 MEADOW WOOD LANE, STE. 202
RENO, NV 89502
(775) 329-0678

ATTORNEYS FOR PLAINTIFFS

FILED
2013 JUL 19 PM 2:35
JOEY ORONA HASTINGS
CLERK OF THE COURT
BY DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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, Plaintiffs, vs. MARK B. STEPPAN, Defendant. AND RELATED MATTERS.	Case No.: CV07-00341 (Consolidated w/ CV07-01021) Dept. No.: 10 **MOTION FOR CONTINUANCE AND MOTION TO EXTEND EXPERT DISCLOSURE DATES** Trial Date: 10/7/13

Petitioners, John Iliescu and Sonnia Iliescu, move this Court for its order to continue the trial date now set for October 7, 2013 so as to open the time frames by which Petitioner can retain expert witnesses. This motion is made and based upon the points and authorities submitted herewith together with all the pleadings, papers and documents on file herein.

A. STATEMENT OF FACTS

These consolidated cases arose from a California based architectural firm (Steppan) seeking in excess of $1 million in professional architect fees on a contract signed with the developer after the recording of a mechanic's lien against property owned by Iliescu. Iliescu never contracted for the services by the architect Steppan. Iliescu owns the property that Steppan seeks to foreclose on the mechanic's lien. Iliescu had signed

a contract to sell the property to a developer who appears to have engaged Steppan to perform the work for securing entitlements to develop the property as a multi-use property to include a high rise tower condominium building. After Steppan was not paid, he files a mechanic's lien and files a lawsuit to foreclose the mechanic's lien which in turn is joined with the lawsuit filed by Iliescu to remove the mechanic's lien.

After the unsuccessful attempt at removing the mechanic's lien, Iliescu files a malpractice lawsuit against the attorneys Hale Lane since they were engaged to protect his interest with regard to the sale of the properties. One of the claims against Hale Lane was their failure to file and record a notice of non-responsibility, amongst other issues. The same law firm, Hale Lane, also represented the buyer of the Iliescu property. There was also a third party action filed by Iliescu against the principals of the buyer of the property by reason of an indemnity agreement that they executed after the recording of the mechanic's lien.

Hale Lane files a lawsuit on behalf of Iliescu against the architect (Steppan) to remove the mechanic's lien. They were unsuccessful in their attempts. After the first hearing, Judge Adams ruled that there should be an opportunity for discovery before he makes a final ruling concerning the application to remove a mechanic's lien. Thereinafter, the first round of discovery occurred with numerous depositions and document exchanges. Eventually, Judge Adams rules not to remove the mechanics lien thereby permitting the case to go forward to trial. Another round of discovery and depositions occur. By reason of extensive settlement negotiations conducted by Judge Adams he disqualifies himself from any future handling of the subject litigation and the matter is reassigned to Judge Elliot. The parties then move towards dismissal of the lawsuit and all the claims based upon failure to comply with the requirements of NRCP 16.1. After the Court initially grants the dismissal, the parties appeal. During the pending appeal, Judge Adams executes an affidavit wherein he states:

> "Claims against individual lawyers sued for professional negligence were dismissed and that claims against the defendant law firm was stayed for all purposes including

> discovery and trial pending the final resolution of all claims asserted by plaintiffs against defendants."

Judge Adams goes on to say in his affidavit:

> "At all times, your undersigned district court judge and the lawyers practicing before me treated the case as one managed by the court under Rule 16. The court did not expect any party to file any early case conference report under Rule 16.1(e)(2)."

Originally, all claims and all of the different complaints were dismissed as to all of the parties for failure to comply with the discovery requests precipitating an appeal. It is not quite clear to the undersigned when Judge Adams' affidavit was presented to the trial court but the court gave great weight and credence to the affidavit pending the appeal and issued an order that the cases would be resurrected as a result of the information contained in the affidavit. Thereupon, the Nevada Supreme Court remanded the case to the District Court for further handling at which time the District Court resurrected the lawsuits between all the parties.

Given the fact that there had not yet been a resolution of the underlying Steppan case, it was premature to pursue the legal malpractice case. Accordingly, the legal malpractice case was stayed pending a resolution of the Steppan case.

To further complicate issues, Judge Eliot retired resulting in this case now directed to Judge Sattler. Also, the parties have changed attorneys during the course of this litigation. After the resurrection of the case, the case is now set for trial on October 7, 2013 with an initial expert disclosure to occur on May 24, 2013. The resurrection of the claims was successfully done in part by Attorney Gordon Cowan who was substituted in the case. Unfortunately, Attorney Gordon Cowan has been encountering numerous medical issues with regard to his hip. Specifically, Gordon Cowan fractured the upper portion of his right thigh bone (femur) in 2012 in a horse accident. When the first surgery did not stabilize or fix the bone, he had to return to surgery. Following multiple pre-operation visits to Standard Medical Facility in both Redwood City and Palo Alto, California, Mr. Cowan underwent a second significant surgery at the Stanford Hospital on March 25, 2013. He remained in the hospital that entire week before being discharged.

Thereinafter, Mr. Cowan was in essence out of his practice several months as he was barely ambulatory several weeks. He remained on crutches in a custom fitted leg brace and he is now down to one crutch he uses most of the time. Last week, Mr. Cowen received permission from his Standard surgeon to begin slowly weaning himself off the leg brace and final crutch. Notwithstanding, he is required to return to Stanford in September for vet another follow up visit with another likely follow up visit thereinafter precipitating the involvement of the undersigned per the substitution.

During the time that Mr. Cowan was facing these medical issues, he was a sole attorney representing the Plaintiffs. He is the sole practitioner and has no one else in his office. No other counsel was associated with him in this matter during the tenure on his involvement of this case. Meanwhile, the Plaintiffs acted expeditiously in connection with engaging other counsel arising from these health related issues.

Attorney Gordon Cowan was receiving medical treatment at a critical time of the case. After being substituted in as counsel in 2012, he had to absorb the case so as to address the issues that were then pending on appeal. His exemplary services coupled with his knowledge of appellate practice caused the reinstatement of the case. Recently, there was a motion for partial judgment filed against the Plaintiffs which was granted. The work was difficult for Mr. Cowan to complete as it occurred during a painful period of his rehabilitation. We are not using it as an excuse in connection with the ruling of the Court but it is a factor that came into play in connection with the engagement of new counsel.

The paperwork in the file is massive. It consists of several thousand pages with numerous discovery exchanges. Unfortunately for the Plaintiffs, he has had more than one attorney and the undersigned is still trying to assimilate all of the materials. The Court filing in District Court alone exceed more than 350 docket entries which are exclusive of the filings in the Supreme Court. With the engagement of new counsel, it will take him time to comprehend this massive material. More importantly, the time for expert disclosures has expired and no experts have been retained by Plaintiff. Recently, the Court has entered a partial summary judgment order indicating that the architect is entitled

to a fixed fee based upon his contract and not a fee based upon quantum merit. The argument by Iliescu was that he was not a party to the contract and should not be bound by the terms. Notwithstanding that argument, the Court ruled otherwise! With such a ruling, Iliescu has to refocus his defense. The defense would no longer be on an argument attacking the time and materials invested in this matter as was reflected on much of the discovery prior to this date, but now on custom and practice in the industry.

The evidence will demonstrate that the Plaintiffs worked for an architectural firm situated in California. California firm is not licensed to practice architecture in the State of Nevada. However, the Plaintiff holds a Nevada license. As a result, the Plaintiff is pursuing the case as opposed to the architectural firm. However, there is an issue concerning the architecture practice as it relates to the fee alleged to have been earned by the architect and whether there has been compliance with the contract. In other words, the custom and practice in the industry is at issue. An expert can address this issue.

The evidence will also clearly show that the architect never served the pre-lien notice. A notice of non-responsibility under NRS 108.234 requires specific information to be contained therein. (See subsection 3.) This statute has evolved over the years with its last revision being in 2005. Before that time, one could prepare a generic notice of non-responsibility without specific information contained therein identifying that the owner of the property is not responsible for work done by a contractor for whatever reason, such as, a lease agreement. However, NRS 108.234 no longer permits such a generic notice of non-responsibility. On the contrary, it must contain specific information. The evidence will demonstrate that the recording of the lien is what first placed Iliescu on notice of work done by this specific architect. Accordingly, Iliescu seeks to introduce evidence to discuss the history of the mechanic's lien statutes coupled with the notice of non-responsibilities to show the deficiency that occurred by the architect in failing to serve a pre-lien notice. From that point forward, the architect can then argue whatever facts the architect deems appropriate to demonstrate that Iliescu had knowledge of the specific architect. In order

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to achieve this end, Iliescu needs to extend the time frame for expert disclosure to include an expert on behalf of Iliescu.

It is only recently that the undersigned attorney has been engaged to focus in on this particular case. Accordingly, counsel has been diligently reviewing the materials as well as handling his other work load and is a sole practitioner. More importantly, the undersigned is more concerned about the lack of expert disclosures. This Court will be facing a significant issue of first impression. The architect failed to provide a pre-lien notice. Although Iliescu testified that he knew that there would be the need of an architect, there has been absolutely no evidence in the record to demonstrate that Iliescu had knowledge as to this specific architect which would in turn frustrate his ability to comply with the mandates of NRS 108.234. With the experts, the Court can be educated as to the evolution of the mechanic lien laws as it relates to the notice of non-responsibility so as to address the issue of knowledge of Iliescu and his responsibilities, if any, in complying with the statutory edict of NRS 108.234. This issue is also crucial with regard to the malpractice case that has now been stayed pending the outcome of this case.

B. ARGUMENT

A district court's decision on a motion for continuance is reviewed for an abuse of discretion. Bongiovi v. Sullivan, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006); Dodd v. Cowgill, 85 Nev. 705, 711, 463 P.2d 482, 486 (1969).

Generally, an attorney's illness is good grounds for a continuance. Bongiovi, 122 Nev. at 556, 138 P.3d at 444 (relying on Hernandez v. Superior Court, 115 Cal.App.4th 1242, 9 Cal.Rptr.3d 821, 825–26 (2004); Lopez v. Lopez, 689 So.2d 1218, 1219 (Fla.Dist.Ct.App.1997); *In re Marriage of Ward,* 282 Ill.App.3d 423, 217 Ill.Dec. 964, 668 N.E.2d 149, 154 (1996)). When that attorney has not been dilatory in conducting his case, the district court's denial of a continuance may be an abuse of discretion. Id.

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Denial of a motion to continue based on an attorney's illness is proper when "the party whose attorney is ill is represented by other counsel" (Dodd, 85 Nev. at 712, 463 P.2d at 487) or the attorney's absence is not prejudicial to the client. Id. (footnoted cite omitted).

A short continuance of the case in order to afford an opportunity to disclose expert witnesses will not result in a harm to Steppan. The statute permits the accrual of interest on his debt. In fact, the interest rate by statute is better than any interest rate that would be given by a bank. He has a recorded lien against this property which frustrates any ability of Iliescu to negatively impact his secured position against the property. The prejudice to Iliescu is far outweighed then the harm to the architect. In Summerfield v. Coca Cola Bottling Company of the Southwest, 113 Nev. 1291, 948 P.2d 704 (1997), the Plaintiff sought a continuance arising from the fact that her doctor would not testify since the Plaintiff was delinquent on their bill and she needed time in order to secure funds to engage the doctor as an expert. The trial court denied the continuance concluding that the problem was inattentiveness by the Plaintiff. Defendants then moved for summary judgment based upon the fact that there was no expert by the Plaintiff. The summary judgment was granted. The Supreme Court reversed. The trial court felt that the Plaintiff was dilatory in failing to have the expert arranged to testify at the time of trial. The Supreme Court did not agree.

In the case before the Court here, the case became active after it was resurrected. It would be unreasonable to assume that any client should recognize the necessity of hiring experts in these fields referenced herein in order to defend the case. The undersigned has been practicing for many years and is familiar with the evolution of the statutes concerning notice of non-responsibility. Accordingly, he recognizes the need to make a record on the issue concerning knowledge of Iliescu as it relates to the requirements of a notice of non-responsibility and its impact by the statutes that mandate a pre-lien notice. Specifically, Iliescu is trying to minimize his claims in connection with any malpractice case against the attorneys. Furthermore, this Court only recently ruled in its

partial order for summary judgment regarding fees that are due the architect. Until that ruling, Iliescu's approach in the defense of this case involved attacking the time and materials claims of the architect but that has now changed!

NRS 16.1(2)(C) called for the disclosure of expert witnesses ninety (90) days before discovery cut off. The order for partial summary judgment was not signed until May 8th and expert disclosures were due May 24th which leaves a little less than two weeks for the Plaintiff to have engaged an expert and expose the expert to the materials in this file concerning the compliance with the architect with the contract concerning compliance by the architect with the contract in earning his fee. Clearly, there was inadequate time to reach that point. Accordingly, Iliescu requests a short continuance together with extension of expert disclosures time frames.

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 19 day of July, 2013.

C. NICHOLAS PEREOS, LTD.

By: _____
C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE, #202
RENO, NEVADA 89502
(775) 329-0678
ATTORNEY FOR PLAINTIFFS

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CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing document addressed to:

Gregory Wilson, Esq.
GREGORY F. WILSON & ASSOCIATES, P.C.
417 W. Plumb Lane
Reno, NV 89509
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Attorney for John Schleining

David Grundy, Esq.
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Attorney for Karen Dennison, Holland & Hart, LLP, Jerry Snyder, R. Howard, Hale Lane Peek Dennison Howard

Michael Hoy, Esq.
HOY CHRISSINGER KIMMEL P.C.
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Reno, NV 89519
775/786-8000
Attorney for Mark Steppan

DATED: 7-19-13

Sandra Martinez

CV07-00341 DC-9900047637-093
JOHN ILIESCU ETAL VS. MARK S 3 Pages
District Court 07/19/2013 02:36 PM
Washoe County 1030
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2013 JUL 19 PM 2:36

JOEY ORDUNA HASTINGS
CLERK OF THE COURT
BY _____ DEPUTY

CODE: 1030
C. NICHOLAS PEREOS, ESQ.
Nevada Bar #0000013
1610 MEADOW WOOD LANE, STE. 202
RENO, NV 89502
(775) 329-0678

ATTORNEYS FOR PLAINTIFFS

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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, Plaintiffs, vs. MARK B. STEPPAN, Defendant. AND RELATED MATTERS.	Case No.: CV07-00341 (Consolidated w/ CV07-01021) Dept. No.: 10 **AFFIDAVIT OF C. NICHOLAS PEREOS IN SUPPORT OF MOTION FOR CONTINUANCE AND MOTION TO EXTEND EXPERT DISCLOSURE DATES** Trial Date: 10/7/13

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

C. Nicholas Pereos, does hereby swear under penalty of perjury that the assertions of this Affidavit are true.

1. The undersigned attorney was first contacted to become involved in handling the subject case approximately two weeks ago. The undersigned was specifically requested to take over the case from Attorney Gordon Cowan on July 12, 2013. A substitution of attorneys was prepared.

2. On information and belief, Affiant believes that the case had been set for trial on two prior occasions. The case was continued on one occasion after both Attorney Tom Hall and Michael Hoy became involved in the case. The case was continued on a second

occasion after Attorney Tom Hall recognized that he had a conflict of trials. Attorney Tom Hall represented Plaintiffs herein.

3. Affiant makes this request for a continuance with the knowledge and consent of his client and at their request.

4. Affiant seeks a continuance of the case for purposes of engaging experts to address the custom and practice to the fee sought by the architect under the terms of the architectural contract and compliance with the schematic design work requirement by the architect. The Court recently issued an Order for partial summary judgment which has made this issue most relevant.

5. Affiant seeks an expert to address the history of the mechanic's lien statutes who can address the history for a notice of non-responsibility and its integration with pre-lien notices.

6. Affiant has been reviewing the files on this case.

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 19 day of July, 2013

C. Nicholas Pereos

SUBSCRIBED and SWORN to before me this 19 day of July, 2013

Notary Public

SANDRA MARTINEZ
Notary Public, State of Nevada
Appointment No. 10-3285-2
My Appt. Expires Sep 24, 2014

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CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing document addressed to:

Gregory Wilson, Esq
GREGORY F. WILSON & ASSOCIATES, P.C.
417 W. Plumb Lane
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Attorney for John Schleining

David Grundy, Esq.
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Attorney for Karen Dennison, Holland & Hart, LLP, Jerry Snyder, R. Howard, Hale Lane Peek Dennison Howard

Michael Hoy, Esq.
HOY CHRISSINGER KIMMEL P.C.
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775/786-8000
Attorney for Mark Steppan

DATED 7-19-13

Sandra Martinez

ORIGINAL

CV07-00341 DC-9900047637-092
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Washoe County 1030
DOC

CODE: 1030
C. NICHOLAS PEREOS, ESQ.
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1610 MEADOW WOOD LANE, STE. 202
RENO, NV 89502
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ATTORNEYS FOR PLAINTIFFS

FILED

2013 JUL 19 PM 2:36

JOEY ORONA HASTINGS
CLERK OF THE COURT
BY _____ DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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, Plaintiffs, vs. MARK B. STEPPAN, Defendant. AND RELATED MATTERS.	Case No.: CV07-00341 (Consolidated w/ CV07-01021) Dept. No.: 10 **AFFIDAVIT OF GORDON COWAN IN SUPPORT OF MOTION FOR CONTINUANCE AND MOTION TO EXTEND EXPERT DISCLOSURE DATES** Trial Date: 10/7/13

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

Gordon Cowan, does hereby swear under penalty of perjury that the assertions of this Affidavit are true.

1. Affiant represented the interest of John Iliescu and Sonnia Iliescu. During that representation, Affiant was successful in resurrecting the cases that had otherwise been dismissed by Judge Elliot.

2. Affiant fractured the upper portion of his right thigh bone (femur) in 2012 in a horse accident. The first surgery did not stabilize or fix the bone necessitating a return to surgery.

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3. Following multiple pre-operation visits to Stanford Medical Facility in both Redwood City and Palo Alto, California, Affiant under went a second significant surgery at Standard Hospital on March 25, 2013. He remained in the hospital that entire week before being discharged.

4. In essence, Affiant was out of his practice several months and was barely ambulatory for several weeks after the surgery. He remained on crutches and a custom fitted leg brace and is now down to one crutch. He is required to return to Stanford for several follow up visits hereinafter.

5. Affiant is a sole attorney representing the Plaintiffs. He is a sole practitioner and has no one else in his office. No other counsel was associated with Affiant in the handling of this matter for the client.

6. Affiant was receiving medical treatment at a critical time of the case. Affiant has had extreme pain with regard to this injury.

7. Affiant has had prior problems with his hip before this most recent accident which compounded issues.

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 19 day of July, 2013

Gordon Cowan

SUBSCRIBED and SWORN to before me
this 19 day of July, 2013

Notary Public

SANDRA MARTINEZ
Notary Public, State of Nevada
Appointment No. 10-3285-2
My Appt. Expires Sep 24, 2014

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Attorney for Karen Dennison, Holland & Hart, LLP, Jerry Snyder, R. Howard, Hale Lane Peek Dennison Howard

Michael Hoy, Esq.
HOY CHRISSINGER KIMMEL, P.C.
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Attorney for Mark Steppan

DATED: 7-19-13

Sandra Martinez

FILED
Electronically
08-23-2013:10:58:01 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3946236

CODE: 3025

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU, ET AL.,

Plaintiff,

vs.

Case No. CV07-00341
Dept. No. 10

MARK STEPPAN,

Defendants.

_____/

ORDER GRANTING MOTION TO STRIKE OR LIMIT JURY DEMAND

Presently before the Court is a MOTION TO STRIKE OR LIMIT JURY DEMAND (hereinafter "the Motion") filed by the Defendant Mark P. Steppan (hereinafter "the Defendant") on July 11, 2013. An OPPOSITION TO MOTION TO STRIKE OR LIMIT JURY DEMAND (hereinafter "the Opposition") was filed by the Plaintiffs John Iliescu, Jr. and Sonnia Santee Iliescu individually and in their capacity as trustees for the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust (hereinafter "the Defendants") on July 26, 2013. A REPLY IN SUPPORT OF MOTION TO STRIKE JURY DEMAND (hereinafter "the Reply") was filed on August 6, 2013, and the matter was contemporaneously submitted to the Court for consideration. Trial is scheduled for October 7, 2013.

The only issue raised in the Motion is whether a jury is required to resolve the issues remaining before the Court[1]. The Motion directs the Court to Close v. Isbell Construction

[1] The pleadings note that there are remaining claims and/or parties that are the subject of this litigation. Specifically, Calvin Eugene Baty, Jr., Consolidated Pacific Development, and DeCal Oregon, Inc. (hereinafter, "the third parties"). *See generally*, the Motion at pages 2 through 3 and the Opposition at page 3. It would appear that the status of the third parties is unknown by the Plaintiff and the Defendants. It is unknown if the claims will be contested;

Company, 86 Nev. 524, 571 P.2d 257 (1970), as support for the proposition that foreclosure suits for mechanics liens (such as the one that is the subject of the case under consideration) are matters of equity and therefore are not afforded the requirement of a jury trial. *See*, Close, 86 Nev. at 529, 471 P.2d at 260-61. The Nevada Supreme Court has recently cited to Close in unpublished opinions and it would appear to the Court that Close is still applicable to cases such as that under consideration. *See also*, Harmon v. Tanner Motor Tours, 79 Nev. 4, 377 P.2d 622 (1963), Johnston v. De Lay, 63 Nev. 1, 158 P.2d 547 (1945) and Crosier v. McLaughlin, 1 Nev. 348 (1865).

The Opposition does not disagree with two propositions: 1) this case is one for the foreclosure of a mechanics lien (the Opposition, page 6, line 11); and 2) Close is controlling (the Opposition, page 3, lines 19 through 20). The remaining portions of the Opposition are attempts to "re-litigate" a previously entered order in this case that disposed of the remaining claims between the Plaintiff and the Defendants. These arguments are not persuasive or responsive to the central issue raised in the Motion.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion is GRANTED. The trial on the issue of foreclosure of the mechanics lien will be a bench trial. No jury is required.

Dated this 23 day of August, 2013.

DISTRICT JUDGE

---

however, it would appear from the representations of the Plaintiff and the Defendant that the third parties will not be contesting the claims against them.

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 23 day of August, 2013, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Gordon Cowan, Esq.
Cowan Law Office
P.O. Box 17952
Reno, NV 89511

Gordon Cowan, Esq.
10775 Double R Blvd.
Reno, NV 89521

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Suite 202
Reno, NV 89502

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 23 day of August, 2013, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

GREGORY WILSON, ESQ.

DAVID GRUNDY, ESQ.

MICHAEL HOY, ESQ.

Sheila Mansfield

Sheila Mansfield

4185

STEPHANIE KOETTING

CCR #207

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE ELLIOTT SATTLER, DISTRICT JUDGE

--oOo--

MARK B. STEPPAN, Plaintiff,	)	
vs.	)	Case No. CV07-00341
JOHN ILIESCU, JR., et al., Defendants.	)	Department 10

TRANSCRIPT OF PROCEEDINGS

HEARING

September 9, 2013

9:00 a.m.

Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

APPEARANCES:

For the Plaintiff:

HOY, CHRISSINGER, KIMMEL
By: MICHAEL HOY, ESQ.
50 W. Liberty
Reno, Nevada

For the Defendant:

NICHOLAS PEREOS, ESQ.
Attorney at Law
1610 Meadow Wood Lane
Reno, Nevada

1 RENO, NEVADA, September 9, 2013, 9:00 a.m.
2
3 --oOo--
4 THE COURT: This is the time set for the oral
5 argument in case number CV07-00341, John Iliescu, et al.,
6 versus Mark Steppan. The only issue that we have before the
7 Court today is Mr. Iliescu's motion for a continuance and
8 motion to extend expert disclosure date.
9 I will simply refer to the parties as Mr. Steppan
10 and Mr. Iliescu, simply because I think that will be much
11 easier given the way the cases have been joined with the
12 other matter that had been previously before the Court, that
13 being CV07-01021. So here on behalf of Mr. Steppan is
14 Mr. Hoy. Present on behalf of Mr. Iliescu is Mr. Pereos.
15 The Court has received and reviewed the pleadings
16 in the case. And I believe it was Mr. Hoy who requested oral
17 argument, but it is Mr. Pereos' motion, therefore, Mr. Pereos
18 if you'd like to proceed.
19 MR. PEREOS: Good morning, your Honor. I'm not
20 going to rehash the history of the case. I imagine the Court
21 has read it ad nauseam with regard to the various pleadings.
22 I would like to fill in some voids. When attorney
23 Tom Hall was representing Iliescu, he was faced with an issue
24 concerning the dismissal of all the lawsuits. And as a

1 result, even though he scheduled two expert witnesses, he
2 scheduled an appraiser as an expert, Mr. Johnson, and he also
3 scheduled the attorney Mike Springer as an expert. He never
4 went forward to get any of the reports, because the case was
5 basically thrown out of Court with the Court's disposition
6 that there was no compliance with the discovery rules.
7 Okay. Mr. Cowan takes the successor over from the
8 particular case and his primary focus is to get the case
9 reinstated on that and he was successful in getting the case
10 reinstated at all levels to include all the particular
11 parties.
12 Now, up to that point in time, there had been
13 discovery performed with regard to the lawsuit. And the
14 focus of the discovery by both the third party defendants, as
15 well as Iliescu's counsel has been attacking the quantitative
16 amount being sought by Steppan in connection with the
17 mechanic's lien.
18 And the argument was basically that under NRS
19 108.222, subsection one, subsection B, to be distinguished
20 from A, that the amount of fees that the architect would
21 receive absent the contract was going to be fair market
22 value. The legitimacy of that argument was predicated on the
23 fact that the contract provided that it was not to be for the
24 benefit of anybody else but the contracting party. And I

1 remind the Court that Iliescu was not a contracting party to
2 this case. He is the landowner. The contracting party was
3 the person to whom he sold the property to and that was
4 section 1.3.7.5.
5 So where prior counsel was going with the case was
6 two-fold. They would demonstrate that Mr. Steppan, the only
7 one licensed in Nevada, to be distinguished from the Fisher
8 Friedman firm that he was working for, okay, did not invest
9 enough time and energy in the case to warrant the claim of
10 $1.8 million. Okay. And, furthermore, okay, that all the
11 other people that were not working under his business license
12 and what have you. And that's where the defense was and
13 that's where most of the deposition discovery was on that
14 when I read through all the depositions.
15 This Court comes down and it makes a decision and
16 the order for partial summary judgment is on May 8th. And in
17 that decision, the Court says, no, Iliescu, I'm going to hold
18 you to 108.222, subsection one, subsection A, that says you
19 are controlled by the contract and the contract identifies
20 that there is to be a fee. Now, I would bring to the Court's
21 attention that the basis for that ruling is section 1.5 of
22 the contract. And 1.5.1 discusses what the billing is on the
23 contract, not what has been earned on the contract.
24 But put that issue aside. I've got to live with

1 the order that I've got. And what happens now is the Court
2 says, sorry, we're not going into an issue of quantum meruit.
3 That's basically what the Court is saying. So the strategy,
4 when I get the case and I get the assignment. And for the
5 Court's benefit, I get the assignment was around June, as
6 I'll discuss who the experts were when I got a hold of them.
7 THE COURT: Mr. Pereos, let me interrupt you for a
8 moment, because I am familiar with the procedural history of
9 the case. And one of the issues that I raised or that I
10 included in the order and what I'd like really like you to
11 focus on this moment is your claim, assuming everything you
12 say is accurate, and I will, your claim is this, that I
13 entered an order on May 9th, which as you allege in your
14 moving papers shifted the focus or the landscape of the case
15 dramatically. Let's just, again, assume that's true.
16 You file a motion in July asking for a continuance
17 of an October trial date, because you need to find an expert
18 or experts. And so my question was, and what I wanted you to
19 address during the hearing, was what steps did you take or
20 your predecessor take from May 9th, the day you found out, as
21 you say, that the focus or the axis had shifted in this case,
22 what did you do from that day forward to get an expert? What
23 have you done since that day? What are your continuing
24 efforts to potentially get an expert? That's what my focus

1 is on. That's what I'm interested in hearing about regarding
2 the motion to continue.
3 MR. PEREOS: Okay. On that, when I looked at the
4 prior disclosures, I noticed that Mr. Johnson was disclosed.
5 He was disclosed. Steve Johnson was disclosed as an expert
6 back in August 31st, 2011. I get ahold of Mr. Clark. He
7 says, no, he didn't do a report. The reason he didn't do the
8 report, says Mr. Clark, the case went out the window before
9 Mr. Gordy Cowan resurrected it.
10 I then got ahold of Mr. Campbell. I spoke with
11 Mr. Campbell approximately the second or third week of July.
12 Joe Campbell, he's an MAI appraiser. I asked Mr. Campbell,
13 look, I want you to look at this project, because I want to
14 look at the viability of this project, whether or not this
15 project could ever have gotten off the ground.
16 I don't know where the Court lives, the judge
17 lives, but I want the Court to recognize that there were 400
18 condominium units approved on this project, two people per
19 unit. That would be 800 people living on 1.5 acres of land.
20 My first impression was this didn't make sense on that. When
21 they got the tentative approvals, there were 26 conditions
22 attached to the tentative approval, all of which were in
23 compliance.
24 So I get a hold of Mr. Campbell and I say, listen,

1 Mr. Campbell, I need to know whether or not this was a viable
2 project, whether or not it made economic sense. Mr. Campbell
3 gets back to me approximately ten days ago.
4 THE COURT: Stop, Mr. Pereos. My question was,
5 what happened between the 9th of May and theoretically this
6 moment right now in time? And if I understand your reply is,
7 you went back and looked, and the first contact you're having
8 with someone about the case as far as being an expert is not
9 at any time in May, not at any time in June, but in July.
10 MR. PEREOS: That's correct.
11 THE COURT: My question is, why did you wait? The
12 day the order comes down, May 9th, Mr. Cowan is representing
13 Mr. Iliescu, is that correct?
14 MR. PEREOS: That's correct.
15 THE COURT: So May 9th comes down, Mr. Cowan,
16 presumably, gets a copy of the order. I can pull it up on my
17 computer to find out when the order was sent or that it was
18 sent to Mr. Cowan, but one has to assume it was. So he's got
19 a copy of the order from May 9th. He knows what's going on.
20 I understand you say he's got physical issues, but he's not
21 mentally incapacitated.
22 So the Court sends out an order May 9th. Nothing
23 happens in the month of May. And you come in in June and
24 still nothing happens. Nothing happens until July, when

1 somebody finally picks up and say, wait, we need an expert on
2 this issue. And that's where, frankly, my focus is. And
3 then so July comes and you speak to the expert and he just
4 gets back to you ten days ago and tells you what?
5 MR. PEREOS: He tells me, approximately, that the
6 project would not pencil out, which is consistent with why
7 they never got any financing on this particular project.
8 What he works is he works up the numbers as to what it would
9 approximately take to sell off the project over a period of
10 time, that it would take to absorb the condominium units,
11 what the market conditions were on the thing. And he
12 basically says, it would not pencil out on that thing.
13 After he gets back to me, I tell him, I need a
14 report. I actually expected to get the report the latter end
15 of last week. I talked to Joe. He said he would get it to
16 me by the first part of this week.
17 I then get ahold of a mortgage expert, a mortgage
18 broker, and I discuss with him the viability of getting
19 financing on this project back at that particular time with
20 these particular numbers on that. Mark basically says, it's
21 not viable on that. Now, I don't --
22 THE COURT: So, Mr. Pereos, then in your moving
23 papers where you describe the fact, I believe it's in your
24 reply, that somehow that the plaintiff or, excuse me, that

1 Mr. Steppan wouldn't be prejudiced by a continuance, because
2 there's this possibility that the project itself would be
3 resurrected. Based upon what you're telling me now, that's
4 just not true. This project is just, for lack of a better
5 term, it's a dog, it's dead, it's not going to happen under
6 any circumstances. Is that accurate?
7 MR. PEREOS: The project is a dead project. What
8 I was saying in my reply argument was we were not
9 precipitating a delay because after the tentative permits
10 were approved, you can get extensions.
11 THE COURT: There were a number of them in this
12 case, like four years' worth of extensions.
13 MR. PEREOS: I believe there were two extensions.
14 THE COURT: Of two years each?
15 MR. PEREOS: I think one year each. Now, I may be
16 misspeaking, but I'm not sure, I don't have that committed to
17 memory. But I do believe there were two extensions. Both of
18 those extensions were at the request and the insistence of
19 the architect. They paid for the extensions, the purpose of
20 which was to keep the project alive. It serves Iliescu's
21 agenda to keep the project alive, as well.
22 After the second extension expired, that's when
23 the project died. That's what I discussed in the reply that
24 we were not the ones that were simply delaying this, we were

1 waiting to see if this project can be resurrected.
2 THE COURT: Okay.
3 MR. PEREOS: On that thing. So after
4 Mr. Campbell, I talked to Mr. Campbell, I start then -- I
5 also speak to or we get ahold of --
6 THE COURT: Hold on a second, Mr. Pereos. I just
7 want to clarify something. The issue of the extension is
8 actually first brought up in Mr. Hoy's opposition to your
9 motion and that's why I just flipped back through that
10 document as well. And so it's clear, it was the Iliescus who
11 were requesting the continuance or the extensions, not Mr.
12 Steppan, at least as I read this.
13 On page three of 11 of Mr. Hoy's opposition, it
14 states, the tentative map approval required the applicant,
15 parenthetically, the Iliescus, close paren, file a final map
16 within two years or November 30th of 2008. Even though the
17 developers had abandoned the project, the Iliescus filed an
18 application to extend the final map deadline by two years,
19 Exhibit 6. The Iliescus paid for the application to extend
20 the time, Exhibit 7.
21 The City of Reno notified the Iliescus of the
22 hearing on their application to extend time, Exhibit 8. The
23 City of Reno granted the Iliescus' application to extend the
24 time for a final map to November 30th of 2010, Exhibit 9.

1 Two years later, the Iliescus again, and again is underlined,
2 applied to extend the final map deadline by another year,
3 Exhibit 10. Again, the City of Reno granted the Iliescus
4 request, Exhibit 11. So I got the numbers a little bit
5 wrong. It's a total of three years, not four years. But
6 your representation that it was Mr. Steppan who was doing
7 that is not accurate. My recollection was correct, it was
8 the Iliescus who were trying to somehow keep this thing
9 afloat. That's my term, not anyone else's.
10 MR. PEREOS: If I may, your Honor, at the time of
11 trial, I will present written evidence, whereby Steppan
12 implores Iliescu in writing to sign the documents to extend.
13 THE COURT: That might be true, but the Iliescus
14 are the ones who did. It is completely, it may be a
15 different setting, but it was the Iliescus who were filling
16 out the paper work and trying to keep the project going.
17 MR. PEREOS: They have to, because they're the
18 owners of the project. I will also be in a position to
19 submit evidence showing that the checks for payment of the
20 extensions came out of the architectural firm.
21 THE COURT: Okay.
22 MR. PEREOS: Now, having said that, okay, after I
23 spoke, or after I got the communications from the
24 architect -- excuse me -- from the appraiser, I then go to

1 Don Clark. And we speak with Don Clark. We contacted
2 Mr. Clark around mid July. He's an architect. And one of
3 the things I asked Mr. Clark is what's the custom and
4 practice? What's the responsibility of the architect in
5 connection with a viable project? Does he just simply go off
6 and design a project, even if it's not viable? Okay. And to
7 that degree, the architectural contract addresses that issue
8 in article 2.1 that discusses the responsibilities of the
9 architect on that.
10 Clark comes back and basically submits the
11 proposition, no, he's got to basically not only review the
12 stuff, but also give some input as to the viability of the
13 project. Now, I'm not addressing the issue as to whether or
14 not the schematic design work was being done. I'm addressing
15 the issue as to the architect's performance under the
16 contract.
17 THE COURT: Again, Mr. Pereos, that's not the
18 issue. Your motion is you want to continue the trial because
19 you need more expert testimony.
20 MR. PEREOS: That's correct.
21 THE COURT: So you're describing what you want
22 your expert to testify to or the issues, but the point kind
23 of keeps escaping the argument, which is, why didn't this
24 happen before? Not what is expected to be testified to, but

1 why is it that this was not, this issue was not anticipated?
2 It seems to be that your argument is we never thought that
3 this was a possibility. And by we I mean yourself and if I
4 remember correctly the four or five different law firms or
5 attorneys who were representing Mr. Iliescu during the course
6 of this litigation.
7 You're basically just saying, we never thought of
8 that, and, therefore, we didn't plan for any of that and now
9 the Court has ruled and we need to somehow fix it. So my
10 question isn't what these people are going to testify to,
11 it's why didn't you think of it before? What steps have been
12 taken to rectify the situation now? Why should I grant a
13 continuance? Not some of the other stuff you're talking
14 about. So, go ahead, continue.
15 MR. PEREOS: Your Honor, I only got into the case
16 mid to late June. That's when I was first contacted. My
17 substitution only went on on July 13th. I cannot talk to
18 what the other attorneys were doing or thinking. All I can
19 do is surmise as to why Mr. Clark never went forward with
20 actually engaging the experts and thinking this and why
21 Mr. Cowan did not on that.
22 When I got into the case, I went through the
23 entire file relatively quickly, taking into consideration
24 this Court's order, and I started getting ahold of these

1 various people on that. But the actual discovery cutoff
2 date, okay, was due on May 24th for expert disclosure. I
3 wasn't even in the case on May 24th.
4 THE COURT: And then 30 days later for rebuttal
5 experts.
6 MR. PEREOS: Yes, 30 days later for the rebuttal
7 experts. I'm not in the case. I can't talk as to why, other
8 than to simply say, sure, Tom Clark must have engaged the
9 expert, because the case got thrown out. Gordy Cowan focused
10 his energies by basically resurrecting the case from the
11 appeal and didn't think far enough ahead in terms to the
12 trial. That's all I can say on those issues.
13 I can only address what I did when I got involved,
14 because that's the way I got the order focused on me, and I
15 can tell you who I spoke to when I spoke to them.
16 THE COURT: It sounds like based on the
17 representations you're making that you have spoken to experts
18 and that those conversations have occurred contemporaneously
19 with your involvement in the case and you have continued to
20 try at least to get some people to be able to testify as
21 experts during the trial.
22 MR. PEREOS: In fact, I've got commitments. What
23 happened on the particular legal issues, there's a legal
24 issue that this Court's going to have to address. And one of

1 the legal issues the Court has to address is whether or not,
2 okay, we got a pre-lien notice mandated by statute and that's
3 108.226, small letter six.
4 THE COURT: I'm not going to talk about that at
5 all today beyond saying this, Judge Adams ruled on that. I
6 was surprised about, in essence, the -- I was surprised about
7 the argument you were making, Mr. Pereos, in the sense that
8 the argument that you were presenting in your papers had
9 nothing to do with the motion that you were making was that
10 was just like an advisory opinion of Judge Adams. That was
11 just kind of like his thoughts on the issue. I don't believe
12 that at all. I believe that's the law of this case.
13 It's not something we're going to go back and
14 relitigate. There is an order in this case regarding that
15 specific issue. So if your thought is that at some point
16 during the trial, we're going to revisit what Judge Adams has
17 already clearly ordered, that's not going to happen, because
18 I think that the ruling has been made and it's done.
19 So to go back and say, and now we're going to
20 start talking about that all over again, it's somewhat -- it
21 just doesn't make sense to me, because it would eliminate the
22 whole point of filing the motion. Because you file a motion
23 and a judge would rule on it, and then the losing party gets
24 to say, well, okay, we're still going to talk about that.

1 No. The purpose of the motion is to resolve that legal
2 issue, and I believe that legal issue in this case has been
3 resolved. Presumably, if you don't think it was resolved
4 correctly, there certainly is an appellate process that's
5 involved. But to just to say, well, I don't think so, I want
6 to do it again, I don't think that's going to be happening
7 during the trial.
8 MR. PEREOS: If I may get some clarification from
9 the Court. When I read Judge Adams' ruling, Judge Adams
10 denied the motion to expunge the lis pendens based upon the
11 argument that Iliescu had actual knowledge. The argument was
12 that Iliescu did not. Judge Adams said, no, he had actual
13 knowledge. Okay. I don't read Judge Adams' opinion
14 addressing the mandated requirement that there had to be a
15 pre-lien notice in a residential project.
16 Now, if this Court reads that into the order and
17 says, that's the way I read the order of Judge Adams, I don't
18 revisit the issue. I've got to live with the decision of
19 this Court.
20 THE COURT: Which I believe Judge Adams' order
21 speaks for itself. I don't have it in front of me. But I
22 think it speaks for itself on the issue. Like I said, that
23 has nothing to do, frankly, with your motion for a
24 continuance. Again, as I read your motion, it's I didn't --

1 I came into the case late June, early July. I immediately
2 took steps to act upon my order regarding how the damages
3 would be assessed in this case. And I continue to take those
4 steps and attempt to be able to resolve this issue or to
5 litigate this issue. That's what the motion should be about,
6 not any of the other extraneous stuff that is going on.
7 And that Mr. Cowan was somehow unable to
8 appreciate the issue that was presented by my order when he
9 was still the attorney of record and did nothing about it
10 from May 9th until you came on to the case, and Mr. Pereos,
11 you said, I immediately began to act on what you perceive to
12 be a glaring weakness or possibly a completely missed issue
13 in the case. That's kind of where I see the whole thing.
14 MR. PEREOS: Well, if I may, your Honor, in terms
15 of showing my activity and my efforts, okay, I did speak to
16 two lawyers, thinking this was still an issue with regard to
17 the legitimacy of the mechanic's lien. And I did speak to
18 both lawyers, okay. I first spoke to Mike Johnson -- excuse
19 me -- Mike Springer was listed and I spoke to Mike, okay, in
20 early July. When he didn't do a report, I then actually
21 amended my disclosures to reference Karen Dennison and I
22 spoke with Dave Grundy representing Karen Dennison. I'm
23 simply saying that's what I did, because I still thought that
24 was an issue for the Court.

1 So if that's not an issue to the Court, the only
2 thing I have is in terms of the -- and the reason for my
3 continuance is for the expert disclosures on that. The only
4 thing I have left is to show the viability of a project and
5 whether or not the architect complied with his obligations
6 under the contract and those are the witnesses I already
7 discussed. That's all I've got. And I contacted them in the
8 first part of July.
9 THE COURT: Mr. Hoy.
10 MR. HOY: Thank you, your Honor, good morning.
11 THE COURT: Good morning.
12 MR. HOY: Let me just clarify a few factual things
13 to begin with. First of all, on the extensions of the
14 development entitlements with the City of Reno, Dr. Iliescu
15 and his wife Sonnia made the initial application to extend
16 the filing deadline for the final map by two years. That had
17 nothing to do with my client Steppan. The second time
18 Iliescu went before the city council to have this done, my
19 client was involved and did offer to pay the fee to the city
20 to have it extended.
21 I don't want to get into the settlement
22 negotiations too much, but one of the terms of the settlement
23 that Judge Adams negotiated between the parties was that
24 there would be further extensions and Dr. Iliescu elected

1 after that settlement conference not to continue on to extend
2 the project. So at this point, the entitlements are not in
3 place. They may be revived. They may not be revived. I'm
4 really not sure. That would depend on the city council
5 make-up at the time the application is remade.
6 Here's one of the problems that I've really
7 struggled with in responding to the motion. What is the
8 scope of the expert testimony that will be offered? Why do
9 we need additional time to get new experts? One of the, you
10 know, sort of fundamental principles in the evidence code is
11 that you can only have an expert when it's helpful to the
12 Court. And there are legion cases out there that talk about
13 people trying to bring in lawyers or other experts to tell
14 the judge what the law is. And the cases are pretty
15 universal that the trial judge is the expert on domestic law.
16 And so any attempt to bring in Michael Springer or anybody
17 else to tell your Honor what the law is, is simply futile.
18 That doesn't happen.
19 THE COURT: It would somewhat eliminate the need
20 for me if it were.
21 MR. HOY: It would. You could just have different
22 lawyers testify to a jury as opposed to arguing to a jury in
23 a jury case.
24 THE COURT: And I guess in the big picture, to

1 bring in other lawyers to testify on what the law should be
2 is not the elimination of the judge, it is kind of a buttress
3 of the actual lawyers who are already retained in the case.
4 That is the lawyers' jobs.
5 MR. HOY: Correct.
6 THE COURT: The retained attorneys' jobs are to
7 advise the Court about what they perceive to be the status of
8 the law, both statutorily and the caselaw. And then it's the
9 Court's job to interpret those or to read those and come to
10 some sort of conclusion. So to have some other lawyer come
11 in and have retained lawyer call hired lawyer to come in and
12 say what the law is, is just basically one more layer of a
13 pleading. Go ahead.
14 MR. HOY: So my position is it's futile to extend
15 any time periods for the purpose of bringing in experts to
16 tell the Court what the law is. Right.
17 So applying that general principle to the original
18 motion, one of the points that Dr. Iliescu wanted to make
19 with a new expert is to have somebody come before the Court
20 and say, look it, there's been a change in the law with
21 respect to notices of non-responsibility and those changes
22 happened in 2005, and those changes somehow affect the
23 pre-lien notice.
24 Well, that's futile for two distinct reasons.

1 Number one, you can't have expert testimony on the law. If
2 somebody wants to demonstrate what the law is before the
3 Court and wants to demonstrate what the legislative history
4 is, it's a very simple thing to just ask judicial notice of
5 the legislative history and then make your best argument
6 based on what the legislative history is.
7 From my perspective, it's a nonsensical argument.
8 The notice of non-responsibility is something that the owner
9 gives to the world to say, I'm not going to be responsible
10 for these improvements. The pre-lien notice is the notice to
11 the owner saying, hey, I'm going to do some work on your
12 property. And that issue has already been decided as your
13 Honor already pointed out.
14 The motion and the reply also talk about the point
15 that Steppan, Mr. Steppan personally didn't perform all the
16 work and, therefore, there's this legal argument that Mr.
17 Steppan can only have a mechanic's lien for the work he
18 personally did, not just the work that he supervised.
19 Again, that's a legal argument. That's an
20 interpretation of NRS Chapter 108, the first section applies
21 to mechanic's liens. The papers also talk about licensing
22 issues, talking about how some of these people who performed
23 some of the work were not licensed architects in Nevada, even
24 though they were under the responsibility and control of Mark

1 Steppan, who is a licensee in Nevada. Again, that's a legal
2 issue. That's not something that you bring in experts to
3 talk about.
4 The third area of expert testimony proposed is the
5 custom and the practice as to the fee alleged to have been
6 earned. Again, this something that is controlled by statute,
7 number one. And the statute says that if there is a written
8 contract, the written contract controls. So habit and custom
9 of other architects and how they compute their fees and how
10 they do their billing is really not before the Court. It's
11 not relevant. Because what is relevant is, what does the
12 written contract say in this case?
13 There was a point in the briefing where Dr.
14 Iliescu said we need an expert to review the work product and
15 give an opinion about the stage of completion of the work
16 that Steppan performed. And that would be a legitimate area
17 for expert testimony, although it hasn't been suggested so
18 far this morning.
19 On that point, your Honor, Mr. Steppan gave a
20 timely disclosure of Brad Van Woert's opinion. Mr. Van Woert
21 looked through all of the, they call them instruments of
22 service, but it's basically the drawings and specifications,
23 the videos and so forth. Yes, the phase called schematic
24 design has been completed by Steppan. There's no question

1 about that.
2 We provided that disclosure to Mr. Cowan on behalf
3 of Dr. and Mrs. Iliescu. Cowan then has 30 days to rebut
4 that. He has 30 days to go out and find an expert to come
5 back and say, no, I don't think that stage of completion was
6 actually satisfied, but he didn't do it.
7 On June 7th of this year, Mr. Cowan wrote to me
8 and said, geez, Mike, I haven't had a chance to go get
9 experts, can you please extend? This is all in my
10 declaration attached to the opposition. On June 10th, I
11 wrote back to say, you know, Gordy, I can't do it, here's
12 why, we're worried about yet another trial continuance and so
13 on and so forth, but you do have time to find a rebuttal
14 expert.
15 This morning, we hear about another area of
16 proposed expert testimony, that is, that Dr. Iliescu wants to
17 hire Joe Campbell as an appraiser to give testimony that this
18 project is not viable. The viability of the project today is
19 not really the issue, your Honor. Perhaps viability of the
20 project back at the time that the architects were doing all
21 of this work is relevant.
22 And I will represent to the Court that we have
23 trial exhibits ready to go where the developers, who were
24 dealing with Dr. and Mrs. Iliescu had several different

1 economic reports saying this project is absolutely viable.
2 So if we're really going to go down that path, we're going to
3 need a little bit of time to fully flesh that out. But
4 assuming that those preexisting reports come into evidence,
5 we will prove that the project was viable at the time.
6 THE COURT: Well, it might be an interesting
7 issue. I mean, we know hindsight being what it is -- well,
8 it would be interesting testimony to hear that this project
9 was viable at the time, which was 2006, 2005, I can't
10 remember the exact date when it was initially proposed. It
11 was viable then, but now we know today based on any number of
12 other projects in the area of a similar nature, that those
13 estimates might not have been accurate.
14 MR. HOY: Well, the project was approved by the
15 city council late in November of 2006.
16 THE COURT: 2006.
17 MR. HOY: At some point shortly after that, the
18 financial economy started to collapse.
19 THE COURT: Right. And this is a side point, I'm
20 sure, Mr. Hoy, but we know just based on the area, if you go,
21 you know, in one square mile around the location where this
22 building was going to be built, where this project was going
23 to be constructed, there are any number of hotels and other
24 structures that were converted into condominiums that were

1 not as successful based on those factors that you suggested,
2 the down-turn in the economy and the collapse of the housing
3 market, that those projects were not as successful as
4 anticipated.
5 MR. HOY: I guess my point, your Honor, would be
6 that it really is not relevant. Under the mechanic's lien
7 statute, if I'm an contractor and I build an apartment
8 complex for you and our contract says I get paid $3 million
9 to build the apartment complex, you can't come into court six
10 years later and say, well, Mr. Hoy, I would love to have the
11 ability to pay you, but I can't, because I couldn't rent out
12 all of these apartments for what I hoped to rent them out
13 for. It doesn't diminish the amount that is secured by my
14 mechanic's lien one bit.
15 THE COURT: Well, I understand. I agree with you
16 about that. I wasn't trying to make the argument or indicate
17 that I would support the argument that you suggested, in
18 essence, that the mechanic has to provide the service and
19 then wait to see if his service has value at the conclusion
20 of the service. In essence, to build out the project and
21 then hope it works at the value, because then -- go ahead,
22 I'll stop talking.
23 MR. HOY: All right. So just to wrap it up real
24 quick, our argument is simply this, all of the expert

1 testimony that has been proposed, with one possible
2 exception, is completely futile. It's irrelevant to the
3 case. So let's not push back the trial any further for the
4 purpose of allowing expert testimony on matters that simply
5 are not going to affect the outcome of the case.
6 And, again, the only piece of expert testimony
7 that could affect the outcome of the case is testimony about
8 whether or not Steppan achieved completion of the schematic
9 design as defined in the design contract. That's it.
10 THE COURT: Mr. Pereos, would you like to make any
11 closing comments?
12 MR. PEREOS: Yes, your Honor, I would. The
13 evidence is going to demonstrate that this project was
14 initially contemplated as 256 condominium units. It went to
15 399 units, which means you had to raise the floors, you had
16 to meet parking requirements and what have you in order to
17 get the 399 units.
18 This discussion on the viability of the project
19 goes to show the architect's performance under the contract
20 and whether or not he's breached his obligations under the
21 contract to which my defense would be that he's not entitled
22 to his fee on that. Because when this Court made a partial
23 order for summary judgment saying I'm controlled by 108.222,
24 subsection one, subsection A, the only thing left for me to

1 do was simply to shoot holes in the argument that he didn't
2 get to the schematic design stage or alternatively to show he
3 didn't perform under the contract.
4 The Court has already told me we're not revisiting
5 the mechanic's lien so the whole idea with the lawyers is
6 moot. I wasn't going to introduce the lawyers' testimony for
7 the purposes of discussing the law, but to discuss the
8 history of the change to the mechanic's lien.
9 THE COURT: I think, Mr. Pereos, as Mr. Hoy
10 pointed out, to make it as simple as possible, that's your
11 job. It's not the job of some other attorney to come in.
12 You can certainly make the argument to the Court or to any
13 Court, not just to me, but to any Court about what the status
14 of the law is or how the law has evolved if that evolution
15 somehow applies to the case.
16 So I don't think that there would have been a need
17 at any time to bring in an attorney to discuss that as an
18 expert with the Court, because -- and I would make one other
19 observation. As we know, I've already ruled that this matter
20 will be a bench trial as opposed to jury trial and,
21 therefore, there doesn't need to be any explanation at all to
22 the jury about any of those issues. They can just simply be
23 arguments that are made to the Court.
24 MR. PEREOS: One final observation, if I may, your

1 Honor?
2 THE COURT: Certainly.
3 MR. PEREOS: It would seem to me to make a lot
4 more sense to realign the parties at this stage in the
5 proceedings, instead of Iliescu taking the defense position
6 in the case.
7 THE COURT: I think you're correct there, but,
8 again, given the fact it's going to be a bench trial rather
9 than a jury trial, I think I can do the mental gymnastics. I
10 know that the parties in their pleadings are often referring
11 to each other as plaintiffs and defendants interchangeably
12 based on the fact that these two cases were joined. And I
13 believe that in my order, I referred to Mr. Iliescu as the
14 defendant, Mr. Steppan as the plaintiff, even though in Mr.
15 Pereos' moving papers, Mr. Steppan is represented as the
16 defendant and Mr. Iliescu is represented as the plaintiff.
17 As we all know that in the end, this action is one brought by
18 Mr. Steppan regarding his mechanic's lien against Dr.
19 Iliescu. And I've referred to him as Mr. Iliescu a number of
20 times, not out of disrespect, just out of forgetting to say
21 Dr. Iliescu.
22 The problem I'm confronted with is this, number
23 one, I agree with Mr. Hoy, there is absolutely no reason to
24 bring in any expert attorney testimony in the case. And so

1 any expert evidence that would be offered by an attorney to
2 explain the law to me is irrelevant.
3 As the parties probably know, I was appointed to
4 the bench on March 18th, at least that was my first day, and
5 one of the obligations that I have by statute is that I must
6 attend the judicial college. What has occurred is that the
7 first judicial college available for me was in April and the
8 next one was the last week of September and the first week of
9 October. And so I'm scheduled to go to the judicial college.
10 I have to do that within a specific period of time. And,
11 therefore, I am not available when this trial is scheduled.
12 I have attempted to have one of my colleagues take
13 the case. I've talked to the chief judge about the
14 situation. And, unfortunately, there is no one else based on
15 schedules. And as we know, Department Six is not available,
16 because Judge Adams recused himself, Judge Berry has recused
17 herself. I believe the case after it was assigned to
18 Department Six was assigned to Department One and that's how
19 it wound up here. After Judge Berry recused herself, it
20 wound up in Department Ten then with Judge Elliott.
21 And so I have no desire, frankly, to continue the
22 case at this point, however, I have no choice but to continue
23 the case simply because there's no one who can conduct the
24 trial and I cannot be here.

1 The trial date in this case was set by the
2 parties, I believe, in September of last year, or maybe it
3 was in January. I can't remember from the pleadings that
4 Mr. Hoy, I think, gave me a chronology. It might have been
5 September of last year. Is that right?
6 MR. HOY: It would have been January, I believe,
7 but it was certainly before your Honor took the bench.
8 THE COURT: And so the case, unfortunately, has to
9 be continued. It is my desire that the case be continued for
10 as brief a period of time as possible. And I'm not
11 continuing it so other experts can go out and be retained.
12 That's not the reason that I'm doing this. It's simply
13 because I have to do this bench trial and I'm not available
14 to do it when it has been scheduled.
15 I do know, Mr. Hoy, that you did point out
16 correctly to the section in Chapter 108, I think it's
17 108.239, subsection eight, that says that mechanic's liens
18 are given preferential trial settings. And the problem is
19 that the 23rd I'm doing a criminal trial that will go for
20 sure. The two following weeks, I'm at the judicial college.
21 Three weeks after that, I am in a civil trial where the
22 defense is a pro per defendant, and so I don't know if the
23 three-week estimate is accurate. I personally think that the
24 trial counsel usually are better able to estimate the amount

1 of trial will take then pro se litigants. So I simply don't
2 know how long that case is going to take and then we're into
3 November.
4 What I will do is instruct the parties right now
5 to at the conclusion of this hearing to go and talk to my
6 judicial assistant about trial dates. It is my desire that
7 this trial be continued as briefly as possible,
8 acknowledging, number one, the fact that the case was
9 originally filed in 2007, and, number two, as Mr. Hoy has
10 pointed out, the plaintiff, Mr. Steppan, does have a right to
11 a preferential trial setting.
12 I am going to be present and available during the
13 holidays. I'm going to be here the beginning of the year
14 next year. So I don't want the parties when they set the
15 trial to think, well, this is Christmas week or it's
16 Thanksgiving week or something along those lines, I'll be
17 here. And it's not a jury trial, it is a bench trial, so the
18 parties can get together and decide what day better suits
19 them with that in mind. And I have briefly discussed the
20 issue with my judicial assistant and let her know to start
21 looking at dates to see where the schedule is.
22 Regarding the request to extend expert
23 disclosures, the Court has already made a ruling regarding
24 whether or not lawyers will be designated as experts to

1 testify to the status of the law. Mr. Pereos, what I will
2 permit you to do is to continue to try and retain an expert
3 and make an offer of proof to the Court on how that expert is
4 relevant to the case. And then I will make a decision
5 whether or not I believe that expert is relevant and is
6 evidence that should be presented at the trial in a
7 preliminary way.
8 And I will give Mr. Hoy the opportunity, assuming
9 I allow that expert to testify, then to have 30 days to
10 designate a rebuttal expert. But that's only if I decide
11 that you're going to get to call the expert. So you still
12 have the obligation to attempt to retain the expert and then
13 make an offer of proof to the Court as to why that expert is
14 necessary. And then I will make a determination whether that
15 expert can or cannot testify.
16 I don't believe that I'll need any motion practice
17 on the part of the attorneys, but if I do feel that motions
18 are appropriate, then I will certainly give the parties ample
19 notice and the opportunity to file a motion. Presumably,
20 Mr. Hoy, if you want to file to strike the designation of the
21 expert, you can do that.
22 So the big picture is I don't know how far out
23 this case is going to go. That's really up to the attorneys.
24 I do apologize both to Mr. Steppan and to Dr. and

1 Mrs. Iliescu, I presume everybody wants to get the case over
2 with, it was just frankly one of those things that happens
3 when new judges get appointed and some things change. I wish
4 there was something I could do. Frankly, I wish I could just
5 not go to the judicial college now and hear the trial and
6 resolve this case one way or the other, but I can't. I have
7 an obligation to go to the judicial college as a result of a
8 my appointment.
9 So that will be the order of the Court. The
10 parties are instructed to meet with my judicial assistant.
11 If you want to go meet with her right now, if you have your
12 trial calendars available or your schedules available, she's
13 available. If not, all I will say is that the parties will
14 meet with my judicial assistant by the close of business this
15 Friday and establish a date when this case will go to trial.
16 I'm not a huge fan of drawing big lines in the
17 sand and saying this case will not be continued under any
18 circumstances from this point forward, because I can never
19 anticipate what those circumstances may be. But it is my
20 desire and my firm belief that the next date that is set for
21 this case will be the date that it goes to trial, absent some
22 unforeseen and very dramatic circumstances. I can't imagine
23 what would happen that would make me continue this trial
24 again. I think the case needs to get going. So that will be

1 the order of the Court. Court's in recess.

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STATE OF NEVADA)
) ss.
County of Washoe)

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 10 of the above-entitled Court on September 9, 2013, at the hour of 9:00 a.m., and took verbatim stenotype notes of the proceedings had upon the hearing in the matter of MARK B. STEPPAN, Plaintiff, vs. JOHN ILIESCU, JR., et al., Defendants, Case No. CV07-00341, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 36, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

DATED: At Reno, Nevada, this 16th day of June 2014.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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CLERK OF THE COURT
BY _____ DEPUTY

CODE: 1320
C. NICHOLAS PEREOS, ESQ.
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ATTORNEYS FOR PLAINTIFFS

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST, Plaintiffs, vs. MARK B. STEPPAN, Defendant. AND RELATED MATTERS.	Case No.: CV07-00341 (Consolidated w/ CV07-01021) Dept. No.: 10 **SECOND SUPPLEMENT TO CASE CONFERENCE REPORT** Trial Date: 10/7/13

Plaintiffs, John Iliescu, Jr. and Sonnia Iliescu as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust, by and through their counsel, C. Nicholas Pereos, Esq. of the law firm of C. Nicholas Pereos, Ltd. hereby submits their second supplement to the Case Conference Report in accordance with NRCP 16.1.

III.

LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR AS A RESULT THEREOF:
[16.1(a)(1)(B) and 16.1(c)(4)]

A. *Plantiffs' Schedule of Documents and Tangibles*

1. City of Reno receipt. (ILIESCU 000644)
2. 9/1/06 letter from Steppan to Decal Custom Homes. (ILIESCU 000645)
3. 12/26/07 email from Caniglia to Iliescu. (ILIESCU 000646)

4. 9/25/08 letter from Caniglia to Johnson. (ILIESCU 000647)

5. 10/9/08 letter from Steppan to Iliescu. (ILIESCU 000648)

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 16 day of September, 2013.

C. NICHOLAS PEREOS, LTD.

By: _____

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ATTORNEY FOR PLAINTIFFS

C:\Shared\CLIENTS\Iliescu\Pleading\Case Conf Supplement 2nd wpd

CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing document addressed to:

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775/786-6868
Attorney for Karen Dennison, Holland & Hart, LLP, Jerry Snyder, R. Howard, Hale Lane Peek Dennison Howard

Michael Hoy, Esq.
HOY CHRISSINGER KIMMEL P.C
4741 Caughlin Parkway, Suite 4
Reno, NV 89519
775/786-8000
Attorney for Mark Steppan

DATED: 9-16-13

Sandra Martinez

ORIGINAL

FILED

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JOEY ORDUNA HASTINGS
CLERK OF THE COURT
BY _____ DEPUTY

CV07-00341
JOHN ILIESCU ETAL VS. MARK
DC-99000051547-019
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Washoe County District Court

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ATTORNEYS FOR DEFENDANTS

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN, Plaintiff, vs. JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST, Defendants. AND RELATED MATTERS.	Case No.: CV07-00341 (Consolidated w/ CV07-01021) Trial Date: December 9, 2013 Dept. No.: 10 **DEFENDANTS' TRIAL STATEMENT**

A. STATEMENT OF FACTS

On July 29, 2005, John Iliescu, Jr., et al. (hereinafter referred to as "Iliescu") entered into a sales contract with Consolidated Pacific Development for the sale of property in Reno, Nevada. As part of the sales agreement, Iliescu was to receive a credit towards the purchase price for a new penthouse in the residential condominium project. In order to facilitate the terms of this transaction, Iliescu engaged the law firm of Hale Lane. Despite the language contained in the contract of sale, it was assigned to another legal entity with the knowledge and cooperation of the Hale Lane firm as they also represented the assignee.

Iliescu had knowledge that an architect was to be engaged as one of the addendums to the contract contemplated that Iliescu would work with the architect for purposes of facilitating his acquisition of a penthouse unit which would then apply towards

the purchase price. However, the contract of sale with Consolidated Pacific does not reference the name and address of the architect. It only references the use of an architect. Without the knowledge and consent of Iliescu, the purchase contract was assigned to BSC Investments. BSC Investments engages Fisher Friedman Associates. Mark Steppan is affiliated with Fisher Friedman Associates.

The first meeting with the architect and the developer (now BSC Investments) was approximately in September 2005. The terms of the architect's engagement were controlled by letters of engagement first executed around September / October 2005. During this time frame, the parties could not agree upon the language of the AIA contract and the subject contract was not signed until the end of April 2006. Prior to that time, there were letters of understanding and engagement so that the architect could pursue forward movement with regard to the project. The architect had no agreement with Iliescu nor did he ever discuss the matter with Iliescu or his real estate agent prior to the execution of the AIA contract in April 2006.

Although the architectural engagement was signed by Mark Steppan, the evidence with demonstrate that most of the work was performed by Fisher Friedman Associates with whom Mark Steppan was employed. Steppan recognized that only a Nevada licensed architect could work on the project. Since the AIA contract had not yet been signed, the work performed by Fisher Friedman was pursuant to the engagement letters. Fisher Friedman would bill for the work on an hourly basis and would be paid for the work. In fact, they were paid approximately $480,000.

Under the AIA contract that was signed, the architect fee was discussed at 5.75% of the construction cost if the project was built, to wit, $180,000,000. The AIA contract discussed a twenty percent (20%) fee upon completion of the schematic design phase. By the time the architect contract was signed, there was already a delinquency in the billing. After the AIA contract was signed, the architect changed his methodology of billing to now reflect a percentage of the twenty percent (20%) of the 5.75% fee even though the evidence will demonstrate that most of the work done by the architect had already been

submitted to the governmental agencies several months earlier and the project was not yet built. Following the signature on the AIA contract, the architect billed in monthly increases reflecting an increase in the percentage of the twenty percent (20%) of the 5.75% even through the work load fails to reflect that this accelerated billing amount had been completed. The lien was filed in November 2006. Shortly before the filing of the lien, the architect billings reflected that the total twenty percent (20%) of the 5.75% was then due and owing. Steppan's justification for the lien amount is their argument that they are entitled to twenty percent (20%) of the 5.75% of the total construction cost for the completion of the project since they completed the schematic design phase of the project even though the contract does not indicate that they have earned that fee.

A reading of the architectural contract does not demonstrate that the architect has "earned" a 5.75% fee or any percentage thereof. Article 1.5 of the contract discusses compensation. Section 1.51 indicates that the architect services shall be computed as follows:

> "5.75% of the total construction cost including contractors profit and overhead... The total construction cost of the project will be evaluated at the completion of the project in order to determine final payment for basic architectural services. Any amount over the original estimated total construction cost of approximately $160,000 shall be paid for architectural services based upon the agreed upon 5.75% fee. Any amount under the original estimated total construction cost of approximately $160,000 shall be credited for architectural services based on the agreed upon 5.75% fee."

In April 2006, the parties agreed that 5.75% of the total construction cost will be the fee of the architect if the project were built. The total construction cost has yet to be evaluated. Albeit, the parties estimated that the total construction cost would be $180 million by addendum. The parties to the contract are Steppan and BSC Financial. It is not John Iliescu. In fact, the contract specifically provides:

> "Nothing contained in this agreement shall create a contractual relationship with ... either the owner or architect." (Section 1.3.7.5)

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The owner is defined as BSC Financial. Furthermore, Iliescu could never be a party to this contract and receive its benefits. Revised Paragraph 1.3.7.9 of the contract provided:

> "The architect and the owner shall not assign this agreement without the written consent of the other party or assignment thereof shall be void."

The parties also agreed that if the owner chooses not to proceed with the project the fees of the architect will be paid as they are incurred for entitlements. This event took place! The architect billed the owner as he was incurring fees and the owner was paying the same. Article 1.5.1 provides:

> "In the event that the owner chooses not to proceed with the construction of the project, the fees associated with retaining said entitlements will be paid as incurred in the due course of the project..."

Although the project never went forward because of financing issues, it is the same as if the owner choose not to proceed with the construction of the project. By no means is Iliescu acknowledging that it falls into the shoes of the owner under the terms of the contract but there is a clear provision in the contract addressing the issue of compensation if the project does not go forward. The evidence will demonstrate that the architect was paid for the work that they performed.

B. STATEMENT OF ADMITTED FACTS.

See Stipulation filed herewith.

C. ISSUES OF LAW

1. The contract is interpreted by intent and custom.

The primary guidelines in interpreting a contract is the intent of the parties United States v. Moorman, 338 U.S. 457 (1950). In interpreting a contract, the cardinal rule is to ascertain the intention of the parties. Victory Investment Corp. v. Muskogee Electric Traction Co., 150 F.2d 889 (1945). The intention of the parties to a contract governs the Court in its interpretation of a contract and in ascertaining the rights and obligations of the parties to the contract. Van Doren v. Tjader, 1 Nev. 380 (____).

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In interpreting the entire contract, the Court is to take into consideration the circumstances in which the contract was signed. A contract must be interpreted by considering all of its provisions with reference to the general subject to which they relate and in light of contemporaneous facts and circumstances so as to arrive at an intention of the parties at the time that the contract was made. Kennedy v. Schwartz, 13 Nev. 229 (____). Another way to state it is that the interpretation of a contract and the ascertaining of the intention of the parties is to be considered within the frame of reference of the subject matter, nature, object and purpose of the agreement. Mobile and M.R. Co. v. Jurey, 111 U.S. 584 (1884). Words contained in a contract are to be interpreted in light of all the circumstances and the intent and purposes to be achieved by the contract. *Restatement, Contract 2d, §202.* In Nevada Ref. Co. v. Newton, 88 Nev. 333 (1972), our Supreme Court reiterated that the Court must look at the relative position of the parties at the time the contract was made and consider the object that was to be achieved when the contract was made. In determining the character of a contract, the Court must weigh all of its terms and provisions and the reasonable and natural results of the effect of the language in order to gain a perception of the intent of the parties. Coles v. Summerville, 47 Nev. 306 (____). In achieving that effect, the Court may look beyond the form in which the parties have cast their agreement and to the events that existed at the time of the casting of the agreement. Heryford v. Davis, 102 U.S. 235 (1880). It is the substance of the agreement rather than the form which should control the interpretation of the document. Mutual Assurance Society v. Watts, 1 Wheat (U.S.) 279 (1816). In the case of Holland v. Rock, 15 Nev. 340 (____), our Supreme Court indicated that one is not to disregard the meaning of phrases such as "about" or "more or less". In interpreting what was intended by those phrases, the Court is to look at the intention of the parties. The significance of the ruling is that the Supreme Court felt that those phrases were significant enough to be considered by the Court in interpreting the context of a contract.

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The intent of the parties is determined at the time of entering into the contract. Cedars-Sinai Medical Center v. State Board of Equalization, 162 Cal.App.3d 1182, 208 Cal.Rptr. 837 (1984). In April 2006, the parties sign a contract which is before approval of the project but after most of the work has been done to secure the approval. At that time, the parties agreed in Article 1.5.1 as follows:

> "In the event that the owner chooses not to proceed with the construction of the project, the fees associated with retaining said entitlements will be as incurred in the due course of the project..."

The evidence will clearly demonstrate that the fees incurred by the developer were paid as he was billed for the work. There is more significance attached to this language when the Court considers the fact that this provision of the contract was a specific addendum to the contract negotiated between the parties.

In Shelton v. Shelton, 119 Nev. 492 (2003), our Supreme Court observed:

> "The question of the interpretation of a contract when the facts are not in dispute is a question of law. A contract is ambiguous if it is reasonably susceptible to more than one interpretation. The best approach for interpreting an ambiguous contract is to delve beyond the express terms and examine the circumstances surrounding the parties agreement in order to determine the true mutual intention of the parties. The examination includes not only the circumstances surrounding the contract's execution but also subsequent acts and declarations of the parties. Also, a specific provision will qualify the meaning of a general provision." Id. at Page 497.

A rule of construction in contracts is that special words or provisions contained in the contract supersede the general provisions contained in the contract: ejusdem generis. Special provisions in a contract qualify that which is contained as general provisions in a contract, and the special provisions control. Smoot v. United States, 237 U.S. 38 (1915). When general words of a contract followed by a description of specific subjects, the meaning of the general words ordinarily will be presumed to be limited to the enumerations contained in the special subjects and include only those things contained in the special subjects. State Farm Fire and Casualty Co. v. Rowland, 143 S.E.2d 193 (1965). When the parties to an agreement reference a particular matter, those particular matters

supersede the general language of the contract. Where part of a contract is printed and part of a contract is typed in, the portion that is typed in will control the printed portions of the contract. The reason greater effect it given to the typed in portion of the contract than the printed part is that the typed in words are the immediate language and terms selected by the parties themselves for an expression of their meaning while the printed portion of the contract is intended only for general use without reference to particular objects or aims to be achieved. Thomas v. Taggart, 209 U.S. 385 (1908).

The language of the AIA contract does not indicate therein that the architect has earned a 5.75% fee of $180,000,000. On the contrary, Section 1.5.1 discusses the fee of the architect to be at 5.75% of the total construction cost. The language clearly indicates that the fee is based on the "total construction costs". If there is no construction cost because the project is not built, then the language of Section 1.5.1 referenced hereinabove controls. This factor is amplified when the Court reads the Paragraph of 1.5.1 which provides that the 5.75% fee is to be adjusted as the total construction cost is adjusted.

> "5.75% of the total construction cost including contractor's profit and overhead.... The total construction cost of the project will be evaluated at the completion of the project..."

The AIA contract provides that the 5.75% compensation advanced by Steppan is controlled by the cost of the project. It provides alternatives if the Owner chooses not to proceed. The Nevada Supreme Court observed that a contract is ambiguous if it is reasonably susceptible to more than one interpretation. Margrave v. Dermody Properties, 110 Nev. 824, 827 (1994).

The evidence will demonstrate that the custom and trade in the industry for purposes of securing financing is to provide your lender with a completed package including the AIA contract so that you can include in the loan your architectural fees as well as your costs to construct. Prior to the signing of the AIA contract, the architect was billing for his fees. After the signing of the AIA contract, the architect billed based upon an accelerated percentage every month of the twenty percent (20%) of the schematic design

aspect of the 5.75% of the $180,000,000. Meanwhile, there will be no evidence justifying this work having been performed after the contract is signed.

Words or words connected with a particular peculiar trade are to be given significance as that which is called for in the custom in the industry. Moran v. Prather, 23 Wall (U.S.) 492 (1874). Usage or custom in a trade is to be considered in interpreting a contract when the language is embodied in the contract. *Restatement of Contracts 2d, §222.*

The Supreme Court in Galardi v. Naples, 129 Nev.Adv.Op. 33 (May 2013), observed that a contract is ambiguous if the terms may reasonably be interpreted in more than one way. It also went on to observe custom and practice can be considered by the trial court in determining whether the contract provisions have an inherent ambiguity. *Restatement of Contracts 2d, §220, Comment D (1981).* The Court went on to observe "ambiguity is not required before evidence of trade usage ... can be used to ascertain or illuminate contract terms." Id.

Custom and Usage may be used to establish the terms of a contract. Worrington v. Empey, 95 Nev. 136, 590 P.2d 1162 (1979). The Supreme Court recognized in Bianchi v. Maggini, 17 Nev. 322 (1883) that custom in the industry controls the obligations of the parties.

2. Court's order granting partial summary judgment addressed the argument of fair market value of services.

Steppan filed a motion for partial summary judgment on October 21, 2011 asking the Court to rule that the measuring stick for the services of the architect is controlled by NRS 108.222(1)(a) as opposed to NRS 108.222(1)(b). Subsection (b) of the statute discusses value of the lien to be "amount equal to the fair market value of such work". In order to eliminate that issue, Steppan filed the motion for partial judgment arguing that the value of his services is controlled by the fixed fee of the AIA contract not fair market value. Accordingly, Iliescu will present the defense within the parameters of that ruling. In that same spirit, Iliescu will present no legal authorities unless requested by this Court to

support its argument that a pre-lien notice was required by NRS 108.226(6) given the Court's indication in arguments on September 9, 2013 that the issue has already been adjudicated and resolved by Judge Adams.

3. Action to foreclose a lien.

This action is an action to foreclose a lien. Any judgment to foreclose a mechanic's lien herein will attach to the property for foreclosure. NRS 108.239(10). In an early Nevada Supreme Court case of Rosina v. Trowbridge, 20 Nev. 105, 17 P. 751 (1888), the Supreme Court observed that legal title to the property was in the name of the partnership but the complaint to foreclose the lien was only against some of the partners in the partnership. Notwithstanding, the foreclosure of the lien could be enforced against those named Defendants who have an interest in the subject property. Accordingly, any judgment for foreclosure of the mechanic's lien herein will be a judgment to foreclose against the subject property.

The evidence will demonstrate that the mechanic's lien was recorded on November 7, 2006. The lien must be recorded within ninety (90) days of the last performance of work. NRS 108.226. A lien must then be served within thirty (30) days after the recording. NRS 108.227. Lawsuit to foreclose the lien must commence within six (6) months after the date on which the lien has been recorded. NRS 108.233. After the conclusion of the case, the Court can issue a judgment for foreclosure against the property. NRS 108.239. Since the mechanic's lien impacts the property described herein, any judgment is to be to that property.

D. SCHEDULE OF EXHIBITS

A summary schedule of exhibits has been prepared and jointly agreed upon by counsel.

E. NAME AND ADDRESSES OF WITNESSES

1. John Iliescu, Jr., c/o C. Nicholas Pereos, Ltd., 1610 Meadow Wood Lane, Ste, 202, Reno, NV 89502.

///

2. Sonnia Iliescu, c/o C. Nicholas Pereos, Ltd., 1610 Meadow Wood Lane, Ste, 202, Reno, NV 89502.

3. Karen Dennison, c/o Holland & Hart, 5441 Kietzke Lane, 2nd Floor Reno, Nevada 89509.

4. R. Craig Howard, c/o Holland & Hart, 5441 Kietzke Lane, 2nd Floor Reno, Nevada 89509.

5. Richard Johnson, The Johnson Group, 5255 Longley Lane, Reno, Nevada 89511; 10631 Professional Circle, #A, Reno, Nevada 89521.

6. Sam Caniglia, 512 10th Street, Sacramento, CA 95814

7. John Schneilling, c/o of Gregory Wilson, Esq., 1495 Ridgeview Drive, Suite 120, Reno, NV 89519.

8. Joseph S. Campbell, 2820 Erminia Road, Suite 101, Reno, Nevada 89523.

9. Donald J. Clark, 250 Bell Street, Reno, Nevada 89503.

F. <u>CERTIFICATION</u>

Counsel certifies that discovery has been completed and that they have met and conferred to discuss settlement.

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 2 day of December, 2013.

C. NICHOLAS PEREOS, LTD.

By: _____
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CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing document addressed to:

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Attorney for Mark Steppan

DATED: 12-2-13

Sandra Martinez

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Document Code: 4205

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Attorneys for: Mark B. Steppan

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

MARK B. STEPPAN, Plaintiff, v. JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU, as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust, Defendants.	Consolidated Case Nos. CV07-00341 and CV07-01021 Dept. No. 10 Trial: Monday, December 9, 2013 8:30 am
And Related cross-claims and third-party claims.	

Trial Statement

Mark B. Steppan submits his Trial Statement pursuant to WDCR 5.

HOY | CHRISSINGER | KIMMEL

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Claimed Facts

1. At all relevant times, John Iliescu, Jr. and Sonnia Iliescu, individually or as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement (collectively "Iliescu") owned real property situated in Washoe County, Nevada, assessor parcel numbers 011-112-03, 011-112-06, 011-112-07, 011-112-12 (the "Property"). The parcels are more particularly described in a Trial Stipulation to be filed before trial.

2. The Property consists of four adjacent parcels, which are bounded by Island Avenue on the north and Court Street on the south.

3. Iliescu held the Property for investment, and with the intent to market the property for development. Iliescu engaged real estate broker Richard Johnson ("Johnson") to market the property.

4. Before 2005, Iliescu had received proposals to sell the Property to developers.

5. On or about July 14, 2005, Sam A. Caniglia, a principal in Consolidated Pacific Development, Inc. ("Consolidated"), sent Johnson a written proposal to buy the Property from Iliescu. [Exhibits 66, 67].

6. Following further negotiations, on or about August 3, 2005, Consolidated and Iliescu signed a Land Purchase Agreement. [Exhibit 68] At the same time, the parties signed Addendum No. 1 [Exhibit 69] and Addendum No. 2 [Exhibit 70] to the Land Purchase Agreement.

7. Addendum No. 2 to the Land Purchase Agreement provides,

> Both parties agree that the Land Purchase Agreement needs to be fine tuned [sic] as to the specifics of the intended agreement before its finalization, and that legal clarification and documentation to achieve the full intent of both parties is spelled out. This shall be accomplished as

soon as possible within the time constraints of the Buyer, Seller, and legal counsel of both parties.

8. Pursuant to Addendum No. 2 to the Land Purchase Agreement, Hale Lane Peek Dennison & Howard ("Hale Lane") was engaged to review the Land Purchase Agreement, interview the parties, and draft another addendum to complete the parties' contract. Karen Dennison performed this work, and drafted Addendum No. 3 to Land Purchase Agreement. [Exhibit 71]

9. The Land Purchase Agreement, as modified by Addenda Nos. 1, 2, and 3 provided for a purchase price consisting of $7,500,000 cash at closing plus (a) a $2,200,000 credit towards a penthouse condominium selected by Iliescu after construction drawings are completed, (b) an easement for four parking spaces for personal use, (c) 500 square feet of storage space, and (d) an easement for fifty-one contiguous, ground-level parking spaces for Iliescu to use for the development and operation of Iliescu's adjacent medical building, which Iliescu intended to convert to a restaurant or other commercial operation.

10. The Land Purchase Agreement, as modified by Addenda Nos. 1, 2, and 3 provided that closing would be delayed while Consolidated sought development entitlements, and that Iliescu would receive non-refundable deposits during this period. The deposits were as follows:

Initial deposit	$25,000.00
Within 30 days from August 3, 2005	$75,000.00
Within 90 days from August 3, 2005	$100,000.00
Within 150 days from August 3, 2005	$100,000.00
Within 210 days from August 3, 2005	$100,000.00
Within 270 days from August 3, 2005	$100,000.00
Total advance deposits	$500,000.00
Balance at close of escrow	$7,000,000.00

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11. Addendum No. 3 specifically contemplated that, prior to close of escrow and transfer of title, the Property might be encumbered by mechanics liens. The parties agreed:

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

Addendum No. 3 [Exhibit 71], page 2, ¶ 5 (emphasis added).

12. At all times relevant to this litigation, Mark B. Steppan, AIA ("Steppan") was licensed by the State of Nevada as a Registered Architect.

13. In 1979, the University of California (Berkeley) conferred upon Steppan a bachelor of arts degree in architecture. Following examinations and practical work in the profession, Steppan was first registered as an architect in approximately 1987.

14. Steppan began working for Fisher Friedman Associates ("FFA") during college, worked full time for FFA in January 1980, and continued to work for FFA at all times relevant to this case. Steppan was an executive vice president of FFA, and had management duties as well as professional architecture duties.

15. As of October 1, 2005, Rodney Friedman, FAIA, was the most senior architect at FFA. Steppan was the second most senior architect employed by FFA.

16. In October, 2005, Consolidated approached FFA to discuss a multi-use development for the Property in Reno.

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17. Following some preliminary negotiations, on October 25, 2005, Steppan sent a proposal to Consolidated proposing to perform the design work for a fee of 5.75 percent of the estimated construction cost. [Exhibit 9] At the time of the October 25, 2005 proposal, the parties did not have a budget for anticipated construction costs.

18. It is ordinary and customary in architecture to specify a fee based upon a percentage of construction costs.

19. Steppan's October 25, 2005 proposal letter also proposed using an American Institute of Architects ("AIA") standard form B141 as the basis for a design contract for the proposed project. Thus, Exhibit 9 includes the transmittal of this standard form.

20. The scope of the proposed project was much too large to be designed and coordinated by a single individual. Consolidated, Steppan, and FFA discussed, understood, and agreed that Steppan (as a Nevada registered architect) would maintain "direct supervision" and "responsible control" of the design process, and that FFA (an architecture firm in which Steppan was an officer and employee) would be a design consultant responsible for much of the design work.

21. After Steppan sent the October 25, 2005 proposal letter to Consolidated, Consolidated submitted the B141 form to Hale Lane for review. A Hale Lane lawyer named Sarah Class identified areas of concern to Consolidated in several written memoranda dated in November, 2005. [Exhibits 10, 11, 12] Consolidated shared these concerns with Steppan, who responded in writing on December 20, 2005. [Exhibit 13]

22. After December 20, 2005, Consolidated and Steppan continued to discuss several concerns about the form of the design contract. They started drafting an addendum to make changes to the standard AIA form. In a March 24, 2006 letter, Steppan wrote that

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Steppan would "Implement the minor agreed to Addendum 1 Agreement items and investigate the three items pending resolution for consequential damages, successors and assigns and termination expenses." [Exhibit 17]

23. Effective October 31, 2005, BSC Financial, LLC c/o Consolidated Pacific Development ("Developer") and Steppan entered into a Standard Form of Agreement Between Owner and Architect ("Design Agreement"). [Exhibit 6]. The signatures on the Design Agreement are not dated.

24. On or about April 21, 2006, Developer and Steppan signed Addendum No. 1 to the Design Agreement. [Exhibit 7]

25. While the Design Agreement was under review by Hale Lane, on December 14, 2005 Consolidated and Iliescu signed a letter acknowledging Hale Lane's joint representation of Consolidated and Iliescu, and waiving the conflict of interest. [Exhibit 8].

26. Before Consolidated and Iliescu signed the waiver of conflict letter, Hale Lane knew that Consolidated/Developer had engaged Steppan to provide design services with respect to the Property, and that those design services could result in a lien on the Property.

27. When Consolidated entered into the Land Purchase Agreement with Iliescu, the Property was endowed with zoning favorable to high-rise development. That zoning was about to expire in early 2006. It was therefore important to submit applications to the City of Reno for development entitlements before the current zoning expired.

28. Steppan and FFA started work on the design before Developer and Steppan signed the form Design Agreement. The design work commenced under a letter agreement dated November 15, 2005. [Exhibit 14]. While the formal Design Agreement was under

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review by Hale Lane, Steppan issued three Design Services Continuation Letters on December 14, 2005 [Exhibit 15], February 7, 2006 [Exhibit 16], and March 24, 2006 [Exhibit 17]. These letters were designed to confirm that Steppan and FFA were authorized to continue performing work on a design for the Property.

29. Pursuant to the November 15, 2005 Architectural Design Services Agreement, Steppan and FFA invoiced for services provided based on hourly rates. These invoices show project identification as 0515-01. [Exhibit 24]

30. After Developer and Steppan signed the Design Agreement, which specifies a fee expressed as a percentage of the estimated and actual construction costs, with progress payments based on a percentage of completion of certain phases of the design work, Steppan and FFA began invoicing for the work on a percentage of completion basis per the Design Agreement. [Exhibit 25]. The invoices provided a credit back to Developer for payments received based on the earlier invoices for hourly billing.

31. Steppan and FFA also performed work that was in addition to the work specified in the Design Agreement. This work was performed at the Developer's direction and with the Developer's approval, and pursuant to written letter agreements. These letter agreements authorized work for building massing models [Exhibit 19], study of parking for the adjacent church [Exhibit 20], studies to answer questions posed by the City of Reno Planning Commission staff [Exhibit 21] and to create a video fly-through of a computerized rendering of downtown Reno buildings, streets, geologic features, and the improvements proposed for the Property. [Exhibit 22]

32. Work for each classification of additional work was billed separately, on an hourly basis. [Exhibits 27-30].

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33. Pursuant to both the Design Agreement and the November 15, 2005 letter agreement, Steppan and FFA also billed for reimbursable expenses. [Exhibit 26]

34. The Developer hired a civil engineering and planning firm called Wood Rodgers to prepare applications to the City of Reno to obtain development entitlements for the Property. David Snelgrove was an employee of Wood Rodgers, and coordinated much of the applications, meetings with the City of Reno staff, and with Steppan and FFA.

35. The Developer also hired Solaegui Engineers, Ltd. to provide a Traffic Analysis for the proposed project. [Exhibits 114, 115, 117]

36. The Developer also hired Pezzonella Associates, Inc. to provide a geotechnical engineering report on the Property.

37. On January 17, 2006, Consolidated submitted a "Special Use Permit Application" to the City of Reno. [Exhibit 35] The Special Use Permit Application includes elevations, site plans, floor plans, and other designs by Steppan and FFA.

38. The Special Use Permit Application includes the following affidavit signed by John Iliescu, Jr. and Sonnia Iliescu: "I am an owner of property/authorized agent involved in this petition and that I authorize **Sam Caniglia** to request development related applications on my property." [Exhibit 35, page STEPPAN 2368, 2369]

39. On February 7, 2006, Consolidated submitted a "Tentative Map & Special Use Permit Application" to the City of Reno. [Exhibit 36] This application superseded the January 17, 2006 application. The Special Use Permit Application includes elevations, site plans, floor plans, and other designs by Steppan and FFA.

40. The Tentative Map Application includes the following affidavit signed by John Iliescu, Jr. and Sonnia Iliescu: "I am an owner of property/authorized agent involved in this

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petition and that I authorize **Sam Caniglia of Consolidated Pacific Development** to request development related applications on my property." [Exhibit 36, page STEPPAN 2521, 2522]

41. After the February 7, 2006 Tentative Map Application, Consolidated changed the design of the proposed project, and compiled an amended application. [Exhibit 37]. Originally, the Developer proposed a project with 390 residential units, 550 parking spaces, and office and commercial space. In the February 7, 2006 Tentative Map Application, the Developer proposed 394 residential units and 550 parking spaces. In the subsequent amendments, the Developer proposed 499 residential units and 824 parking spaces.

42. In order to increase the number of residential units from 390 to 499, the Developer did not change the footprint or height of the proposed improvements. Instead, the Developer changed the mix of the type of units, substituting more studio and one-bedroom units for two- and three-bedroom units. This also increased the statutory parking requirements, which required the Developer and Steppan/FFA to redesign the parking garage to include car lifts.

43. On or about May 15, 2006, the Developer submitted a Revised Tentative Map. [Exhibit 38] This revised tentative map shows 499 residential units. Although the Revised Tentative Map is printed on Wood Rodgers plan sheets, all of the architectural design was created by Steppan and FFA. The sheets for the grading and utility plans are signed and sealed by Steven P. Strickland, a professional engineer employed by Wood Rodgers.

44. Steppan and other FFA employees attended meetings with City of Reno staff, Reno neighborhood advisory boards, the Reno Planning Commission, and the Reno City Council to explain and promote the design for the Property. Steppan and FFA also

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prepared numerous renderings, computer models, a Powerpoint presentation [Exhibits 40, 41], a video fly-through [Exhibit 42], shadow studies [Exhibits 54, 55] and other presentation materials. These presentation materials were well-received by the City of Reno and the community, and materially contributed to approval of the application for a tentative map for the Property.

45. John Iliescu, Jr. and Richard Johnson also attended neighborhood advisory board meetings and meetings of the Reno Planning Commission and Reno City Council. They both knew that Steppan and FFA were providing architectural design services and presentation services in aid of the application for development entitlements.

46. On October 4, 2006, the Reno Planning Commission recommended approval of the special use permit and tentative map for the Property. [Exhibit 47]

47. On November 15, 2006, the Reno City Council upheld the recommendation of the Planning Commission, and approved the special use permit and tentative map for the Property. [Exhibit 48]

48. John Iliescu, Jr. and Richard Johnson both attended the November 15, 2006 Reno City Council meeting with Rodney Friedman of FFA, as well as subsequent party to celebrate the City Council's approval of the Special Use Permit and Tentative Map.

49. The Design Agreement (a) specifies a fee equal to 5.75 percent of the estimated construction costs and (b) states that the estimated construction costs are $180 million. Therefore, the total fee (subject to reconciliation for actual construction costs) is $10,350,000.

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50. The Design Agreement allocates 20 percent of the fee to the Schematic Design phase of the work. The Design Agreement defines the Schematic Design to include City of Reno entitlements.

51. Steppan and FFA made progress on the Schematic Design starting in 2005. Starting May 18, 2006, Steppan and FFA invoiced for progress on the Schematic Design phase as follows:

May 18, 2006	23.25%	$481,275
June 20, 2006	23.25%	$481,275
July 19, 2005	28.10%	$581,670
August 23, 2006	44.63%	$923,841
September 21, 2006	61.16%	$1,266,012
October 25, 2006	77.69%	$1,608,183
November 21, 2006	100.00%	$2,070,000

52. As a result of the grant of the Tentative Map application on November 15, 2006, the Schematic Design was 100 percent complete.

53. Steppan and FFA received no objections to the progress billings for Schematic Design.

54. As a result of the City of Reno entitlements, the Property value was immediately enhanced. In fact, on February 23, 2007, appraiser William G. Kimmel appraised the Property with the entitlements at $30 million. [Exhibit 93]

55. Iliescu understood that the Property value was enhanced because of the entitlements approved by the City of Reno. Iliescu applied to the City of Reno to extend the entitlements by delaying the deadline for recordation of a final subdivision map. The initial application [Exhibit 49] was approved on November 24, 2008 [Exhibit 50], extending the filing deadline to 2010. The second application [Exhibit 51] was granted on October 13, 2010 [Exhibit 53], extending the filing deadline by one more year.

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56. While the Tentative Map & Special Use Permit Application was pending with the City of Reno, on or about September 18, 2006, Consolidated and Iliescu executed Addendum No. 4 to the Land Purchase Agreement. [Exhibit 72] In Addendum No. 4, the parties agreed to a $376,000 "Additional Extension Deposit" to be paid $365,000 to Iliescu and $11,000 to Johnson to extend the closing date to April 25, 2007.

57. On November 7, 2006, Steppan recorded a Notice and Claim of Lien as Document No. 3460499. [Exhibit 1]

58. The Notice and Claim of Lien was served on Iliescu within 30 days. NRS 108.227(1).

59. In April, 2007, Iliescu, Consolidated, and other parties prepared to close escrow on the Land Purchase Agreement. The original buyer, Consolidated, assigned its rights under the Land Purchase Agreement to its affiliate, BSC Investments, LLC. [Exhibit 88]. BSC Investments, LLC ("BSC") then entered into a Purchase and Sale Agreement and Joint Escrow Instructions to sell the Property, along with the development entitlements, to a new company called Wingfield Towers, LLC ("Wingfield"). [Exhibit 82].

60. Under the Iliescu – Consolidated Land Purchase Agreement, as modified by Addenda Nos. 1 through 4, the purchase price to be paid to Iliescu was $7,878,000. Exhibit 72] Under the BSC – Wingfield Purchase and Sale Agreement, the purchase price to be paid to BSC Investments was $24,282,000. [Exhibit 82] The parties, Hale Lane, First Centennial Title Company, and Ticor Title of Nevada, Inc. prepared for a "double closing" so that proceeds from the BSC-Wingfield transaction would be paid into the Iliescu-Consolidated escrow to effectuate the transfer of the Property title.

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61. As part of the preparation for close of escrow, First Centennial Title sent Steppan's attorney a request for a payoff of the Mechanic's Lien: "I have been instructed to pay your demand for the Claim of Lien filed 11/7/06 as document No. 3460499, Washoe County Nevada Official Records involving property owned by John Iliescu, et al for work performed for DeCal Homes, or one of their subsidiaries…. We ask that you complete and sign the requested information below, and sign and have notarized the Lien Release enclosed." Exhibit 89. As requested, Steppan signed and returned the payoff demand. [Exhibit 99] As requested, Steppan's counsel signed and tendered a Discharge or Release of Notice of Lien to escrow. [Exhibit 106]

62. The April 2007 "double escrow" never closed. Although the parties had signed deeds, memoranda, and releases [Exhibits 105-108] the documents were never recorded, title never transferred, and funds were never disbursed per the estimated closing statements. [Exhibit 104]

63. After the April 2007 "double escrow" failed, Steppan recorded an Amended Notice and Claim of Lien on May 3, 2007 as document 3528313, official records of the Washoe County Recorder. [Exhibit 2] The original lien amount was $1,783,548.85. The amended lien amount was increased to $1,939,347.51 to include accrued interest.

64. Even though the April 2007 transaction never closed, by September 25, 2007 Iliescu had received at least $1,176,000 in non-refundable deposits under the Land Purchase Agreement as amended. [Exhibit 102]

65. Effective December 2, 2007, Iliescu and Consolidated entered into Addendum No. 5 to the Land Purchase Agreement. [Exhibit 73] Under Addendum No. 5, Iliescu agreed to extend close of escrow to December 12, 2007 in consideration of a price

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accretion of $100,000, with the immediate transfer of $100,000 in water rights. Addendum No. 5 also increased Iliescu's credit towards a penthouse condominium from $2,200,000 to $3,000,000.

66. On November 8, 2013, Steppan recorded a Second Amended Notice and Claim of Lien. [Exhibit 3] The corrected lien seeks $1,755,229.99 in principal. Through December 9, 2013, Steppan seeks $2,243,638.83 in accrued interest. [Exhibit 5]

Admitted or Undisputed Facts

Through counsel, the parties have filed a separate trial stipulation setting forth agreed facts.

Memorandum of Legal Points and Authorities

1. Introduction

This trial follows an evidentiary hearing and several motions for partial summary judgment. At the outset of the case, Iliescu argued that Steppan failed to perfect the mechanics lien because he did not give a pre-lien notice. This Court disagreed, ruling that Iliescu had actual knowledge that Steppan and FFA were performing architectural services, so that no pre-lien notice was required under *Fondren v. K/L Complex, Ltd.*, 106 Nev. 705, 800 P.2d 719 (1990). Order, June 22, 2009. This Court further held that, pursuant to NRS 108.222(1), Steppan's mechanics lien "secures the fixed fee specified in Lien Claimant's written contract." Order, May 5, 2013. Therefore, Plaintiff Steppan contends that the only issue remaining for trial is the computation of the principal and interest due pursuant to Steppan's written contract.

Iliescu does not share Steppan's vision of the scope of this trial. Iliescu has signaled an intention to re-litigate issues that are already decided. For example, Iliescu continues to

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protest that, while Iliescu was aware that *some* design professionals were involved with the development entitlements for the Property, Iliescu was not aware of the *particular* architects involved. Iliescu has recently developed a new theory that Steppan's right to receive a fee for design work was somehow contingent on actual construction of the improvements designed. Iliescu further argues that the lien claimant can only recover up to the liquidation value of the Property, and cannot obtain a personal judgment against the landowner. These legal issues are discussed below.

2. Statutory mechanics lien procedure

NRS 108.239 sets forth procedures for actions to foreclose mechanics liens. The Court must determine the amount of the lien, then "cause the property to be sold in satisfaction of liens and the costs of sale…" NRS 108.239(10). The statute further prescribes that a judgment creditor may cause the property to be sold in the same manner provided for sales of real property pursuant to writs of execution. *Id.* Exhibit 1 to this Trial Statement is a proposed form of judgment to comply with this statute.

If the proceeds from the sale exceed the amount of the judgment, the surplus is paid to the property owner. NRS 108.239(11). If the proceeds from the sale do not satisfy the amount of the judgment, then the judgment creditor is entitled to personal judgment against the property owner for the deficiency (or "residue") if the property owner has been personally summoned or appeared in the action. NRS 108.239(12). Steppan therefore contends that the Court should order a sale of the Property. If the net sale proceeds are less than the monetary amount of the judgment, Steppan must then apply to the Court for a personal judgment against Iliescu.

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3. Amount of the lien

The amount of the lien is comprised of these components: (a) the principal amount [determined under NRS 108.222], (b) prejudgment interest [NRS 108.237(2)], (c) the cost of preparing and recording the notice of lien [NRS 108.237(1)], (d) "the costs of the proceedings, including without limitation, reasonable attorney's fees, the costs for representation of the lien claimant in the proceedings" [NRS 108.237(1)], and (e) "any other amounts as the court may find to be justly due and owing to the lien claimant" [NRS 108.237(1). Each of these elements is further described below:

A. Principal: The Design Agreement clearly provides that the Architect has earned a fee based on the progress of the work, and clearly allocates 20 percent of the total fee to the Schematic Design phase.

Under NRS 108.222(1)(a), if the lien claimant agreed "by contract or otherwise, upon a specific price or method for determining a specific price for some or all of the work" then the principal amount of the lien is the unpaid agreed price. This Court previously held that Steppan's mechanics lien secures the unpaid balance due under the Design Agreement, which specifies a fee based upon a percentage of the estimated construction cost.

Iliescu contends that the Design Agreement makes Steppan's fee contingent on actual construction of the designed improvements. This legal argument is debunked below.

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In addition to the Design Agreement fee, Steppan is also entitled to recover (a) the amount of reimbursable expenses as specified in the Design Agreement and (b) hourly fees for additional work that fell outside the scope of the Design Agreement. According to the Design Agreement, page 10, § 1.5.4 [Exhibit 6, STEPPAN 7507] and the November 15, 2005 stop-gap letter agreement [Exhibit 14] reimbursable expenses are to be repaid with a 15 percent mark-up. Fees for work outside the scope of the Design Agreement are based on agreed hourly rates. Design Agreement, page 10, § 1.5.2 [Exhibit 6, STEPPAN 7507]; additional work letters [Exhibits 19-22].

B. Prejudgment interest

Under NRS 108.237(2) controls the computation of prejudgment interest to include the lien. Interest is calculated based upon:

> (a) The rate of interest agreed upon in the lien claimant's contract; or
>
> (b) If a rate of interest is not provided in the lien claimant's contract, interest at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 4 percent, on the amount of the lien found payable. The rate of interest must be adjusted accordingly on each January 1 and July 1 thereafter until the amount of the lien is paid.
>
> Interest is payable from the date on which the payment is found to have been due, as determined by the court.

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The Design Agreement provides that unpaid invoices accrue interest, beginning 30 days after the invoice, at the rate of "1 & ½ % monthly." Design Agreement, page 10, §1.5.8 [Exhibit 6, STEPPAN 7507]. Arguably, the interest is compounded monthly. To simplify the interest computation, Steppan claims simple interest on the Design Agreement fees at 18 percent per annum. For reimbursable expenses, Steppan claims interest based on the legal rate of interest specified in NRS 108.237(2)(b). The prejudgment interest computation through December 9, 2013 is set forth in Exhibit 5.

C. Attorney fees and costs

A lien claimant is entitled to recover attorney fees to prepare and record the lien, as well as all of the fees incurred to represent the lien claimant in the foreclosure proceeding. NRS 108.237(1). The lien claimant is also entitled to recover the costs of the suit. Because the recoverable attorney fees and costs will continue to accrue through trial, Steppan will present costs and attorney fees by post-trial motion.

4. The Design Agreement does not make payment of the architect's fee contingent on construction of the improvements on the Property.

The Design Agreement [Exhibit 6] provides for the architect's compensation in Article 1.5.

> § 1.5.1 For the Architect's services as described under Article 1.4, compensation shall be computed as follows:
>
> 5.75% of the total construction cost including contractors profit and overhead. Compensation will be billed monthly as a percentage complete of each phase with the following assumptions: SD 20%, DD 22%, CD 40%, Bid/Negotiate 1% and CA 17%.
>
> The Total Construction Cost of the project will be evaluated at the completion of the project in order to determine final payment for basic architectural services. Any amount over the original estimated Total

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> Construction Cost of approximately $160,000,000 shall be paid for architectural services based on the agreed upon 5.75% fee. Any amount under the original estimated Total Construction Cost of approximately $160,000,000 shall be credited for architectural services based on the agreed upon 5.75% fee….

Exhibit 6, page 9 [STEPPAN-007506]. By Addendum No. 1, the parties increased the estimated Total Construction Cost from $160 million to $180 million. Exhibit 7, [STEPPAN-007520]. The Addendum also clarifies that the abbreviations used in § 1.5 mean Schematic Design, Design Development, Construction Documents, and Construction Administration. Exhibit 7, § 1.5 [STEPPAN-007521].[1]

The mechanics of this compensation scheme are clear: the Architect is entitled to bill monthly for progress under each phase. Twenty percent of the overall fee is allocated to Schematic Design. Therefore, completion of 50% of the Schematic Design phase entitles the Architect to 10% of the overall fee (50% x 20% x Fee). Under the Design Contract, once the construction is complete, the Architect's fee is increased or decreased based on a difference between the cost estimates and the actual costs experienced. This reconciliation is made in the Architect's final payment.

Iliescu argues that the Design Agreement makes the architect's right to collect any part of the progress billing contingent upon completion of construction. The plain language of the Design Agreement demonstrates the fallacy of this interpretation. The Design Agreement specifies,

> **§1.3.8.6** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to

[1] These phases of work are described in detail in Article 2.4 of the Design Agreement. Addendum No. 1 references the American Institute of Architect's Handbook of Professional Practice to further define the work required under each p7521]hase. Addendum No. 1, § 1.5.

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> termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7.
>
> **§1.3.8.7** Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

Exhibit 6, page 8 [STEPPAN7505].[2] Clearly the Architect is entitled to be paid for work performed before termination of the contract, even if the designed improvements are never constructed. Further, in Addendum No. 1, the parties specifically provided for the possibility that the development would not be built, providing that the Architect is to receive the portion of fixed fee allocated to the work performed, whether or not the improvements are ever built:

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

Exhibit 7, § 1.5.9.

Iliescu's proposed construction of the Design Agreement is contrary to the plain language used by the parties and vetted by Hale Lane, joint legal counsel for both Developer and Iliescu. If the parties had intended Iliescu's result, they could have easily provided that the architect would not receive any fee unless and until the project was completely constructed.

---

[2] Steppan does not seek lost profits in this case, only the contract-specified fees for the Schematic Design work and the additional work invoiced on an hourly basis.

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5. When a contract is unambiguous, the Court must give effect to the language used by the parties and eschew "construing" the contract based on custom or surrounding circumstances.

In order to shoehorn its interpretation of the Design Agreement into this case, Iliescu cites many cannons of contract construction. However, the rules of contract interpretation are only useful when contracting parties have created an ambiguous contract.

Under the parol evidence rule, the Court may not rely upon extrinsic evidence to interpret a contract unless the contract contains ambiguities. *Margrave v. Dermody Properties, Inc.*, 110 Nev. 824, 829, 878 P.2d 291, 294 (1994). The surrounding circumstances are relevant only when the meaning is not clear from the contract itself. *See NGA #2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997). A contract is ambiguous only if it is reasonably susceptible to more than one interpretation. *Agricultural Aviation v. Clark County Board of Commissioners*, 106 Nev. 396, 398, 794 P.2d 710, 712 (1990).

The Design Agreement is certainly not ambiguous, and is not susceptible to the interpretation proposed by Iliescu. The contract clearly provides that the architect will be paid for the progress towards Schematic Design, whether or not the improvements are ever constructed.

6. The Court should refuse the proposed "industry custom" evidence proposed by Iliescu.

Iliescu does not merely propose an interpretation of the Design Agreement, but further asserts that the "industry custom" is that a developer typically would not commit to pay a fee based on the percentage of the anticipated construction costs until the developer

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had arranged construction financing. This proposed evidence of industry custom would directly contradict the express terms to which Steppan and Consolidated agreed.

Iliescu has not identified a witness to testify that Consolidated did not intend to pay Steppan unless the improvements were built. On the other hand, it is undisputed that Steppan and FFA billed for percentage completion of Schematic Design, that there was no objection to the invoices, and that the parties intended to pay Steppan the entire lien amount through the April 2007 escrow.

7. Iliescu's interpretation of the Design Agreement is unreasonable and inconsistent with the parties' conduct.

Steppan contends that the Design Agreement is unambiguous, and therefore not subject to interpretation. If the Court finds room for interpretation, it must prefer a reasonable interpretation: "An interpretation which results in a fair and reasonable contract is preferable to one that results in a harsh and unreasonable contract." *Dickenson v. State, Department of Wildlife*, 110 Nev. 934, 937, 877 P.2d 1059, 1061 (1994). It would be unreasonable and harsh to interpret the Design Agreement to make payment of the design fees contingent upon construction of the improvements. The architect's first task was to develop a Schematic Design in support of an application to obtain development entitlements. Steppan and FFA achieved this goal. Steppan and FFA had no control over project financing or the decision to proceed with construction or abandon that process.

If the Design Agreement is ambiguous, the Court may also consider the parties' post-contract conduct:

> The best approach for interpreting an <u>*ambiguous*</u> contract is to delve beyond its express terms and "examine the circumstances surrounding the parties' agreement in order to determine the true mutual intentions of the parties."

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> This examination includes not only the circumstances surrounding the contract's execution, but also subsequent acts and declarations of the parties.

Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003)(footnotes omitted; emphasis added). Here, the Developer never objected to the lien claimant's invoices. When Iliescu was about to close escrow in April, 2007, the parties indicated that Steppan's lien would be paid. See Exhibits 98, 99, 106. There was no hint that Steppan would need to wait for construction of the improvements before payment was forthcoming.

8. Richard Johnson's knowledge is imputed to his principal, Iliescu.

An agent's knowledge is imputed to the principal:

> An agent's knowledge of matters within the scope of his or her authority is imputed to the principal because it is presumed that such knowledge will be disclosed to the principal for the principal's protection or guidance. In other words, principals are presumed to have knowledge of all acts done and declarations made by and to their agents when acting in relation to the subject matter of the agency and within the scope of an actual or apparent authority conferred.

3 C.J.S. Agency § 547. Iliescu engaged Richard Johnson as a real estate broker to market the Property (and other land owned by Iliescu). Mr. Johnson dealt with the various developer entities and individuals involved in the purchase of the Property. Johnson was involved in the effort to obtain development entitlements for the Property. Mr. Johnson was, effectively, Iliescu's eyes, ears, and mouth for many dealings that are germane to this lawsuit. Therefore, Mr. Johnson's knowledge must be imputed to Iliescu.

9. Hale Lane's knowledge is imputed to its clients, including Iliescu.

The attorney-client relationship is likewise a agent-principal relationship so that the attorney's knowledge is imputed to the client. *Atkeson v. T & K Lands, LLC*, 258 Or.App. 373, 309 P.3d 188 (2013); *Fitzgerald v. State ex rel. Adamson*, 987 S.W.2d 534 (Mo.App. 1999).

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Further, "It has long been recognized that knowledge obtained by one member of a firm of lawyers is imputed to all the other members." *Frazier v. Superior Court*, 97 Cal. App. 4th 23, 30, 118 Cal. Rptr. 2d 129, 134 (2002). Additionally, the attorney's acts and omissions within the scope of the agency are regarded as the client's acts or omissions. *Green v. Midland Mortgage Company*, 342 S.W.3d 686, 691 (Tex.App. 2011).

Hale Lane represented both Iliescu and the Developer with respect to the Property. See Exhibit 8 (December 14, 2005 waiver of conflict letter) and Exhibit 77 (January 17, 2007 waiver of conflict letter). Hale Lane drafted Addendum No. 3 to the Land Purchase Agreement, which included an indemnity against mechanics liens to protect Iliescu. Exhibit 71. Hale Lane studied the architectural design agreement proposed by Steppan, and made recommendations to Developer. Exhibits 10, 11, 12. Hale Lane drafted the December 8, 2006 Indemnity Agreement to protect Iliescu against Steppan's lien. Exhibit 76. Hale Lane knew that the Developer engaged Steppan to provide architectural design to win development entitlements for the Property, and that knowledge is imputed to Iliescu.

10. By statute, the Developer is Iliescu's agent.

NRS 108.22104 provides:

> "Agent of the owner" means every architect, builder, contractor, engineer, geologist, land surveyor, lessee, miner, subcontractor or other person having charge or control of the property, improvement or work of improvement of the owner, or any part thereof.

The Land Purchase Agreement confers upon Consolidated Pacific Development, Inc. the right to seek development entitlements for the Property. See Addendum No. 3, ¶ 7 [Exhibit 71]. Further, Iliescu expressly authorized Sam Caniglia, a principal owner of Consolidated Pacific Development, to apply for development entitlements on behalf of

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the Property owners. [Exhibits 35, 36] Thus, Consolidated fits squarely within the definition of "Agent of the Owner."

Sam Caniglia is also the individual who signed the Design Agreement [Exhibit 6], Addendum No. 1 to the Design Agreement [Exhibit 7], and the letter agreements for additional work [Exhibits 19, 20, and 21]. Therefore, for purposes of the lien statute, Mr. Caniglia and Consolidated are "agents of the owner." Caniglia's knowledge is imputed to Iliescu, and Caniglia's action to engage Steppan to provide design services is binding on Iliescu.

11. Developer and Steppan are competent to fix the effective date of their contract.

Iliescu contends that the Design Agreement was signed on or about April 21, 2006, and therefore could not control the architect's compensation for work performed before that signing. But the Design Agreement specifies that the effective date is October 31, 2005. All of the evidence is that signing the Design Agreement was delayed by the lawyers' review, and that the contracting parties always understood that the design fee would be 5.75 percent of the estimated construction cost.

The Court must enforce the effective date selected by the contracting parties:

> We reiterate the long-standing observation of our courts that the date of execution of a contract is not necessarily the date of the contract. "'[I]t is elementary that ordinarily a contract speaks from the day of its date, regardless of when it was executed and delivered.'" [] Illinois courts have permitted the "relation back" theory of contract effectiveness: "that is, contractual terms may be effective for a period before the contract is executed, so long as such coverage is clear from the face of the contract." []

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Asset Recovery Contracting, LLC v. Walsh Const. Co. of Illinois, 2012 IL App (1st) 101226, 980 N.E.2d 708, 724 appeal denied, 982 N.E.2d 767 (Ill. 2013)(citations omitted). As the Georgia Supreme Court summarized,

> [T]he effective date of a contract is not the date of execution where the contract expressly states that its terms are to take effect at an earlier date. "It is elemental that contracting parties may agree to give retroactive effect… to their contracts as they see fit. [] And, "[i]t is fundamental that where parties to an agreement expressly provide that a written contract be entered into 'as of' an earlier date than that on which it was executed, the agreement is effective retroactively 'as of' the earlier date and the parties are bound thereby ..." []

Am. Cyanamid Co. v. Ring, 248 Ga. 673, 674, 286 S.E.2d 1, 3 (1982)(citations omitted).

Summaries of Schedules

1. Exhibit 3, Steppan's Second Amended Notice and Claim of Lien, contains schedules of invoices and payments received, and a recapitulation of the principal amounts claimed.

2. Exhibit 5 is a schedule showing the computation of prejudgment interest.

3. Exhibits 24, 25, 26, 27, 28, and 29 contain invoices by project identification. Each exhibit contains a summary schedule of the invoices within the exhibit.

Witnesses

Steppan expects to present testimony by the following witnesses:

Mark B. Steppan, AIA
7 Freelon Street
San Francisco, California 94107
(415) 762-8388

Rodney Friedman, FAIA
333 Bryant Street
San Francisco, CA 94107
(415) 435-3956

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Brad Van Woert, AIA
1400 South Virginia Street
Reno, Nevada 89502
(775) 328-1010

John Iliescu, Jr. (subpoena)
100 North Arlington Avenue
Reno, Nevada 89501
Phone number unknown

Sonnia Iliescu (subpoena)
100 North Arlington Avenue
Reno, Nevada 89501
Phone number unknown

Richard Johnson (subpoena)
5255 Longley Lane, Suite 105
Reno, Nevada 89511
(775) 823-8877

David Snelgrove (subpoena)
Land Planomics
4225 Great Falls Loop
Reno, Nevada 89511
(775) 737-8910

Steppan will call the following witnesses if the need arises:

Maryann Infantino
First Centennial Title Company of Nevada
1450 Ridgeview Drive, Suite 100
Reno, Nevada 89519
(775) 689-8510

Susan Fay
7 Freelon Street
San Francisco, California 94107
(415) 762-8388

Gayle A. Kern
5421 Kietzke Lane, Suite 200
Reno, Nevada 89511
(775) 324-5930

Stephen C. Mollath
6560 SW McCarran Boulevard, Suite A
Reno, Nevada 89509
(775) 786-3011

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Karen D. Dennison
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
(775) 327-3000

Craig Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
(775) 327-3000

Eugenia Kokunina
661 Sierra Rose Drive
Reno, Nevada 89511
(775) 954-2020

William G. Kimmel
1281 Terminal Way, Suite 205
Reno, Nevada 89502
(775) 323-6400

Lynette R. Jones
One East First Street, Second Floor
Reno, Nevada 89501
(775) 334-2032

Discovery Certification

Undersigned counsel certifies that all discovery has been completed.

Settlement Certification

Undersigned counsel certifies that, prior to filing this trial statement, he has personally met and conferred in good faith to resolve the case by settlement.

Motions in Limine

None. (This is a bench trial.)

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Privacy Certification

Undersigned counsel certifies that this trial statement does not contain any social security numbers.

Dated December 4, 2013.

HOY CHRISSINGER KIMMEL

Michael D. Hoy
Attorneys for Mark B. Steppan

Certificate of Service

Pursuant to NRCP 5(b), I certify that I am an employee of Hoy Chrissinger Kimmel, PC and that on December 4, 2013 I electronically filed a true and correct copy of this Motion for Partial Summary Judgment with the Clerk of the Court by using the ECF system, which served the following counsel electronically: Gregory Wilson, Alice Campos Mercado, Thomas Hall, Stephen Mollath, David Grundy. I also hand-delivered a true and correct copy of this Motion for Partial Summary Judgment to:

C. Nicholas Pereos
C. Nicholas Pereos, Ltd.
1610 Meadow Wood Lane
Reno, Nevada 89502

December 4, 2013.

Michael D. Hoy

Index to Exhibits

1 Proposed form of Judgment, Decree and Order for Foreclosure of Mechanics Lien

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F I L E D
Electronically
12-04-2013:02:18:05 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4174965

Exhibit 1

Document Code:

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

MARK B. STEPPAN, Plaintiff, v. JOHN ILIESCU, JR.; SONNIA SANTEE ILIESCU; JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU, as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust, Defendants.	Consolidated Case Nos. CV07-00341 and CV07-01021 Dept. No. 10
And Related cross-claims and third-party claims.	

Judgment, Decree and Order for Foreclosure of Mechanics Lien

Based upon the pleadings, evidence, Findings of Fact, Conclusions of Law, Decision, [and post-trial orders listed] herein,

IT HEREBY IS ORDERED, ADJUDGED, AND DECREED:

1. Plaintiff Mark B. Steppan shall take judgment on the Notice and Claim of Lien recorded on November 7, 2006 as Document 3460499 in the official records of the Washoe County Recorder, as amended by the Amended Notice and Claim of Lien recorded May 3, 2007 as Document 3528313, and as further amended by the Second Amended Notice and

Claim of Lien recorded November 8, 2013 as Document 4297751 for the following amounts:

A. Principal (NRS 108.222) .....

B. Prejudgment Interest (NRS 108.237(2) .....

C. Attorney fees (NRS 108.237(1) .....

D. Costs (NRS 108.237(1) .....

Total .....

(the "Lienable Amount")

2. Pursuant to NRS 108.239(10), the real property described as Assessor Parcel Number 011-112-03, 011-112-06, 011-112-07, and 011-112-12, and more particularly described in Exhibit A hereto (the "Property") shall be sold in satisfaction of the Plaintiff's mechanics lien in the amounts specified herein.

3. Pursuant to NRS 108.239(10), Plaintiff Mark B. Steppan shall cause the Property to be sold within the time and in the manner provided for sales on execution for the sale of real property.

4. The costs of the sale shall be deducted from the gross proceeds, and the balance shall constitute the Net Sale Proceeds.

5. Pursuant to NRS 108.239(11), if the Net Sale Proceeds are equal to or exceed the Lienable Amount, then the Lienable Amount shall be disbursed to Plaintiff Mark B. Steppan, and the surplus shall be disbursed to Defendants John Iliescu, Jr. and Sonnia Iliescu as trustees of the John Iliescu Jr. and Sonnia Iliescu Trust.

6. If the Net Sale Proceeds are less than the Lienable Amount, then all of the Net Sale Proceeds shall be disbursed to Plaintiff Mark B. Steppan. Within 30 calendar days after the sale, Steppan may by motion seek additional relief pursuant to NRS 108.239(12).

Dated December ___, 2013.

Hon. Elliott Sattler,
District Judge

DOC # 3460499
11/07/2008 04:21P Fee:17.00
BK1
Requested By
GAYLE A KERN LTD
Washoe County Recorder
Kathryn L. Burke - Recorder
Pg 1 of 4 RPTT 0.00

When Recorded Mail To:

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

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

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

NOTICE AND CLAIM OF LIEN

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

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

Claimant further states:

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

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

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

COPY

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

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

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

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

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

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

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

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

Commencing on the North line of Court Street, at the intersection of the North line of Court Street with the West line of Hill Street, if said Hill Street was protracted Northerly to said point of inter-section according to the official plat of Lake's South Addition to Reno, Washoe County, State of Nevada; thence running westerly and along the North line of said Court Street 100 feet; thence Northerly and parallel with the West line of said Hill Street, if protracted, 276 feet more of less to the South Bank of the Truckee River; thence Easterly and along the south bank of the Truckee River to the West line of Hill Street, protracted, 324 feet more or less to the North line of Court Street and the place of beginning, being the same lands conveyed by Antonio Robori and Carlotta Robori, his wife, to Charles Snyder, May 27, 1907, and by Antonio Robori to Charles Snyder, January 12, 1905, by deeds duly recorded in Book 32 of Deeds, page 405, and book 26 of deeds, page 296, Records of said Washoe County.
EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded August 4, 1922, as Document No. 26097, in Book 61, Page 280, of Deeds.
FURTHER EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded December 17, 1971, as Document No. 229332, in Book 600, Page 759 of Official Records.
APN: 011-112-12

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

DATED: This 7th day of November, 2006.

By _____
Gayle A. Kern, Esq.

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

_____
Gayle A. Kern, Esq.

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

_____
Notary Public

AMBER A. GARRELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 05-99145-2 - Expires June 21, 2009

COPY

DOC # 3528313
05/03/2007 11:32:12 AM
Requested By
GAYLE A KERN
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: $18.00 RPTT: $0.00
Page 1 of 5

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

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

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

AMENDED NOTICE AND CLAIM OF LIEN

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

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

AIA, CSI, NCARB
Signature Title

Mark Steppan

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

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

COPY

When Recorded Mail To:

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

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

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

AMENDED NOTICE AND CLAIM OF LIEN

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

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

Claimant further states:

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

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

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

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

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

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

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

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

beginning; said true point of beginning being the Southeast corner of the parcel of land heretofore conveyed to Atha Carter by Antonieo Rebori and wife, by deed duly recorded in Book 64 of Deeds, Page 294, Washoe County Records: running thence Easterly, parallel with the North line of Court Street, a distance of 50 feet to the Southwest corner of the property formerly owned by H. F. Holmshaw and wife thence Northerly at a right angle, along the west line of the property formerly owned by said H. F. Holmshaw and wife, to the South bank of the South channel of the Truckee River; thence Westerly along the South bank of said channel of the Truckee River to a point which would intersect a line drawn northerly and parallel with the East line of said property from the said true point of beginning; thence southerly along said line to the truce point of beginning.
SAVE AND EXCEPTING, however, from the above described premises, all that portion thereof conveyed by Antonio Rebori and Charlotta Rebori, his wife, to the City of Reno, a municipal corporation, by deed dated February 16, 1922, and recorded in Book 59 of Deeds, Page 297, Washoe County, Records.
APN: 011-112-03

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

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

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

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

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

FURTHER EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded December 17, 1971, as Document No. 229332, in Book 600, Page 759 of Official Records.
APN: 011-112-12

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

DATED: This 3rd day of May, 2007.

By _____
Mark Steppan, AIA, CSI, NCARB

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

AMBER A. GARRELL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 05-99145-2 - Expires June 21, 2009

_____
NOTARY PUBLIC

DOC # 4297751
11/08/2013 11:26:26 AM
Requested By
MICHAEL D HOY
Washoe County Recorder
Lawrence R. Burtness - Recorder
Fee: $50.00 RPTT: $0.00
Page 1 of 9

When recorded, mail to:

Michael D. Hoy
Hoy Chrissinger Kimmel, PC
50 West Liberty Street, Suite 840
Reno, Nevada 89501
(775) 786-8000

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

Second Amended Notice and Claim of Lien

Pursuant to NRS 108.229(1), Mark B. Steppan hereby amends the Notice and Claim of Lien recorded November 7, 2006 as Document 3460499 in the Official Records of the Washoe County Recorder and the Amended Notice and Claim of Lien recorded May 3, 2007 as Document 3528313 in the Official Records of the Washoe County Recorder.

NOTICE IS HEREBY GIVEN that Mark B. Steppan ("Lien Claimant") claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property, as follows:

1. The amount of the original contracts: Lien Claimant entered into several different contracts to provide services as an architect in relation to the improvement, property or work of improvement described below. NRS 108.2214(1).

A. Design Agreement. Effective October 31, 2005, Lien Claimant entered into a Standard form of Agreement Between Owner and Architect based upon the AIA Document B141 – 1997 Part 1 and Part2 ("Design Agreement"). On April 21, 2006, the Owner and Lien Claimant executed Addendum No. 1 Contractual Changes to AIA B141 Standard Agreement between Owner and Architect.

Parties to the Design Agreement agreed upon the material terms in October, 2005. While the formal Design Agreement was under legal review, the Owner directed the Lien Claimant to commence work. This work was billed on an hourly basis pursuant to a letter agreement dated November 5, 2005. After the Design Agreement was formalized, Lien Claimant changed the billing to reflect the fixed-fee in the Design Contract, and gave credit for payments previously received under the November 5, 2005 letter agreement.

The Design Agreement provides for a fixed fee computed by multiplying the anticipated construction cost ($180 million) by 5.75 percent, for a total fee of $10,350,000. The Design Agreement allocates this fee among various phases of the work covered by the Design Agreement. The Design Agreement allocates 20 percent of the overall fee to the Schematic Design phase. Lien Claimant completed the Schematic Design phase as defined in the Design Agreement. The Design Agreement also provides that any unpaid contract balance bears simple interest at the rate of one and one-half percent per month (or 18 percent per annum).

B. Reimbursable Items. Under the Design Agreement, Lien Claimant was entitled to receive 115 percent of the Lien Claimant's actual cost for defined Reimbursable Expenses including fees paid to certain sub-consultants, including a landscape architect. Lien Claimant billed a total of $35,585.27 for these Reimburseable Expenses.

C. Adjacent Church Parking Studies. In relation to the property, on or about June 14, 2006, Lien Claimant entered into a separate letter agreement with BSC Financial, LLC to provide design services for a parking layout configurations and parking structure.

D. City Staff comment studies. In relation to the property, Lien Claimant entered into a separate agreement with BSC Financial, LLC to provide design recommendations to respond to inquiries from the City of Reno staff regarding applications by BSC Financial, LLC and its affiliates, and the Property Owner. For this work, Lien Claimant was entitled to be paid hourly rates agreed between the parties. The work performed under this agreement was billed at $36,555.

E. Project fly-through. In relation to the property, Lien Claimant entered into a separate agreement with BSC Financial, LLC to create a computerized, three-dimensional model of downtown Reno with the proposed improvements, and to create and edit a video fly-through of downtown Reno with the improvements designed for the property. For this work, Lien Claimant was entitled to be paid hourly rates agreed between the parties. The work performed under this agreement was billed at $66,620.

F. Other agreements. Lien Claimant entered into separate agreements with BSC Financial, LLC in relation to the property. In order to simplify this Notice of Lien and the litigation to foreclose the lien, Lien Claimant does not claim that the amounts due under those other contracts are secured by this lien.

(continues)

2. Payments. The total amount of all payments received to date is below listed separately under each agreement:

A. Design Agreement. The payments received are as follows:

02/16/2006	$254,990.00
03/21/2006	8,230.00
05/16/2006	15,490.00
06/16/2006	102,160.00
09/16/2006	50,000.00
Total	$430,870.00

B. Reimbursable items. The payments received are as follows:

02/16/2006	$11,460.65
04/18/2006	3,224.87
05/16/2006	101.12
06/21/2006	16,264.87
07/12/2006	1,557.53
Total	32,609.04

C. Adjacent Church Parking Studies. The payments received are as follows:

07/12/2006	3,255.00

D. City Staff comment studies. Lien Claimant has received no payments for this work.

E. Project fly-through. Lien Claimant has received no payments for this work.

Total of all payments received on contracts that Lien Claimant asserts are secured by this lien:

$466,734.04

COPY

3. Amount of lienable amount after deducting all just credits and offsets, is as follows:

Design Agreement			
	Fee earned	$2,070,000.00	
	Payments:	430,870.00	
	Principal due:		$1,639,130.00
Reimburseable Expenses			
	Amount earned:	$37,411.53	
	Payments:	32,609.04	
	Principal due:		4,802.49
Adjacent Church Parking Studies			
	Fee earned:	$11,377.50	
	Payments:	3,255.00	
	Principal due:		8,122.50
City Staff comment studies.			
	Fee earned:	$36,555.00	
	Payments:	0.00	
	Principal due:		36,555.00
Project fly-through.			
	Fee earned:	$66,620.00	
	Payments:	0.00	
	Principal due:		66,620.00
Total principal claimed:			$1,755,229.99

4. Interest. Pursuant to NRS 108.237(1) and (2), Lien Claimant claims interest. With respect to the principal amounts due for fees and reimburseable expenses under the Primary Design Contract, interest is computed as simple interest at the rate of one and one-half percent per month. Interest on amounts due under other agreements shall be the legal rate of interest at the time judgment is entered.

5. Ownership. For assessor's parcel numbers 011-112-03, 011-112-07, 011-112-12, the owner of record is John Iliescu, Jr. and Sonnia Iliescu, as trustees of the Iliescu Family Trust. For assessor's parcel number 011-112-06, the owner of record is John Iliescu, a married man as his sole and separate property.

6. Name of person by whom Lien Claimant was employed. Lien Claimant was employed by and supplied services, work, labor and materials to BSC Financial,

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LLC c/o Consolidated Pacific Development, Inc., 932 Parker Street, Berkley, California 94710.

7-A. Terms of payment – Design Agreement (0515). The Primary Architectural Design Services Agreement provides in relevant part: "Payments on account of services rendered and for Reimburseable Expenses incurred shall be made monthly upon presentation of Architect's statement of services." Lien Claimant billed for fees in the following invoices:

Invoice	Date	Amount	
22258	11/22/2005	$39,190.00	(paid)
22282	12/20/2005	$72,700.00	(paid)
22299	01/12/2006	$91,035.00	(paid)
22300	01/13/2006	$52,065.00	(paid)
22384	05/18/2006	$100,405.00	
22408	07/19/2006	$100,395.00	
22430	08/23/2006	$324,171.00	
22452	09/21/2006	$342,171.00	
22468	10/25/2006	$342,171.00	
22481	11/21/2006	$461,817.00	

Schematic Design	$2,070,000.00
Less: Prior progress billings	1,926,120.00
Final progress billing	$143,880.00

7-B. Terms of payment – Reimburseables (0515-R). Payment terms for reimburseables are included in the primary architectural design agreement. Lien Claimant billed for reimburseables in the following invoices:

Invoice	Date	Amount
22259	11/22/2005	$257.38
22283	12/20/2005	811.13
22301	01/18/2006	9,036.64
22316	02/23/2006	5,718.37
22332	05/16/2006	87.93
22368	05/18/2006	382.21
22400	06/22/2006	1,354.37
22353	04/19/2006	13,761.16
22412	07/19/2006	869.08
22432	08/23/2006	523.70
22454	09/21/2006	943.87
22484	11/21/2006	1,153.00
22499	12/22/2006	553.81
22518	02/28/2007	132.62

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Total: $35,585.27

7-C. Terms of payment – Adjacent Church Parking Studies (0515-03). The letter agreement for adjacent church parking studies provides in relevant part:

> Fees and reimburseable invoiced amounts shall be billed on a monthly basis. All invoiced amounts not in dispute are due and payable within 30 (thirty) days from the date of the invoice.

Lien Claimant billed for work performed under this letter agreement as follows:

Invoice	Date	Amount	
22386	06/20/2006	$3,255.00	(paid)
22410	07/19/2006	6,730.00	
22467	09/21/2006	1,392.50	
	Total:	11,377.50	

7-D. Terms of Payment - City Staff Comments (0515-05). The letter agreement to respond to City of Reno staff comments provides in relevant part:

> Fees and reimburseable invoiced amounts shall be billed on a monthly basis. All invoiced amounts not in dispute are due and payable within 30 (thirty) days from the date of the invoice.

Lien Claimant billed for work performed under this letter agreement as follows:

Invoice	Date	Amount
22431	08/23/2006	22,100.00
22453	09/21/2006	10,675.00
22469	10/25/2006	1,800.00
22482	11/21/2006	1,980.00
	Total:	36,555.00

COPY

7-E. Terms of Payment – Project Fly-through (0515-06). (Note: I have not located the contract for this billing project.)

Lien Claimant billed for work performed under this letter agreement as follows:

Invoice	Date	Amount
22498	11/21/2006	66,620.00

8. Property encumbered by lien. A description of the property to be charged with the lien follows:

Parcel 1.

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

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

APN: 011-112-03

Parcel 2.

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

APN: 011-112-06

Parcel 3.

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

APN: 011-112-07

Parcel 4.

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

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

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

APN: 011-112-12

(Continues)

Dated November 8, 2013.

Michael D. Hoy, Esq.
Counsel to Mark B. Steppan

Verification

State of Nevada)
) ss
County of Washoe)

Michael D. Hoy, being first duly sworn on oath according to law, deposes and says: I have read the foregoing Second Amended Notice and Claim of Lien, know the contents thereof and state that the same is true based upon review of contracts, deeds, invoices, and other relevant documents produced in Consolidated Case Nos. CV07-00341 and CV07-01021pending in the Second Judicial District Court of the State of Nevada, Washoe County.

Michael D. Hoy

Subscribed and sworn to before me,
this Ninth day of November, 2013.

Notary Public in and for the above
referenced county and state

Shondel F. Seth
Notary Public
State of Nevada
Appt. No: 03-83385-2
My Comm. Exp. 03-08-2017

COPY

FILE / COPY

AIA® Document B141™ – 1997 Part 1

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

RECEIVED
APR 26 2006
FISHER FRIEDMAN ASSOCIATES

TABLE OF ARTICLES

1.1 INITIAL INFORMATION

1.2 RESPONSIBILITIES OF THE PARTIES

1.3 TERMS AND CONDITIONS

1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

1.5 COMPENSATION

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

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

AGREEMENT made as of the Thirty-first day of October in the year Two Thousand and Five
(In words, indicate day, month and year)

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

BSC Financial, LLC, Limited Liability Company
c/o Consolidated Pacific Development Inc.
932 Parker Street
Berkeley, CA 94710
Telephone Number: 510.548.6093
Fax Number: 510. 548.6164

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

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

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

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

The Owner and Architect agree as follows:

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User Notes: (112287728)

ARTICLE 1.1 INITIAL INFORMATION

§ 1.1.1 This Agreement is based on the following information and assumptions.
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.2 PROJECT PARAMETERS

§ 1.1.2.1 The objective or use is:
(Identify or describe, if appropriate, proposed use or goals.)

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

§ 1.1.2.2 The physical parameters are:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)

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

§ 1.1.2.3 The Owner's Program is:
(Identify documentation or state the manner in which the program will be developed.)

As outlined in Exhibit B.

§ 1.1.2.4 The legal parameters are:
(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)

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

§ 1.1.2.5 The financial parameters are as follows.

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

§ 1.1.2.6 The time parameters are:
(Identify, if appropriate, milestone dates, durations or fast track scheduling.)

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

§ 1.1.2.7 The proposed procurement or delivery method for the Project is:
(Identify method such as competitive bid, negotiated contract, or construction management.)

Negotiated contract to be determined later by mutual agreement

§ 1.1.2.8 Other parameters are:
(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)

To be determined later by mutual agreement

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User Notes: (112287728)

STEPPAN-007499

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

Sam Caniglia, BSC Financial, LLC

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

Sam Caniglia BSC Financial, LLC

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

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

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

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

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

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

§ 1.1.4 Other important initial information is:

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

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

ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES
§ 1.2.1 The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

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

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

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

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

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

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

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

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

§ 1.2.3 ARCHITECT

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

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

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

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

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

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

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

ARTICLE 1.3 TERMS AND CONDITIONS

§ 1.3.1 COST OF THE WORK

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

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

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

§ 1.3.2 INSTRUMENTS OF SERVICE

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

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

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

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

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§ 1.3.3 CHANGE IN SERVICES

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

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

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

§ 1.3.4 MEDIATION

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

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

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

§ 1.3.5 ARBITRATION

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

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

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

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

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

§ 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

§ 1.3.7 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

§ 1.3.8 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

§ 1.3.9 PAYMENTS TO THE ARCHITECT

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

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

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

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

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

ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

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

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

§ 1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:
(List other documents, if any, delineating Architect's scope of services.)

§ 1.4.1.3 Other documents as follows:
(List other documents, if any, forming part of the Agreement.)

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

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

ARTICLE 1.5 COMPENSATION

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

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

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

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

§ 1.5.2 If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.
(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)

See Exhibit A

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

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

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

See Exhibit A

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

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

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

1 & 1/2% monthly

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

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

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

OWNER **ARCHITECT**

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(Signature)
Sam Caniglia BSC Financial, LLC
(Printed name and title)

(Signature)
Mark Steppan, AIA , CSI, NCARB
(Printed name and title)

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

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

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

ARTICLE 2.1 PROJECT ADMINISTRATION SERVICES

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

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

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

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

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

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

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§ 2.1.7 EVALUATION OF BUDGET AND COST OF THE WORK

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

ARTICLE 2.3 EVALUATION AND PLANNING SERVICES

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

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

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

ARTICLE 2.4 DESIGN SERVICES

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

§ 2.4.2 SCHEMATIC DESIGN DOCUMENTS

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

§ 2.4.3 DESIGN DEVELOPMENT DOCUMENTS

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

§ 2.4.4 CONSTRUCTION DOCUMENTS

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

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

ARTICLE 2.5 CONSTRUCTION PROCUREMENT SERVICES

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

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

(Paragraph deleted)

§ 2.5.4 COMPETITIVE BIDDING

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

(Paragraph deleted)

§ 2.5.5 NEGOTIATED PROPOSALS

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

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

(Paragraph deleted)

ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES

§ 2.6.1 GENERAL ADMINISTRATION

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

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

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

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

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

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

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

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

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

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

§ 2.6.2 EVALUATIONS OF THE WORK

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

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

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

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

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

§ 2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

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

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

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

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

§ 2.6.4 SUBMITTALS

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

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

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

§ 2.6.5 CHANGES IN THE WORK

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

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

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

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

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

§ 2.6.6 PROJECT COMPLETION

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

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

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

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

ARTICLE 2.7 FACILITY OPERATION SERVICES

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

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

ARTICLE 2.8 SCHEDULE OF SERVICES

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

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

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

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

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.6 evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to Instruments of Service resulting therefrom;

.7 preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; or

.8 Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.

.9 Construction Administration over 24 months.

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

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

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

ARTICLE 2.9 MODIFICATIONS

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

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

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

OWNER

(Signature)

Sam Caniglia, BSC Financial, LLC

(Printed name and title)

ARCHITECT

(Signature)

Mark Steppan, AIA , CSI, NCARB

(Printed name and title)

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

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

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

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

ss.1.1.2.1 The project is to create an urban mixed use high rise residential development with approximately 499 living units for BSC Financial, LLC.

ss. 1.1.2.3 To obtain entitlements and approvals for the property and proposed buildings as shown in exhibit B as attached to the AIA B141 agreement as part of the design services in the Schematic Design/Entitlements Phase.

ss. 1.1.2.5.2 Replace' $160,000,000' with approximately '$180,000,000'.

ss. 1.3.2.2 Replace text to read beginning with the sentence 'If and upon' as follows:
If and upon the date the Architect is adjudged in default of this Agreement, or upon any default by the Architect, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license, including Architects consent, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

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

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

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

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

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

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

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

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

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

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

ss. 1.5.1

All existing text in this section shall remain with the addition of the following:
In the event that the Owner chooses not to proceed with construction of the project, the fees associated with retaining said entitlements will be paid as incurred in the due course of the project and will be applied to aforementioned budgets as defined in the architects scope of work and estimated value.

ss. 1.5.9

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

ss. 2.4.1

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

Agreed this Day, 21 day of April, 2006.

BSC Financial, LLC.

Owner: _____, Title Mgr.
Signature

Mark B. Steppan, AIA, CSI, NCARB

Architect: _____
Signature

Conflict waiver
Need Never entitlement work!!!

HALE LANE

ATTORNEYS AT LAW

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

December 14, 2005

Edward Everett Hale
(1929-1993)
Steve Lane
J. Stephen Peek
Karen D. Dennison
R. Craig Howard
Stephen V. Novacek
Richard L. Elmore
Richard Bennett
Robert C. Anderson
Alex J. Flangas
James L. Kelly
Kelly Testolin
N. Patrick Flanagan
Matthew E. Woodhead
Michelle D. Mulline
Roger W. Jeppson
Lance C. Earl
Jeremy J. Nork
David A. Garcia
Elissa F. Cadish
Timothy A. Lukas
Frederick J. Schmidt
James Newman
Terry R. Somers
Patrick J. Reilly
Scott D. Fleming
Scott Scherer
Anthony L. Hall
Jerry M. Snyder
Brent C. Eckersley
Frederick R. Batcher
Patricia C. Halstead
Matthew J. Kreutzer
Matthew B. Hippler
Brad M. Johnston
Bryce K. Kunimoto
Douglas C. Flowers
Justin C. Jones
Nicole M. Vance
KimberLee Rotchy
Dora V. Djilinnovn
Simon Johnson*
Sarah E. L. Class
Helen E. Mardirosian

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").

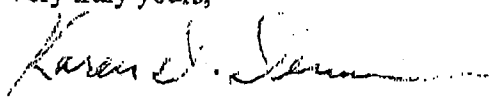
HALE LANE
ATTORNEYS AT LAW

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

;;ODMA\PCDOCS\HLRNODOCS\496624\1

December 14, 2005
Page 3

HALE LANE
ATTORNEYS AT LAW

Acknowledgement

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

Iliescu:

Date: 12-15-05 John Iliescu, Jr.

Date: 12-15-05 Sonnia Santee Iliescu

Date: 12-15-05 John Iliescu Jr., as Trustee of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust

Date: 12-15-05 Sonnia Santee Iliescu, as Trustee of the John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust

Baty:

Date: _____ Calvin Baty

Consolidated:

Consolidated Pacific Development, Inc.,
a Nevada corporation

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

::ODMA\PCDOCS\HLRNODOCS\496624\1

HALE LANE
ATTORNEYS AT LAW

Acknowledgement

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

Iliescu:

Date: _____

_____
John Iliescu, Jr.

Date: _____

_____
Sonnia Santee Iliescu

Date: _____

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

Date: _____

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

Baty:

Date: _____

_____
Calvin Baty

Consolidated:

Consolidated Pacific Development, Inc.,
a Nevada corporation

Date: _____

By: _____
Sam A. Caniglia, President

::ODMA\PCDOCS\HLRNODOCS\496624\1

HALE LANE
ATTORNEYS AT LAW

Acknowledgement

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

Iliescu:

Date: _____ _____
John Iliescu, Jr.

Date: _____ _____
Sonnia Santee Iliescu

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

Date: _____ _____
Sonnia Santee Iliescu, as Trustee of the John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust

Baty:

Date: _____ _____
Calvin Baty

Consolidated:

Consolidated Pacific Development, Inc.,
a Nevada corporation

Date: 12/16/05 By: _____
Sam A. Caniglia, President

::ODMA\PCDOCS\HLRNODOCS\496624\1

MARK B STEPPAN, AIA, CSI, NCARB

ARCHITECT

October 25, 2005

Anthony Iamesi
Consolidated Pacific Construction, Inc.
932 Parker Street
Berkeley, CA 94710

RE: ARCHITECTURAL DESIGN SERVICES DRAFT SUMMARY
RESIDENTIAL PROJECT-RENO, NEVADA

Dear Tony,

We are very pleased to present this proposal as requested for the above referenced project based on the provided site information, site map, existing site data, zoning information, residential design guidelines, site photos and meetings. Our contract, fee and deliverables are based on executing an **AIA Document B141-1997** Agreement. A copy of the Agreement is attached.

SCOPE

Based on the information received, the architects will analyze the building and site and make design recommendations. The scope design phases include the following:

1. Schematic Design & Entitlements
2. Design Development
3. Construction Drawings
4. Bidding/Permitting
5. Construction Administration

SCHEDULE

Design, documentation and meetings will occur in a timely manner, as required by the approval process, with the anticipated completion of scope tasks in approximately 8 months after the agreement is executed. The architect is available to start work immediately upon execution of the agreement.

COMPENSATION

The architect shall perform the above referenced services for a fee of **5.75 percent** of the total construction cost including contractors profit and overhead. The final architectural fee shall be adjusted at the end of the project accordingly based upon the final total construction cost. All Reimbursable expenses (including but not limited to printing, plotting and messenger services) shall be billed at one hundred percent plus a fifteen percent mark-up. See attached **Exhibit A**.

Consultants retained at the Architects expense are as follows:

1. Landscape
2. Structural
3. Mechanical
4. Electrical
5. Plumbing
6. Acoustics
7. Waterproofing
8. Code
9. Elevator
10. Specifications
11. Cladding/Curtain Wall/Waterproofing System

1485 Park Avenue, suite 103, Emeryville, CA 94608
p.510-420-1666 mark@fisherfriedman.com f:510-420-0599

All other necessary consultants shall be retained at the Owners expense which include but are not limited to the following:

1. Survey
2. Geotechnical
3. Title 24
4. Lighting
5. Interiors
6. Telecom
7. Wind Analysis
8. Window Washing
9. Cost Estimation
10. Audio/Visual
11. Graphics
12. Hardware
13. Security
14. Parking/Traffic
15. (Special) Cladding/Curtain Wall
16. Fire Protection

Fees and reimbursable invoiced amounts shall be billed on a monthly percentage basis. All invoiced amounts not in dispute are due and payable within 30 (thirty) days from the date of the invoice. If the client disputes any portion of and invoice, Client agrees to inform FFA in writing of such dispute within 7 calendar days of receipt of the invoice.

If you have any questions or need more information please do not hesitate to contact me. We will track this work effort under the **project number 0515 and 0514-R**.

Yours Truly,

Mark B. Steppan AIA, CSI, NCARB

Cc: Agreement File
Accounting File

1485 Park Avenue, suite 103, Emeryville, CA 94608
p:510-420-1666 mark@fisherfriedman.com f:510-420-0599

EXHIBIT A

2005 MASTER FEE SCHEDULE

PRINCIPAL/OFFICER	$220.00 per hour
EXECUTIVE VICE PRESIDENT	$200.00 per hour
SENIOR VICE PRESIDENT	$170.00 per hour
VICE PRESIDENT	$145.00 per hour
ARCHITECT III	$145.00 per hour
PROJECT MANAGER III	$145.00 per hour
ARCHITECT II	$125.00 per hour
PROJECT MANAGER II	$125.00 per hour
CONSTRUCTION ADMINISTRATOR II	$110.00 per hour
ARCHITECT I	$110.00 per hour
PROJECT MANAGER I	$110.00 per hour
JOB CAPTAIN I	$110.00 per hour
CONSTRUCTION ADMINISTRATOR I	$100.00 per hour
SENIOR DESIGNER/DRAFTER	$100.00 per hour
GRAPHIC DESIGNER	$95.00 per hour
INTERMEDIATE DRAFTER/DESIGNER	$90.00 per hour
JUNIOR DRAFTER/DESIGNER	$70.00 per hour
GRAPHIC DESIGN ASSISTANT	$70.00 per hour
ACCOUNTING	$65.00 per hour
SPECIALIZED COMPUTER IMAGING/RENDERING	$200.00 per hour
CLERICAL/WORD PROCESSING/OFFICE SUPPORT	$65.00 per hour

REIMBURSABLE EXPENSES AND CONSULTANT FIRM'S FEE SCHEDULE

Reimbursable Expenses are billed to the Client in addition to Architect's Hourly Rates at 1.15 times the cost to the Architect. These include transportation and living expenses in connection with out-of-town travel, models, perspectives, renderings, reprographics, plotting, postage, delivery messenger services, and telephone and telefax costs. Consultant services will be billed to the Client in addition to Architect's Hourly Rates at 1.15 times the cost to the Architect.

NOTES

1) The above rates also apply to Hourly Basis Services, Additional Services or changes within Lump-Sum or Fixed-Fee Agreements.
2) Rates shall be increased by a factor of 1.50 for hours incurred outside USA.
3) Contract or part-time employees are billed at the category of work performed.
4) These Schedules are part of the letter of agreement.

*This Schedule is subject to annual increases not to exceed 4%.

1485 Park Avenue, suite 103, Emeryville, CA 94608
p:510-420-1666 mark@fisherfriedman.com f:510-420-0599

AIA DOCUMENT B141-1997

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

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

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year)

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

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

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

The Owner and Architect agree as follows.

TABLE OF ARTICLES

1.1 INITIAL INFORMATION

1.2 RESPONSIBILITIES OF THE PARTIES

1.3 TERMS AND CONDITIONS

1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

1.5 COMPENSATION

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ARTICLE 1.1 INITIAL INFORMATION

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

1.1.2 PROJECT PARAMETERS

1.1.2.1 The objective or use is:
(Identify or describe, if appropriate, proposed use or goals.)

1.1.2.2 The physical parameters are:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)

1.1.2.3 The Owner's Program is:
(Identify documentation or state the manner in which the program will be developed.)

1.1.2.4 The legal parameters are:
(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)

1.1.2.5 The financial parameters are as follows.

.1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is:

.2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is:

1.1.2.6 The time parameters are:
(Identify, if appropriate, milestone dates, durations or fast track scheduling.)

1.1.2.7 The proposed procurement or delivery method for the Project is:
(Identify method such as competitive bid, negotiated contract, or construction management.)

1.1.2.8 Other parameters are:
(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)

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1.1.3 **PROJECT TEAM**

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

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

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

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

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

1.1.4 Other important initial information is:

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

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

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ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES

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

1.2.2 OWNER

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

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

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

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

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

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

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

1.2.3 ARCHITECT

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

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

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

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

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

1.3.3 CHANGE IN SERVICES

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

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

.1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;

.2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;

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dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

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

1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

1.3.7 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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1.3.9 PAYMENTS TO THE ARCHITECT

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

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

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

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

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

ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

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

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

1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:
(List other documents, if any, delineating Architect's scope of services.)

1.4.1.3 Other documents as follows:
(List other documents, if any, forming part of the Agreement.)

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

ARTICLE 1.5 COMPENSATION

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

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

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

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

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

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

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

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

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

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

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

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

OWNER *(Signature)*	**ARCHITECT** *(Signature)*
	Rodney F. Friedman, FAIA, CEO
(Printed name and title)	*(Printed name and title)* CA License C3463

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

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

TABLE OF ARTICLES

2.1 PROJECT ADMINISTRATION SERVICES

2.2 SUPPORTING SERVICES

2.3 EVALUATION AND PLANNING SERVICES

2.4 DESIGN SERVICES

2.5 CONSTRUCTION PROCUREMENT SERVICES

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2.7 FACILITY OPERATION SERVICES

2.8 SCHEDULE OF SERVICES

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2.1.7.3 In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. If an increase in the Contract Sum occurring after execution of the Contract between the Owner and the Contractor causes the budget for the Cost of the Work to be exceeded, that budget shall be increased accordingly.

2.1.7.4 If bidding or negotiation has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

2.1.7.5 If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 authorize rebidding or renegotiating of the Project within a reasonable time;
.3 terminate in accordance with Subparagraph 1.3.8.5; or
.4 cooperate in revising the Project scope and quality as required to reduce the Cost of the Work.

2.1.7.6 If the Owner chooses to proceed under Clause 2.1.7.5.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the budget for the Cost of the Work. The modification of such documents shall be the limit of the Architect's responsibility under this Paragraph 2.1.7. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not construction is commenced.

ARTICLE 2.2 SUPPORTING SERVICES

2.2.1 Unless specifically designated in Paragraph 2.8.3, the services in this Article 2.2 shall be provided by the Owner or the Owner's consultants and contractors.

2.2.1.1 The Owner shall furnish a program setting forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements.

2.2.1.2 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

2.2.1.3 The Owner shall furnish services of geotechnical engineers which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

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ARTICLE 2.5 CONSTRUCTION PROCUREMENT SERVICES

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

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

2.5.3 The Architect shall assist the Owner in bid validation or proposal evaluation and determination of the successful bid or proposal, if any. If requested by the Owner, the Architect shall notify all prospective bidders or contractors of the bid or proposal results.

2.5.4 COMPETITIVE BIDDING

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

2.5.4.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Bidding Documents for distribution to prospective bidders. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

2.5.4.3 If requested by the Owner, the Architect shall distribute the Bidding Documents to prospective bidders and request their return upon completion of the bidding process. The Architect shall maintain a log of distribution and retrieval, and the amounts of deposits, if any, received from and returned to prospective bidders.

2.5.4.4 The Architect shall consider requests for substitutions, if permitted by the Bidding Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

2.5.4.5 The Architect shall participate in or, at the Owner's direction, shall organize and conduct a pre-bid conference for prospective bidders.

2.5.4.6 The Architect shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.

2.5.4.7 The Architect shall participate in or, at the Owner's direction, shall organize and conduct the opening of the bids. The Architect shall subsequently document and distribute the bidding results, as directed by the Owner.

2.5.5 NEGOTIATED PROPOSALS

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

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

2.5.5.3 If requested by the Owner, the Architect shall organize and participate in selection interviews with prospective contractors.

2.5.5.4 The Architect shall consider requests for substitutions, if permitted by the Proposal Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

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2.6.2 EVALUATIONS OF THE WORK

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

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

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

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

2.6.2.5 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

2.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Paragraph 2.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

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determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

2.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

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

2.6.6 PROJECT COMPLETION

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

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

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

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

ARTICLE 2.7 FACILITY OPERATION SERVICES

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

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

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ARTICLE 2.8 SCHEDULE OF SERVICES

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

.1 up to ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.

.2 up to ( ) visits to the site by the Architect over the duration of the Project during construction.

.3 up to ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

.4 up to ( ) inspections for any portion of the Work to determine final completion.

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

.1 review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;

.2 responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Service;

.4 providing consultation concerning replacement of Work resulting from fire or other cause during construction;

.5 evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;

.6 evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to Instruments of Service resulting therefrom;

.7 preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; or

.8 Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.

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

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

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

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ARTICLE 2.9 MODIFICATIONS

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

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

OWNER *(Signature)*

ARCHITECT *(Signature)*

(Printed name and title)

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MEMORANDUM

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,

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.

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[redacted] 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 ~~negligenet~~ 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

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 langage "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@decalcustomhomes.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

Dcecl

Danielle Bacus-Aragon

From: Sarah Class
Sent: Tuesday, November 29, 2005 2:58 PM
To: 'samcaniglia@sbcglobal.net'
Cc: Danielle Bacus-Aragon
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.
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Visit our website: www.halelane.com

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MARK B. STEPPAN, AIA, CSI, NCARB

ARCHITECT

December 20, 2005

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

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

Dear Sam,

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

RESPONSE TO B141 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT

1. Section 1.1 under Section 1.1.6 - We agree.

2. Section 1.1 under Section 1.5.2 – We invite any suggestions as to what additional project information should be included in the agreement.

3. Section 1.2.2.2 - We agree.

4. Section 1.3.2.2 - Revised text shall read:

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

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

5. Section 1.3.6 - We recommend not deleting this paragraph.

6. Section 1.3.7.1 – The construction contract should be governed by Nevada law. The Agreement between the Owner and the Architect should be governed by California law because the Architect and one Owner are based in California.

7. Section 1.3.7.6 – Revised text shall read: Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility of the discovery, presence,

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

8. Section 1.3.7.9 Revised partial text shall read: The Architect shall execute all consents reasonably required to facilitate such assignment, so long as insurance vehicle is also assigned maintaining architects protection.

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

   - Schematic Design
   - Design Development
   - Construction Documents
   - Construction Administration

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

10. Section 1.5.9 - We agree.

11. Section 2.4.1 – In this case, normal structural, mechanical and electrical services mean that the consultants are contracted to the Architect and no extravagate systems are required by the Owner which would trigger an increase in consultants fees as well as Architects. We anticipate that the end result of the project would produce industry standard Class A units.

12. Section 2.8 - No action required.

RESPONSE TO A201 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

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

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

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

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

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

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

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

1. Section 2.2.1 - No impact to Architect.

2. Section 3.2.3 - We agree.

3. Section 3.3.1 - Add text at end as follows: Architect agrees to never direct to proceed with means, methods, techniques, sequences or procedures which may not be safe.

4. Section 3.10.3 - We agree.

5. Section 3.18.1 - We agree.

6. Section 4.3.10 - We agree. Owner shall determine.

7. Section 4.6.4 – Our insurance carrier does not allow consolidation or joinder. If this item is still in question, we shall respond at a later date.

8. Section 5.2 – We agree. Owner shall determine.

9. Section 6.2.3 – Separate Contractor is in Owner control and Architect is not impacted. Owner shall determine.

10. Section 10.3.3 & 10.5 – Not Architect issue.

11. Section 11.4.1.1 - We recommend property insurance coverage with architect named as insured with waiver of subrogation.

12. Section 12.2.2.1 & 4.2.1 – We agree.

13. Section 13.2.1 – We agree.

14. Section 14.2.1 – We agree.

15. Section 14.2.4 – We agree.

16. Designing the project within budget comment: Architect agrees to redraft the plans at no additional cost if the lowest bid exceeds the **approved** budget.

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

Yours Truly,

Nathan Ogle, AIA

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

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MARK B. STEPPAN, AIA, CSI, NCARB

ARCHITECT

November 15, 2005

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

RE: ARCHITECTURAL DESIGN SERVICES AGREEMENT
RESIDENTIAL PROJECT-RENO, NEVADA

Dear Sam,

We are pleased to present this proposal for the above referenced project based on the provided site map, existing site data, zoning information, residential design guidelines, site photos, survey and meetings.

SCOPE

Based on the information received, we will analyze the building and site and make design recommendations for a new high-rise residential building. We shall make one site visit accompanied by the Owner and shall participate in one meeting with the appropriate City officials.

SCHEDULE

Design, documentation and meetings will occur in a timely manner, as required by the approval process and the Owner's schedule.

COMPENSATION

We shall perform the above referenced services on a time and materials basis based on our 2005 hourly billing rate schedule. All Reimbursable expenses (including but not limited to printing, plotting and messenger services) shall be billed at one hundred percent plus a fifteen percent mark-up. See attached **Exhibit A**.

Fees and reimbursable invoiced amounts shall be billed on a monthly basis. All invoiced amounts not in dispute are due and payable within 30 (thirty) days from the date of the invoice. If the Owner disputes any portion of an invoice, Owner agrees to inform us in writing of such dispute within 7 calendar days of receipt of the invoice.

If you have any questions or need more information please do not hesitate to contact me. We will track this work effort under the **project number 0515-01 and 0515-01R**.

Sincerely,

Mark B. Steppan, AIA, CSI, NCARB

ACCEPTED:
BSC Financial, LLC

Sam Caniglia 11/15/05
Date

Cc: Agreement File
Accounting File

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EXHIBIT A

2005 MASTER FEE SCHEDULE

PRINCIPAL/OFFICER	$220.00 per hour
EXECUTIVE VICE PRESIDENT	$200.00 per hour
SENIOR VICE PRESIDENT	$170.00 per hour
VICE PRESIDENT	$145.00 per hour
ARCHITECT III	$145.00 per hour
PROJECT MANAGER III	$145.00 per hour
ARCHITECT II	$125.00 per hour
PROJECT MANAGER II	$125.00 per hour
CONSTRUCTION ADMINISTRATOR II	$110.00 per hour
ARCHITECT I	$110.00 per hour
PROJECT MANAGER I	$110.00 per hour
JOB CAPTAIN I	$110.00 per hour
CONSTRUCTION ADMINISTRATOR I	$100.00 per hour
SENIOR DESIGNER/DRAFTER	$100.00 per hour
GRAPHIC DESIGNER	$95.00 per hour
INTERMEDIATE DRAFTER/DESIGNER	$90.00 per hour
JUNIOR DRAFTER/DESIGNER	$70.00 per hour
GRAPHIC DESIGN ASSISTANT	$70.00 per hour
ACCOUNTING	$65.00 per hour
SPECIALIZED COMPUTER IMAGING/RENDERING	$200.00 per hour
CLERICAL/WORD PROCESSING/OFFICE SUPPORT	$65.00 per hour

REIMBURSABLE EXPENSES AND CONSULTANT FIRM'S FEE SCHEDULE

Reimbursable Expenses are billed to the Client in addition to Architect's Hourly Rates at 1.15 times the cost to the Architect. These include transportation and living expenses in connection with out-of-town travel, models, perspectives, renderings, reprographics, plotting, postage, delivery messenger services, and telephone and telefax costs. Consultant services will be billed to the Client in addition to Architect's Hourly Rates at 1.15 times the cost to the Architect.

NOTES

1) The above rates also apply to Hourly Basis Services, Additional Services or changes within Lump-Sum or Fixed-Fee Agreements.
2) Rates shall be increased by a factor of 1.50 for hours incurred outside USA.
3) Contract or part-time employees are billed at the category of work performed.
4) These Schedules are part of the letter of agreement.

*This Schedule is subject to annual increases not to exceed 4%.

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MARK B. STEPPAN, AIA, CSI, NCARB

FILE / COPY

ARCHITECT

December 14, 2005

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

RE: ARCHITECTURAL DESIGN SERVICES CONTINUATION LETTER
RESIDENTIAL PROJECT-RENO, NEVADA

Dear Sam,

Pursuant to our December 12, 2005 meeting with John Schleining, we shall continue to advance the above referenced project in a timely fashion, in order to aggressively advance the building design, meet entitlement obligations, consultant selection and input, pricing support and meeting requirements. Please respond in writing within 7 business days upon receipt of this letter if we are not authorized to continue working on the project.

If you have any questions or need more information please do not hesitate to contact me. We will continue tracking and billing this work effort under the **project number 0515-01 and 0515-01R**.

Yours Truly,

Nathan Ogle, AIA

Cc: Agreement File
Accounting File

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MARK B. STEPPAN, AIA, CSI, NCARB

ARCHITECT

FILE / COPY

February 7, 2006

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

RE: ARCHITECTURAL DESIGN SERVICES CONTINUATION LETTER
RESIDENTIAL PROJECT-RENO, NEVADA

Dear Sam,

Pursuant to our upcoming unscheduled presentation meeting with the City of Reno, we shall continue to advance the above referenced project in a timely fashion, in order to aggressively advance the presentation materials, powerpoint, meet entitlement obligations, consultant selection and input, pricing support and meeting requirements. Please respond in writing within 7 business days upon receipt of this letter if we are not authorized to continue working on the project.

If you have any questions or need more information please do not hesitate to contact me. We will continue tracking and billing this work effort under the **project number 0515-01 and 0515-01R**.

Yours Truly,

Nathan Ogle, AIA

Cc: Agreement File
Accounting File

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MARK B. STEPPAN, AIA, CSI, NCARB

ARCHITECT

FILE / COPY

March 24, 2006

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

RE: ARCHITECTURAL DESIGN SERVICES CONTINUATION LETTER
RESIDENTIAL PROJECT-RENO, NEVADA

Dear Sam,

Pursuant to our Meeting on March 24, 2006, we shall continue to advance the above referenced project in a timely fashion, in order to aggressively advance the presentation materials, powerpoint, meet entitlement obligations, consultant selection and input, pricing support and meeting requirements. The immediate tasks associated with the outcome of our meeting are as follows:

1. Alert the design team and all parties of the Owner directive to amend the City Site Use Permit Application with the updated unit mix as indicated below.
2. Review and implement the new desired unit mix from 394 to 499 units involving adding studio and 1 bedroom units in lieu of some 2 and 3 bedroom units.
3. Issue, in sketch format, the unit mix revisions (plans and project data) for review and comment by March 29, 2006.
4. Review and recommend new parking requirements based on updated unit mix which will include updating/expanding garage levels and considering parking stall lifts.
5. Update square footage takeoffs for the Meridian report based on the 499 units.
6. Issue sketches for review and comment (Dan Gustin vote) for the Ben Franklin type Wingfield historical memorial.
7. Continue to advance the power point presentation materials.
8. Continue to assist in updating the current construction budget.
9. Implement the minor agreed to Addendum 1 Agreement items and investigate the three items pending resolution for consequential damages, successors and assigns and termination expenses.

If you have any questions or need more information please do not hesitate to contact me. We will continue tracking and billing this work effort under the **project number 0515-01 and 0515-01R**.

Yours Truly,

Nathan Ogle, AIA

Cc: Agreement File
Accounting File
C. Bosma, DeCal
D. Snellgrove, Wood Rodgers

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

7/18/2002

Consolidated Pacific Development Inc
A Nevada Corp.

VIA FACSIMILE 775 823-8848

July 14, 2005

SMAA CAN.gil.ia @ SBCGlobal.Net

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.

$6,500,000

25,000 Immediate
75,000 released at 30 days
100,000 every 60 days

C.O.E. on or before 9 mos or all money will be returned

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

ADDRESS: Illiescu Land at Court St and Island Street...

METZKER JOHNSON GROUP®
COMMERCIAL * RESIDENTIAL * INVESTMENT * REALTY
6190 S. McCarran Blvd., RENO, NEVADA 89509 PHONE: (775) 823-8877 FAX: (775) 823-9848

LAND PURCHASE AGREEMENT

Date Prepared: *July 29, 2005*

Property Address: *APN: 011-112-06, 011-112-07, 011-112-13, 011-112-03*

RECEIVED from CONSOLIDATED PACIFIC DEVELOPMENT INC. a Nevada Corporation and/or assignees (hereinafter designated as "BUYER"), the sum of $25,000.00(Twenty Five Thousand and no/100 Dollars) evidenced by ☐Cash, ☒ Check, ☐Other, n/a on account of the PURCHASE PRICE of $7,500,000 (Seven Million Five Hundred Thousand and no/100 Dollars) for that certain land, improvements, and personal property, if any, (hereinafter collectively referred to as the "Property") situated in the City of Reno, County of Washoe, State of Nevada, and more particularly described as follows: (the "Property") 219 Court Street (APN 011-112-13 *John Jr. and Sonnia Illiescu Trust, Seller*), 0 Court Street (APN 011-112-07 *John Jr. and Sonnia Illiescu Trust, Seller*), and 223 Court Street (APN 011-112-06 *John Illiescu, Seller*) (APN 011-112-03 *John Jr. and Sonnia Illiescu Trust, Seller*) consisting of approximately 59,414 square feet of land, water rights defined in Paragraph 39(F) below upon the following TERMS and CONDITIONS:

1. FINANCE TERMS:

1.1 **DEPOSIT:** $ 25,000.00

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

1.2 **ADDITIONAL CASH DEPOSIT:** $ 475,000.00

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

☒ an additional $ 75,000.00 within 30 days from acceptance,
☒ an additional $ 100,000.00 within 90 days from acceptance,
☒ an additional $ 100,000.00 within 150 days from acceptance,
☒ an additional $ 100,000.00 within 210 days from acceptance,
☒ an additional $ 100,000.00 within 270 days from acceptance,
☒ if, through no fault of the Buyer, additional time is required for governmental approvals of the project, Seller agrees to extend the close of escrow, as needed to obtain approvals, Buyer to pay an additional $ 50,000.00 deposit within each 30 days extension from the 270 day payment due date. All extension deposits shall be credited to the purchase price upon close of escrow. Buyers shall have a 15 day grace period to make any of the aforesaid deposits.

Buyer / METZKER JOHNSON GROUP Seller

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ADDRESS: Ilieses Legal at Court St and Island Street

1.3 BALANCE OF CASH PAYMENT: $7,000,000.00
To be paid at Close of Escrow, as needed to close but not including closing costs.

1.4 EXISTING FINANCING: $ n/a
Per Terms and Conditions as specified below.

1.5 OWNER FINANCING: $ n/a
Per Terms and Conditions as specified below

1.6 NEW LOAN: $ n/a
Contingent upon the Terms and Conditions as specified below

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

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

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

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

2. SUBORDINATION AND PARTIAL RECONVEYANCE:

2.1 SUBORDINATION CLAUSE: N/A

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

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

Buyer ____/____ MEITZER JOHNSON GROUP Seller

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(2)

ADDRESS: Bigger Land in Court Ft and Island Street

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

3. ADDENDUM:

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

☒ Duties Owed by a Nevada Real Estate Licensee.

☐ Consent to Act.

☒ Plot map--Exhibit A ,

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

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

☐ Other: n/a

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

4. CLOSING AND ESCROW:

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

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

Buyer / METZKER JOHNSON GROUP Seller

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(9)

ADDRESS: Hisaki Postal Court Fa and Island Street . . .

5. EVIDENCE OF TITLE:

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

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

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

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

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

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

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

6. BONDS:

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

7. EXPIRATION:

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

8. PROVISIONS AS FURTHER DEFINED:

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

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

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

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

Buyer _____ MEITZKER JOHNSON GROUP Seller _____

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ADDRESS: Vacant Land at Court St and Island Street

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

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

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

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

BUYER INCLUDED: ☒ BUYER WAIVED: ☐ N/A **8-C. FLOOD HAZARD ZONE:**

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

BUYER INCLUDED: ☐ N/A BUYER WAIVED: ☒ **8-D. BROKER REPRESENTING BOTH PARTIES:**

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

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

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

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

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

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

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

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

_____ Buyer may elect to do a 1031 Tax Deferred Exchange

_____ Seller may elect to do a 1031 Tax Deferred Exchange

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

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

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

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

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

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

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

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

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

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

9. CHANGES DURING TRANSACTION:

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

10. PRORATIONS:

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

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

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

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

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

12. ENCUMBRANCES:

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

13. NOTICES:

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

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

14. DEFAULT:

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

15. PHYSICAL POSSESSION:

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

16. TIME:

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

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17. HAZARDOUS MATERIALS:

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

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

18. AGENT(S) DISCLAIMER:

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

19. CORRESPONDENCE:

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

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

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

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

Copies to: Richard K. Johnson Fax: 775-823-8848
6420 S. McCarran Blvd. Phone: 775-823-8877
Reno, Nevada 89509

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

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

20. SEVERABILITY:

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

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

21. GOVERNING LAW:

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

22. NO ONE DEEMED DRAFTER:

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

23. COUNTERPARTS:

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

24. EFFECTIVE DATE OF THIS AGREEMENT:

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

25. AUTHORITY OF INDIVIDUALS SIGNING ON BEHALF OF ENTITY:

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

26. EXHIBITS AND ADDENDUM:

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

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27. BUSINESS DAYS:

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

28. LAND USE RESTRICTIONS:

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

29. VERIFICATION OF INFORMATION:

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

30. ATTORNEYS FEES:

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

31. ACCESS TO PROPERTY:

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

Buyer _____ METZKER JOHNSON GROUP Seller _____

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

32. PREPAYMENT:

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

33. DUE ON SALE CLAUSE:

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

34. REAL ESTATE BROKERS AND FEES:

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

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

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

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

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designated in Escrow Instructions

36. **IMPACT FEES:**

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

37. **DEFERRED AGRICULTURAL TAX:**

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

38. **EXISTING CONDITION:**

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

39. **ADDITIONAL TERMS AND CONDITIONS:**

A. Subject to the Terms and Conditions of this agreement, the Seller hereby grants to Buyer, an irrevocable, exclusive right to purchase the Property consisting of the parcel(s) of land along with all buildings and structures (IF ANY), easements and rights appurtenant (including, without limitations, all development rights, all mineral, oil, gas, and other hydrocarbon substances on or under the land, air rights, water, and water rights (if any). Seller shall not solicite or accept any other offers during the term of this Agreement.

B. To the best of Seller's knowledge the property is not in violation of any federal, state, or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on under or above the property including, but not limited to, soil and groundwater condition.

C. All covenants, representations and warrants made by Seller and Buyer to and for the benefit of each other, except and only those related to close of escrow shall survive the close of escrow under this Agreement.

D. Purchaser has and will inspect the Property and be thoroughly acquainted with its condition. Except as expressly stated herein, Purchaser agrees to purchase the Premises "AS-IS, WHERE IS, IN CURRENT CONDITION WITH ALL FAULTS".

E. Buyer shall have a due diligence period of thirty (30) days from date of acceptance of this agreement by both Buyer and Seller, within which to at Buyer's expense, do any and all inspections and reports Buyer deems necessary such as but not limited to: availability and suitability of utilities, geological reports, well reports, zoning, flood zones, master plans, fees

Buyer ____ / ____ MEYZKER JOHNSON GROUP Seller

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

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

☒ Zoning
☒ Legal Access
☒ Environmental
☒ Future land use designation(s)
☒ Easements
☐ Mineral Right
☒ Phase 1 Environmental
☒ Availability of Utilities
☒ Subject Property Buildable
☐ Road Maintenance Agreement

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

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

F. This offer is conditioned upon Buyer, at ☒ Buyer/s ☐ Seller's expense, obtaining the following governmental approvals within 270 days of acceptance of this agreement, as may be extended pursuant to Paragraph I.2 above:
☒ Variance
☒ Tentative Map
☒ Special Use Permits
☒ Zone Change & Land Use Designations
☐ Parcel Map
☒ Other: architectural and design review and approval

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

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

See addendum #2

Buyer ____ METZKER JOHNSON GROUP Seller ____

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

See Addendum 1 & 2 LL ASR

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

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

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

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

See Addendum 1 & 2 LL ASR

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

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

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

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

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

41. **ARBITRATION OF DISPUTES:**

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

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ADDRESS: Nelson Road at Sugar St and Island Street

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

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

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

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

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

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

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

42. LIQUIDATED DAMAGES:

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

Buyer ____/____ METZKER JOHNSON GROUP Seller ____/____

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ADDRESS: Illiesca Land Lot Count 8 And Island Street

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

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

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

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

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

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

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

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

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

Buyer ____ METZKER JOHNSON GROUP Seller

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ADDRESS: Highway Frontage Road (Stone Island Street)

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

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

SELLING OFFICE: NONE
REPRESENTED BY: NONE
Is the licensee acting for (check one): N/A

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

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

Buyers Broker: NONE Dated: _____
By None

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

ACCEPTANCE

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

COMMISSION:

Seller agrees to pay in cash the following real estate commission for services rendered, which commission Seller hereby irrevocably assigns from escrow:
Listing Broker's commission shall be 6 % of the accepted purchase price, and n/a % of the accepted price, or $ n/a to n/a, the Selling Broker, irrespective of the agency relationship. Escrow instruction with respect to commissions may not be amended or revoked without the written consent of the Broker herein. Commissions shall also be payable upon any default by Seller, or the mutual rescission (not covered by this

Buyer _____ METZKER JOHNSON GROUP Seller _____

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

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

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

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

SELLING OFFICE: Metzker Johnson Group
REPRESENTED BY: Richard K. Johnson
Is the licensee acting for (check one):

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

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

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

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

Buyer / METZKER JOHNSON GROUP Seller

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ADDRESS: Illiescu Land at Corner S Coral Island Street

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

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

Seller: John Iliescu Dated: 8-3-05 Time: 7:30 pm
Authorized Signature, John Iliescu Jr.

Seller: Dennis Iliescu Jr. Dated: 8-3-05 Time: 7:30 pm
Authorized Signature, Dennis Iliescu

OR

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

Seller: _____ Dated: _____ Time _____

Seller: _____ Dated: _____ Time _____

OR

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

Seller: _____ Dated: _____ Time _____

Seller: _____ Dated: _____ Time _____

Buyer / METZKER JOHNSON GROUP Seller

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ADDRESS: Hixson Land/B Court St and Island Street

Buyer _____ METZKER JOHNSON GROUP Seller _____

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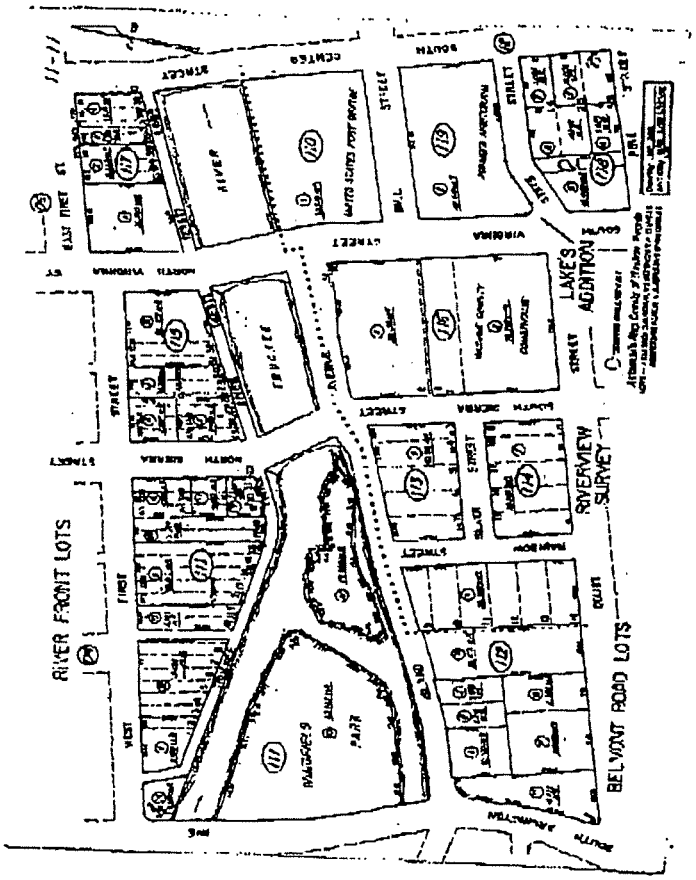
ADDRESS: Bigson Land at Court St (and Island Street)



Buyer _____ MEITZKER JOHNSON GROUP Seller _____

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

ADDENDUM NO. 1

Date Prepared: *August 1, 2005.*

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

39. ADDITIONAL TERMS AND CONDITIONS:

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

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

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

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

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

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

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

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

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

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

Seller/Agent: _____ Date _____Time_____.

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ADDENDUM NO. 1

Date Prepared: *August 1, 2005*

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

39. ADDITIONAL TERMS AND CONDITIONS:

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

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

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See addendum #2

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

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

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

Please all Land Purchase Agreement & Addendum to be part of this transaction AI LI

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

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

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

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

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

Seller/Agent: _____ Date _____ Time _____

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