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.

Supreme Court No. 76146

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

JOINT APPENDIX TO APPELLANT'S OPENING BRIEF VOLUME VII

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

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Counsel for Appellants

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		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 VII**, 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

METZKER JOHNSON GROUP©
COMMERCIAL * RESIDENTIAL * INVESTMENT * REALTY
6490 S. McCarran Blvd., Reno, Nevada 89509 Phone: (775) 823-8877 Fax: (775) 823-8848

ADDENDUM NO. 2

Date Prepared: *August 2, 2005*

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

The purchase/sale of the said property is hereby in force and obligated by both parties. The terms and conditions of these two documents are accepted by the parties signed below conditioned upon the agreement that:
Both parties agree that the Land Purchase Agreement needs to be fine tuned as to the specifics of the intended agreement before its finalization, and that legal clarification and documentation to achieve the full intent of both parties is spelled out. This shall be accomplished as soon as possible within the time constraints of the Buyer, Seller, and legal counsel of both parties.

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

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

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

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

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

Seller/Agent: _____ Date _____Time_____.

MEIZKER JOHNSON GROUP
COMMERCIAL * RESIDENTIAL * INVESTMENT * [illegible]

6490 S. McCarran Blvd., Reno, Nevada 89509 Phone: (775) 823-6877 Fax: (775) 823-8848

ADDENDUM NO. 2

Date Prepared: August 2, 2005

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

The purchase/sale of the said property is hereby in force and obligated by both parties. The terms and conditions of these two documents are accepted by the parties signed below conditioned upon the agreement that:
Both parties agree that the Land Purchase Agreement needs to be fine tuned as to the specifics of the intended agreement before its finalization, and that legal clarification and documentation to achieve the full intent of both parties is spelled out. This shall be accomplished as soon as possible within the time constraints of the Buyer, Seller, and legal counsel of both parties.
Please see Land Purchase Agreement & Addendum # 1 as part of this transaction. JB JB

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

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

Seller/Landlord: Somnia Biasca Dr Date: 8-3-05 Time: 7:30pm
Somnia Biasca, (Biasca, John Jr. and Somnia, 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 _____

(85)

Addendum No. 3

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

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

1.2 Additional Cash Deposit: $475,000.00

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48. Miscellaneous.

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

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

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

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

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

Seller:

John Iliescu Jr.

Sonnia Santee Iliescu

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

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

Buyer:

Consolidated Pacific Development, Inc.,
a Nevada corporation

By: Sam A. Caniglia, President

Exhibit "A"
Preliminary Title Report

(*See* attached.)

10/9/05 10/8/05

FIRST CENTENNIAL TITLE COMPANY OF NEVADA

☑ 1450 RIDGEVIEW DR., SUITE 100 * RENO, NV 89509 (775) 689-8510
☐ 500 DAMONTE RANCH PARKWAY, SUITE 820 * RENO, NV 89521 (775) 850-2559
☐ 716 NORTH CARSON STREET, #100 * CARSON CITY, NV 89701 (775) 687-8560
☐ 6121 LAKESIDE DR., SUITE 150 * RENO, NV 89511 (775) 689-8530
☐ 839 TAHOE BLVD., SUITE 300 * P.O. BOX 8286, INCLINE VILLAGE, NV 89450 (775) 831-8200
☐ 1025 ROBERTA LANE, * SPARKS, NV 89432 (775) 685-2121
☐ 3748 LAKESIDE DR., SUITE 100 * RENO, NV 89509 (775) 689-8235
☐ 6190 MAEANNE AVENUE, SUITE 2 * RENO, NV 89523 (775) 746-7080

Issuing Policies Of

First American Title Insurance Company

Today's Date:
August 18, 2005

PRELIMINARY REPORT

PROPOSED BUYER: **Consolidated Pacific Development, Inc.**

PROPERTY ADDRESS: **APN 011-112-03, 06, 07 and 12, Reno, NV**

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

Escrow Officer: Maryann Infantino Our No.: 145279-MI

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

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

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

by: Julie Moreno, *Title Officer*

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10/9/05 10/8/05

SCHEDULE A

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

Fee Simple

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

Sonnia Santee Iliescu, John Iliescu, John Iliescu Jr. and John Iliescu Jr. and Sonnia Iliescu as Trustees of the John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust all as their interests appear of record

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

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

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SCHEDULE B

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

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

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

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

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

10/9/05

10/8/05

SCHEDULE B
(Continued)

5. Any additional tax that may be levied against said land due to the supplemental tax roll, by reason of a change in ownership or completion of new construction thereon.

6. Liens for delinquent sewage charges, if it be determined that the same has attached to said premises, pursuant to Ordinance No. 51096, amending Section 9, Article XIV of the Reno Municipal Code.

7. Any facts, rights, interests, easements, encroachments or claims which a correct survey would show.

8. Easements for any and all ditches, pipe and pipe lines, conduits, transmission lines, poles, roads, trails, and fences on or traversing said land which would be disclosed and located by an accurate survey.

9. Terms and conditions as contained in an agreement for an open driveway, recorded May 29, 1926, in Book 1, Page 97, as Document No. 37015, Bonds and Agreements.
AFFECTS PARCEL 1

10. An exclusive easement for the installation, maintenance and use of street light poles and incidental purposes as granted to CITY OF RENO, a Nevada municipal corporation, by instrument recorded September 16, 1992, in Book 3566, Page 281, as Document No. 1605637, Official Records, located along a portion of the Northerly and Easterly boundaries of said land.
AFFECTS PARCELS 1 & 4

11. The terms, covenants, conditions and provisions as contained in an instrument, entitled "An ordinance of the City council of The City of Reno Amending Ordinance No. 4041, as amended, to extend the duration of the redevelopment plan for the downtown redevelopment area, and providing for other matters relating thereto," recorded July 8, 2005, as Document No. 3242447, of Official Records.

12. Except all water, claims or rights to water, in or under said land.

13. Any rights, interest or claims of parties in possession of the land not disclosed by the public records.

14. Prior to the close of escrow this office will require:
    a. A Copy of the Trust Agreement, or a Notarized Certificate of Trust, for the trust set forth in the vesting herein.

10/9/05

10/8/05

EXHIBIT "A"
Legal Description

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

PARCEL 1:
Commencing at the intersection of the East line of Flint Street (if said Flint Street were protracted Northerly) with the North line of Court Street, in the City of Reno, Nevada; thence Easterly along the North line of Court Street 125 feet, more or less, to the Westerly line of what is known as and called "The Gregory" property; thence at an angle of 89°58' Northerly 140 feet to the Northwesterly corner of the aforesaid "Gregory" property; thence Easterly along the Northerly line of the said "Gregory" property a distance of 25 feet, said last point being the place of beginning; thence at an angle of 90°5' Easterly a distance of 50 feet; thence at a right angle Northerly a distance of 136 feet, more or less, to the South bank of the South channel of the Truckee River; thence Westerly along the South bank of said Truckee River to a point on a line drawn Northerly and parallel with the Easterly line of said property from the point of beginning; thence Southerly and parallel with the said Easterly line of said property to the point of beginning.

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

APN: 011-112-03

PARCEL 2:

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

APN: 011-112-06

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PARCEL 3:

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

APN: 011-112-07

PARCEL 4:

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

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

FURTHER EXCEPTING THEREFROM that portion of the hereinabove described parcel conveyed to the City of Reno, a municipal corporation, in an instrument recorded December 17, 1971, as Document No. 229332, in Book 680, Page 759, of Official Records.

APN: 011-112-12

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

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10/9/05

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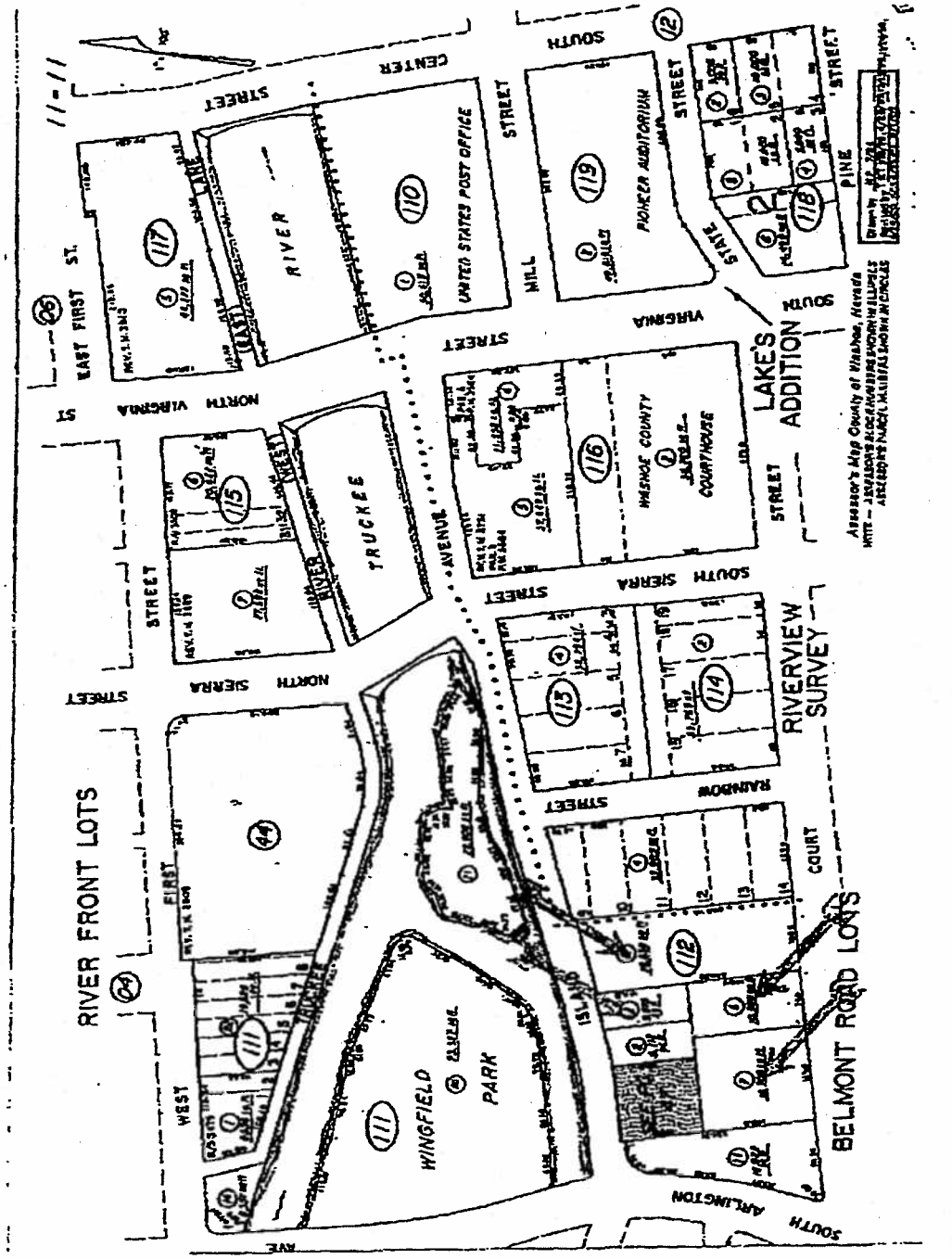
RIVER FRONT LOTS
RIVERVIEW SURVEY
LAKE'S ADDITION
BELMONT ROAD LOTS
WINGFIELD PARK
RIVER
TRUCKEE
CENTER STREET
SOUTH VIRGINIA STREET
NORTH VIRGINIA STREET
WEST FIRST ST.
NORTH SIERRA STREET
SOUTH SIERRA STREET
RAINBOW COURT
ARLINGTON AVE
WASHOE COUNTY COURTHOUSE
UNITED STATES POST OFFICE
PIONEER AUDITORIUM
STATE
PINE
MILL
ISLAND
WEST
FIRST
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10/9/05 10/8/05

METZKER JOHNSON GROUP©
COMMERCIAL * RESIDENTIAL * INVESTMENT * REALTY
6490 S. McCarran Blvd., RENO, NEVADA, 89502 PHONE: (775)823-8877 FAX: (775) 823-8848

ADDENDUM No. 4.

Date Prepared: September 18, 2006

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

RECITALS:

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

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

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

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

2. The Additional Extension Deposit shall be in addition to all other sums payable under the Agreement, including, but not limited to, the extension deposits described in the Agreement.

3. The purchase price of $7,500,000.00 (Seven Million Five Hundred Thousand Dollars) as set forth in the Agreement shall be increased to Seven Million Eight Hundred Seventy Six Thousand Dollars ($7,876,000) (herein "Purchase Price").

4. Except as modified by this Addendum No. 4, all other terms and conditions of the Agreement shall remain in full force and effect.

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

Seller:

John Iliescu Jr.

Sonnia Santee Iliescu

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

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

Buyer:

Consolidated Pacific Development, Inc.,
a Nevada corporation

By: _____
Sam A Caniglia, President

INDEMNITY

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

RECITALS:

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

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

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

D. Baty and Schleining are principals of BSC.

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

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

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

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

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

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

BSC FINANCIAL, LLC, a limited liability company

Dated: December 8, 2006

By: _____
Calvin Baty
Manager

Dated: December 8, 2006

_____
CALVIN BATY, individually

Dated: December 8, 2006

_____
JOHN SCHLEINING, individually

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

January 17, 2007

Via Email, *calvin@decalcustomhomes.com*

Calvin Baty
DeCal Custom Homes
440 Columbia Blvd.
St. Helens, OR 97051

Re: Waiver of Potential Conflict of Interest
Mike Ostrander/Wingfield Ventures

Dear Calvin:

As you may know, I have been asked by Mike Ostrander and Al Stevens, the Buyer of the Wingfield Towers project in Reno, to represent them in connection with formation of a buying entity, Wingfield Ventures. Because we represent Decal Custom Homes, BSC Financial LLC (the "Companies") and Sam Caniglia, John Schleining and you ("Individuals") individually, regarding the Wingfield Towers, it is necessary that the Individuals and you on behalf of the Companies, consent to our representation of Messrs Ostrander and Stevens in connection with formation of Wingfield Ventures and waive any conflict of interest. In the event of a dispute between Messrs Ostrander and Stevens and the Individuals or the Companies, we will not represent either party.

If you consent to the foregoing and waive any potential conflict of interest arising from our representation of Messrs Ostrander and Stevens in connection with this matter, please execute the acknowledgment which follows and return the original of this letter to me at your earliest opportunity.

If you have any questions, please call.

Sincerely,

R. Craig Howard

R. Craig Howard

RCH:dna

ACKNOWLEDGMENT

The foregoing waiver of conflict of interest is accepted this 17th day of January, 2007.

DECAL CUSTOM HOMES

By: _____
Calvin Baty

Its: Chief Executive Officer

BSC FINANCIAL, LLC

By: _____
Calvin Baty
Manager

_____
CALVIN BATY, individually

_____
SAM CANIGLIA, individually

_____
JOHN SCHLEINING, individually

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ACKNOWLEDGMENT

The foregoing waiver of conflict of interest is accepted this ___ day of January, 2007.

DECAL CUSTOM HOMES

By: _____
Calvin Baty

Its: Chief Executive Officer

BSC FINANCIAL, LLC

By: _____
Calvin Baty
Manager

_____
CALVIN BATY, individually

_____
SAM CANIGLIA, individually

_____
JOHN SCHLEINING, individually

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ACKNOWLEDGMENT

The foregoing waiver of conflict of interest is accepted this ___ day of January, 2007.

DECAL CUSTOM HOMES

By: _____
Calvin Baty

Its: Chief Executive Officer

BSC FINANCIAL, LLC

By: _____
Calvin Baty
Manager

_____
CALVIN BATY, individually

_____
SAM CANIGLIA, individually

_____
JOHN SCHLEINING, individually

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ACKNOWLEDGMENT

The foregoing waiver of conflict of interest is accepted this 17th day of January, 2007.

DECAL CUSTOM HOMES

By: _____
Calvin Baty

Its: Chief Executive Officer

BSC FINANCIAL, LLC

By: _____
Calvin Baty
Manager

_____
CALVIN BATY, individually

_____
SAM CANIGLIA, individually

_____
JOHN SCHLEINING, individually

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CODE: 3370

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.
_____/

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

A four day bench trial was conducted beginning on December 9, 2013, in the above entitled matter. The Plaintiff, MARK B. STEPPAN ("Steppan") was suing to foreclose on a mechanics lien for architectural services provided to, among other parties, the Defendants JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST ("Iliescu"). The trial concluded on December 12, 2013. The parties were permitted to submit post-trial briefs no later than January 3, 2014. Steppan and Iliescu both submitted post-trial briefs. The transcript of the proceedings was available to the Court at the end of February, 2014. The Court has received and reviewed all the exhibits admitted during the trial, the testimony of the witnesses, the stipulations entered into by the parties, and all of the other pleadings, papers, and orders previously entered in these proceedings and makes the following findings of fact, conclusions of law and decision following bench trial pursuant to NRCP 52.

I. FINDINGS OF FACT

1. Iliescu owned four parcels of land in downtown Reno, Washoe County, Nevada, ("the property") as more fully described by the parties in the TRIAL STIPULATION filed on December 6, 2013. Iliescu desired to sell and/or develop the property.
2. Illiescu retained the services of Richard K. Johnson ("Johnson") to act as his broker in the sale and/or development of the property. Johnson has been licensed as a real estate broker for over 25 years. He has been a member of the Nevada Real Estate Commission and is a principle in the Johnson Group, a real estate firm in Washoe County, Nevada.
3. Johnson had worked for Illiescu for over five years. Johnson had sold property for Illiescu prior to the deal that became the subject of the matter *sub judice*. Johnson worked for Illiescu on a commission basis.
4. Johnson was in contact with Sam Caniglia ("Caniglia") regarding the purchase of the property. Caniglia represented Consolidated Pacific Development, Inc. ("CPD"). CPD wanted to purchase the property and develop it by placing mixed-use structures on the land. The property would be both commercial and residential.
5. Johnson received a letter from Caniglia on behalf of CPD proposing a purchase of the property. The letter was marked and admitted as exhibit 66. Johnson had been speaking with Caniglia on behalf of Illiescu prior to the receipt of the letter. The letter describes the numerous "advantages" of dealing with CPD, including financing "tentatively arranged and * * * in place well before the project is approved (by the City of Reno)" and "Architect and Engineers in place ready to start work." The parties agreed on a purchase price of $7,500,000.00 and Illiescu would be entitled to a condominium in the development as well as other inducements. Illiescu and CPD executed numerous

addendums to the land purchase agreement that increased the sales price of the property and provided additional inducements to Illiescu. Illiescu was represented by both Johnson and legal counsel at various times during the negotiations for the sale of the property.

6. The development contemplated by Illiescu, Caniglia, and CPD was known as Wingfield Towers.

7. The sale of the property never came to pass. The property was in escrow on a number of occasions and non-refundable deposits were paid to Illiescu; however, CPD and/or its assigns were never able to secure funding for the purchase of the property or the development contemplated thereon.

8. CPD transferred its interest in the property to Baty Schleming Investments, LLC ("BSC"). Caniglia represented both CPD and BSC during times relevant to these proceedings. Johnson believed that BSC and CPD were all the same people.

9. Steppan is, and at all times relevant to these proceedings was, an architect licensed to practice in the State of Nevada. Steppan was employed at all times relevant to these proceedings by the firm of Fisher Friedman Associates ("FFA"). FFA's offices were in California. Steppan was the only architect at FFA licensed to practice in Nevada. FFA was an internationally recognized architectural firm. FFA had developed many mixed-use, residential and commercial properties. Steppan was the project manager of the Wingfield Towers project. Steppan provided project management and oversaw the staff at FFA in preparing the instruments of service for the Wingfield Towers project.

10. Steppan entered into an AIA Document B141 Agreement ("the contract") with BSC to design Wingfield Towers. The contract had one addendum. Of note, the contract called

for an overall estimated construction cost of $160,000,000.00. The addendum increased the estimated construction cost to $180,000,000.00. The Court finds that the later fee is a conservative estimate given the scope of the project and the testimony of the witnesses during the trial. The contract was signed by Steppan and BSC. Illiescu is not a party to the contract. The responsibilities of the parties in the event of failure to complete the project are clearly set out in § 1.3.8 of the contract.

11. Steppan would be paid based on a schedule established in § 1.5.1 of the contract. Specifically, Steppan would be entitled to 5.75% of the total construction cost including contractors profit and overhead. Steppan would earn his fee at the completion of five separate stages of design and construction. Steppan would earn 20 % of his fee at the completion of the schematic design phase ("SD")(this stage includes the City of Reno entitlement process); 22 % at the completion of the design development phase ("DD"); 40 % at the construction documents phase ("CD"); 1% at the bid/negotiate phase; and 17 % at the construction administration phase ("CA"). The criteria for the SD phase were established § 2.4.2.1. The "cost of the work" as defined in § 1.3.1.1 of the contract is the total cost or, to the extent the project is not completed, the estimated cost to the owner of all the elements of the project designed or specified by the architect. The contract was signed executed on October 31, 2005. There was an Addendum to the contract executed on April 21, 2006. Steppan worked on the Wingfield Towers project prior to the signing of the contract and the signing of the addendum. The parties were concerned about losing the opportunity for certain entitlements on the project; therefore, Steppan worked on an hourly basis pursuant to certain "stop gap" agreements entered into between himself and Caniglia. The SD phase was completed and Wingfield Towers was able to

secure the required entitlements and project approval from the Reno Planning Commission and the Reno City Council.

12. Rodney Friedman ("Friedman") testified at the trial. Friedman is a principal at FFA. FFA was a design consultant on the Wingfield Towers project. Friedman initially had contact with Caniglia about the Wingfield Towers project. Friedman established that the 5.75% fee was discussed from the inception of the project. The billing for the project was on an hourly basis while the parties finalized the details of the contract.

13. Kenneth VanWoert ("VanWoert") testified at the trial. VanWoert is an architect. The Court found that VanWoert was qualified to testify as an expert in the proceedings. VanWoert reviewed all the work done by Steppan and determined that the SD phase of the project had been completed. VanWoert opined that even though the documents were "prepared" by a firm other than Steppan they would go toward the SD phase because the design was done by Steppan. VanWoert opined that the instruments of service (those items that represent the design of the building) were done by Steppan. VanWoert did acknowledge that there were changes in the overall composition of the building (the size and composition of units for example); however, these modifications did not alter his belief that Steppan had completed the SD phase.

14. Illiescu was aware that the instruments of service were being produced. Illiescu may not have known, at all times, Steppan's name; however, there is no doubt in the Court's mind that Illiescu was aware of the work being done by Steppan (a third party) on behalf of Caniglia, CPD and/or BSC. Specifically, Illiescu was present when a video showing the impact of the project was shown to the Reno City Council. He was aware of the nature and scope of the project to include the production of models and drawings that evidenced

how the buildings would look and the impact they would have on the surrounding community. All of the instruments of service were produced by Steppan at or through FFA.

15. Illiescu consented to the request and/or extension of the entitlements granted to build Wingfield Towers. The entitlements were extended numerous times.

16. Steppan was not paid for his services as contemplated by the contract. There were numerous emails sent to Caniglia and others detailing the failure to pay the sums due. On November 7, 2006, Steppan filed a mechanic's lien against the property. Steppan did not provide Illiescu with pre-lien notice. The lien was removed at the request of the developers so the project could go forward before the Reno Planning Commission and/or the Reno City Council for approval with no encumbrances on the property.

17. Illiescu acknowledged during the trial that in the land purchase agreement between Illiescu and Caniglia, that Caniglia had the authority to act in a way that may expose the property in question to a mechanics lien. *See*, exhibit 68, ¶31. Illiescu knew that there would be architects, engineers, and other service providers in order to get the Wingfield Towers process underway. Illiescu acknowledged that he was at the homeowner's association meetings, *infra*, the Reno Planning Committee meeting and the Reno City Council meeting regarding the Wingfield Towers project. Illiescu is an experienced real estate owner. He is familiar with the notice of non-responsibility process and mechanic's liens based on previous business dealings as a landlord.

18. Both Dr. John Illiescu and Sonnia Illiescu signed an "OWNER AFFIDAVIT" that were part of the applications presented to the various agencies that evidence that Caniglia had authorization to act as agent in the development of their property. The affidavits were

included along with the instruments of service produced by Steppan as part of the overall application for Wingfield Towers. The affidavits were part of the Special Use Permit Application and the Tentative Map & Special Use Permit Application. Ronald David Snelgrove ("Snelgrove") was employed at Wood Rogers during the times relevant to these proceedings. Snelgrove was present when Illiescu signed the affidavits. Snelgrove discussed the project with Illiescu and showed him pictures from the instruments of service. Illiescu was present with Snelgrove at downtown homeowner's association meetings to discuss the impact of the Wingfield Towers project. During these presentations a "PowerPoint" demonstration was shown with FFA and Steppan's name present as the architects. The "fly through" of the impacted area and the "PowerPoint" were admitted into evidence. Snelgrove was also present at a party thrown by Illiescu after the successful presentation to the Reno City Council. Friedman and Steppan were present at this party.

19. Steppan established that there were agreements between himself and the developer that were outside both the contract and the "stop gap" agreement. These documents were admitted at the trial. Steppan also established the billing system used by FFA during the "stop gap" period and for the non-contract services provided. The description of the non-contract services and the billing statements were admitted as exhibits 19 through 30. Caniglia never objected to any of the billing provided by Steppan, to include the "stop gap" billing and the non-contract services. Further, Caniglia never objected to the amount of the mechanic's lien, *supra.* Steppan waived any right to additional fees that may have been earned pursuant to § 1.3.8.7 as "Termination Expenses". Steppan is only

requesting payment for those sums due as a result of completing the SD phase of the project and those other sums billed for non-contract services.

20. Steppan's first contact with Illiescu was during the special use permit application.

II. CONCLUSIONS OF LAW

1. "A mechanic's lien is a statutory creature established to help ensure payment for work or materials provided for construction or improvements on land." In re: Fountainebleau Las Vegas Holdings, 128 Nev. Adv. Op. 53, 289 P.3d 1199, 1210 (2012). The statutory framework applicable to the mechanic's and material man's liens is codified in chapter 108 of the Nevada Revised Statutes.

2. "[T]he mechanic's lien statutes are remedial in character and should be liberally construed." Leher McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124 Nev. 1102, 1115, 197 P.3d 1032, 1041 (2008)(*citing*, Las Vegas Plywood v. D&D Enterprises, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982)).

3. The legislative purpose behind the mechanic's lien is to ensure payment for services provided. "[P]ublic policy strongly supports the preservation of laws which give the laborer and material man security for their claims." Lehrer, 124 Nev. at 116, 197 P.3d at 1041(*citing*, Wm. R. Clarke Corp. v. Safeco Ins. Co., 15 Cal.4th 882, 64 Cal.Rptr.2d 578, 938 P.2d 372, 375-76 (1997)).

> Underlying the policy in favor of preserving laws that provide contractors secured payment for their work and materials is the notion that contractors are generally in a vulnerable position because they extend large blocks of credit; invest significant time, labor, and materials into a project; and have any number of workers vitally depend upon them for eventual payment. We determine that this reasoning is persuasive as it accords with Nevada's policy favoring contractors' rights to secured payment for labor, materials, and equipment furnished.

Id.

4. "Substantial compliance with the technical requirements of the lien statutes is sufficient to create a lien on the property where * * * the owner of the property receives actual notice of the potential lien claim and is not prejudiced." Fronden v. K/L Complex, LTD., 106 Nev. 705, 709, 800 P.2d 719, 721 (1990)(*citing,* Board of Trustees v. Durable Developers, Inc., 102 Nev. 401, 410, 724 P.2d 736, 743 (1986)). *Accord,* Hardy Companies Inc. v. SNMARK, LLC, 126 Nev. Adv. Op. 49, 245 P.3d 1149 (2010).

5. "The purpose of the pre-lien statute is to put the owner on notice of work and materials furnished by *third persons* with whom he has no direct contact. If the owner fails to file a notice of non-responsibility within the time provided in the law, *after knowledge of the construction,* the statue provides that the construction is at the instance of the owner." Fronden, 102 Nev. at 709, 800 P.2d at 721(*citing*, Matter of Stanfield, 6 B.R. 265, 269 (Bankr.D.Nev. 1980)(emphasis in the original).

6. "... [A]ctual knowledge requires that the owner has to have been reasonably made aware of the identity of the third party seeking to record and enforce a lien." Hardy, 126 Nev. Adv. Op. 49, 245 P.3d at 1157.

7. "The purpose underlying the notice requirement is to provide the owner with knowledge that work and materials are being incorporated into the property. The failure to serve the pre-lien notice does not invalidate a mechanics' or materialmen's lien where the owner received actual notice." Fronden, 106 Nev. at 710, 800 P.2d at 721.

8. "Failure to either fully or substantially comply with the mechanic's lien statute will render a mechanic's lien invalid as a matter of law." Hardy, 126 Nev. Adv. Op. 49, 245 P.3d at 1155 (*citing*, Schofield v. Copeland Lumber, 101 Nev. 83, 86, 692 P.2d 519, 521 (1985)).

9. "Fronden is still good law." Hardy, 126 Nev. Adv. Op. 49, 245 P.3d at 1154. 2003 and 2005 legislative amendments to NRS chapter 108 have not altered the validity of the pre-lien notice analysis previously announced by the Nevada Supreme Court. *See generally*, Hardy, *supra.*

10. "An owner who witnesses the construction, either firsthand or through an agent, cannot later claim a lack of knowledge regarding future lien claims." Hardy, 126 Nev. Adv. Op. 49, 245 P.3d at 1157 (*citing*, Fronden, *supra*).

11. A contract that is unambiguous shall not be the subject of parole evidence. "Under the parole evidence rule, extrinsic evidence cannot be introduced to aid the court in interpreting a contract unless the contract contains ambiguities." Margrave v. Dermody Properties, Inc., 110 Nev. 824, 829, 878 P.2d 291, 294 (1994)(internal citations omitted). "A contract is ambiguous when it is subject to more than one *reasonable* interpretation." Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007)(emphasis added)(*citing*, Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003)).

12. The Court finds that the contract admitted during the trial is clear on their face and unambiguous in its terms. The Court further finds that the terms of that contract contemplate Steppan being entitled to 20 % of 5.75 % of $180,000,000.00 (the agreed upon estimated cost of service) at the conclusion of the SD phase. The Court finds by a preponderance of the evidence that the SD phase was completed. To interpret the contract in any other way would be unreasonable. Steppan would have to wait until the completion of all stages of the contract prior to determining the amount owed if the Court were to give the terms the meaning suggested by Illiescu. Further, that would place the

obligation to pay completely in the hands of the developer: should the developer abandon the project at any time the actual amount of construction would never be known, and Steppan would never be able to establish his lien amount. This is unreasonable. The parties agreed on an approximate amount as the basis for the services provided. Further, the Court finds that the parties contemplated an adjustment (up or down) depending on the actual cost of the completed development. The Court finds that the $180,000,000.00 estimate to be conservative based on the testimony of the experts at the trial. The Court further finds that Steppan has proven the non-contract expenses by a preponderance of the evidence. Steppan is entitled to those sums as more fully set out in the Second Amended Notice and Claim of Lien filed with the Washoe County Recorder on November 8, 2013, and admitted during the trial as exhibit 3. Steppan has established that he is entitled to a mechanic's lien.

13. The Court finds by a preponderance of the evidence that Steppan has proven that Illiescu was aware of the third party services he was providing. Illiescu was in attendance during numerous presentations where the instruments of service containing Steppan's name were presented. He personally saw the instruments of service. Illiescu negotiated repeatedly for specific inducements in Wingfield Towers. Further, Illiescu knew that an architect would be employed to design Wingfield Towers. Illiescu signed affidavits giving Caniglia the right to negotiate on his behalf. While there was no pre-lien notice provided, none was required.

IT IS ORDERED, that the parties shall contact the Judicial Assistant for Department 10 within 5 days from the date of this ORDER to set a hearing to establish the final amount owed as a result of the mechanic's lien, to include applicable interest.

DATED this 28 day of May, 2014.

DISTRICT JUDGE

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 28 day of May, 2014, 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:

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 28 day of May, 2014, 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:

MICHAEL D. HOY, ESQ.

Sheila Mansfield

1880

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 Findings of Fact, Conclusions of Law, and Decision (May 28, 2014, E-flex Transaction #4451229), Order Regarding Plaintiff's Motion for Costs (September 5, 2014, E-flex Transaction #4594487), Order Regarding Plaintiff's Motion for Attorney Fees (September 8, 2014, E-flex Transaction #4595799), Order Regarding Reconsideration of Attorney Fees (December 10, 2014, E-flex Transaction 4729999), and the rulings regarding the computation of prejudgment interest during the June 12, 2014 hearing reflected in the hearing transcript at pages 21 and 22.

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	$1,753,403.73
B.	Prejudgment interest	$2,527,329.23
C.	Attorney fees	$233,979.50
D.	Costs	$21,550.99
Total		$4,536,263.45

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). Defendants reserve all rights regarding any additional relief including, but not limited to, the arguments in the Defendants' Motion for Relief From Court's Attorneys' Fees and Costs Orders and For Correction, Reconsideration, or Clarification of Such Orders to Comply with Nevada Mechanic's Lien Law (filed September 15, 2014, e-Flex Transaction 4606433).

7. Certain third party claims by the Defendants, against a third-party defendants, remain pending in this lawsuit, which have been stayed by prior stipulations of the parties. The Court determines that there is no just reason for delay and, notwithstanding any remaining claims against other parties herein, this Judgment is certified as final pursuant to NRCP 54(b) with respect to the parties hereto and the claims between them.

DATED February 26, 2015.

Hon. Elliott A. Sattler,
District Judge

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Document Code: 2535

Michael D. Hoy (NV Bar 2723)
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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, vs. 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. And Related Claims.	Consolidated Case Nos. CV07-00341 and CV07-01021 Dept. No. 10

Notice of Entry of Judgment

TO: All parties and their counsel:

Please take notice that on February 26, 2015, the Court entered its Judgment, Decree and Order for Foreclosure of Mechanics Lien. A true and correct copy of the Judgment is attached as Exhibit 1.

Privacy Affirmation

Pursuant to WDCR 10(4), undersigned counsel affirms that this document does not contain any social security numbers.

Dated February 27, 2015.

Hoy Chrissinger Kimmel Vallas, PC

Michael D. Hoy

HOY | CHRISSINGER KIMMEL | VALLAS
ATTORNEYS AND COUNSELORS AT LAW

Certificate of Service

I hereby certify that on February 27, 2015, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system, which will send a notice of electronic filing to the following:

G. Mark Albright and D. Chris Albright for John Iliescu, Jr. and Sonnia Iliescu, individually and as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust

David Grundy, Todd Alexander, and Alice Campos Mercado for Jerry M. Snyder, Karen D. Dennison, R. Craig Howard, Hale Lane Peek Dennison Howard, and Holland and Hart

Gregory F. Wilson for John Schleining

I further certify that on February 27, 2015, I served the foregoing on

C. Nicholas Pereos for John Iliescu, Jr. and Sonnia Iliescu, individually and as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust

by depositing the same for mailing enclosed in a sealed envelope with first class postage fully prepaid addressed to: C. Nicholas Pereos, 1610 Meadow Wood Lane, Suite 202, Reno, Nevada 89502.

Dated February 27, 2015.

Michael D. Hoy

Table of Exhibits

1 Judgment, Decree and Order for Foreclosure of Mechanics Lien

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Attorneys for Applicants/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.

And all original prior consolidated case(s).

CASE NO. CV07-00341
(Consolidated w/CV07-01021)

DEPT NO. 10

DEFENDANTS' MOTION FOR COURT TO ALTER OR AMEND ITS JUDGMENT AND RELATED PRIOR ORDERS

COMES NOW, John Iliescu, Jr., individually and John and Sonnia Iliescu, as trustees of the John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust Agreement (jointly hereinafter the "Iliescu Defendants" or "Defendants" or "Movants"), as the Defendants in the second of these two consolidated cases, and, pursuant to NRCP 52(b) and NRCP 59(e), hereby move this Court to Alter and Amend its February 26, 2015 Judgment, Decree and Order for Foreclosure of Mechanic's Lien ("Judgment") as well as its May 28, 2014 Findings of Fact, Conclusions of Law, and Decision

("Decision") and its June 9, 2009 and May 9, 2013 Partial Summary Judgment Orders as well as its prior Orders with respect to awards of costs and attorneys' fees (jointly "Orders"). The Judgment and the other related Orders described above uphold a mechanic's lien and allow a foreclosure thereon, which mechanic's lien should instead be invalidated. This Motion is made and based upon the points and authorities in support hereof, filed concurrently herewith, the exhibits thereto, the papers and pleadings on file with this Court and any argument made with respect thereto at any hearing of this matter.

DATED this 10th day of March, 2015.

By _____

G. MARK ALBRIGHT, ESQ. (NV Bar No. 001394)
D. CHRIS ALBRIGHT, ESQ. (NV Bar No. 004904)
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Tel: (702) 384-7111 / Fax: (702) 384-0605

I. STATEMENT OF FACTS

A. The Defendants Agree to Sell Their Land.

Movants/the Iliescu Defendants are the owners of certain vacant real property located in downtown Reno, as described in the Judgment (the "Property"). Movants entered into a Land Purchase Agreement and certain related Addendums to sell the Property to Consolidated Pacific Development, Inc. Trial Exhibits (hereinafter "TE") 68, 69, 70, 71. The purchaser planned to build a multi-use high-rise development (the "Wingfield Towers") at the Property, and subsequently joined and assigned its rights to an entity known as Baty, Schleming Investments, LLC. Decision at ¶¶ 2-8. (The purchaser entity or entities are jointly hereinafter referred to as "BSC" or "Developer").

B. The Developer Hires FFA to Provide Design Services.

While the Property was in escrow, certain principals of the Developer negotiated with Rodney Friedman, the sole owner (**Exhibit "1"** hereto, Deposition Transcript of Steppan at pp. 7-13; Trial Transcript – hereinafter "TT" 266, 346-47) of a California architectural firm known as Fisher Friedman

Associates ("FFA") to design the Wingfield Towers. (TT 212; 229; 417-18; Decision at ¶12). FFA was not registered to perform architectural services in Nevada and Rodney Friedman was not licensed to perform such services in Nevada (Decision at ¶9), such that these negotiations violated NRS 623.182. FFA had one employee who held a Nevada license: Friedman's son-in-law (Exh. "1" at pp. 12-13), Mark Steppan (Decision at ¶9), who had resided in California and worked for FFA his entire career (Defendant's Trial Statement, filed December 4, 2013, at ¶14).

Due to Steppan's Nevada license, and because, to avoid liability, Friedman never signed *any* agreements (TT 267 l. 21 - 268 l. 2), once the negotiations were complete, Friedman had Steppan sign the architectural contract (TT 351 1.20 - 352 1.2) for FFA's planned architectural work. Three types of contracts were ultimately claimed or involved: (i) a November 15, 2005 hourly fee letter agreement (TE 14), intended as a "stop-gap" agreement until a final AIA Agreement could be signed; (ii) an AIA B141-1997 Agreement (TE 6) (hereinafter the "AIA" Agreement), which, once signed, was to become effective October 31, 2005 and thereby supplant the hourly letter agreement (TE 6 at Steppan 4116) but which was actually signed on April 21, 2006 (TE 6 at Steppan 4130) and which called for payments on a percentage basis, tied to the anticipated construction costs of the development; and (iii) certain unsigned "add-on" agreements, for additional work outside the direct scope of the AIA (TE 19, 20, 21, 22). The Iliescu Defendants were not parties to the architectural contracts. (Decision at ¶ 10).

C. <u>FFA Performs Services and Records a Lien</u>.

FFA and its employees, including Steppan, provided design work for BSC's planned Wingfield Towers development. After learning that the Developer was having problems obtaining financing, FFA completed the structural design phase of its work, so as to reach a milestone which would allow it to seek flat fee compensation, based on the percentage of the contract up to that phase. FFA then procured BSC's signature on the AIA Agreement, without thereafter performing any more work thereunder (Exh. "1" at p. 255), and then recorded a mechanic's lien in Steppan's name (TT 336; 343-348). Financing for the project was never obtained, escrow never closed, and no on-site improvements ever commenced. This suit, listing only one cause of action, for foreclosure of the lien, was then filed.

II. ANALYSIS

A. Legal Standards.

A motion to amend under NRCP 52(b), including to challenge "the sufficiency of the evidence supporting the findings" is to be filed within "10 days after service of written notice of entry of judgment." NRCP 59(e) allows a motion to alter or amend a judgment to be made within that same time period. Relief may be granted under NRCP 59 where an aggrieved party's substantial rights have been materially affected (*Edwards Indus. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1035-37, 923 P.2d 569 (1996)) or on the basis of plain error or manifest injustice (*Frances v. Plaza Pac. Equities*, 109 Nev. 91, 847 P.2d 722 (1993)), or where the decision is manifestly contrary to the evidence (*Avery v. Gilliam*, 97 Nev. 181, 183, 625 P.2d 1166 (1981)).

In mechanic's lien cases, a "district court's findings must be supported by substantial evidence" meaning evidence "a reasonable mind might accept as adequate to support a conclusion." *Simmons Self Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. Adv. Op 57, 331 P.3d 850, 855-856 (November 24, 2014). A lien claimant has the burden to "plead and prove" the statutorily required elements of his own architectural lien claim "as part of [his] prima facie case seeking compensation for . . . architectural services at trial" --*DTJ Design Inc. v. First Republic Bank*, 318 P.3d 709, 710, 130 Nev. Adv. Op. 5 (February 13, 2014). *See also, Schofield v. Copeland Lumber Yards*, 101 Nev. 83, 84, 692 P.2d 519, 520 (1985)("Compliance with the provisions of the lien statutes is placed at issue by the complaint for foreclosure.")

"A district court may reconsider a previously decided issue if . . . the decision is clearly erroneous," including on the basis of "new clarifying case law." *Masonry and Tile Contractors Assoc. v. Jolley, Urga, Wirth and Woodbury*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Similarly, a court has the authority to change a prior order if it is "persuaded by the rationale of . . . newly cited authority" or if it is "more familiar with the case" or its facts and law. *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 217, 606 P.2d 1095, 1097 (1980).

B. Key Legal Questions.

Although Steppan signed the contract documents and was identified as the purported "Contract Architect" thereon, and the mechanic's lien and this suit were filed in his name, "Steppan's" Mechanic's Lien must fail, as a Nevada mechanic's lien claimant may only lien for the value of services provided "by or through" the lien claimant. NRS 108.222(1)(a) or (b). This means that a Nevada mechanic's lien claimant may lien for (i) his own work, or (ii) that of his employees or (iii) that of his hired subcontractors, but he cannot lien for someone else's work, or for that of someone else's hired employees or hired subcontractors. This is demonstrated by *Nevada National Bank v. Snyder*, 108 Nev. 151, 157, 826 P.2d 560, 562-64 (1992) (partially abrogated on other grounds by *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002)) which held that it was error for a district court to allow an individual member of a foreign architectural firm to act as the plaintiff foreclosing the architectural firm's mechanic's lien, including because (a) the relevant invoices were submitted on behalf of the foreign firm, not the individual; (b) the architectural drawings were prepared by the foreign entity, not the individual; (c) the persons who prepared those drawings were employees of the foreign architectural firm, *not* of the individual, etc.

To prove up a valid lien at trial, "lien claimant" and Plaintiff Steppan therefore needed to demonstrate by a preponderance of substantial evidence that the lien was for unpaid amounts owed *to Steppan* for *his* services (as alleged in Paragraph 9 of "his" Complaint) "furnished by" him or furnished by *his* employees or *his* subproviders, acting "through" him as their customer or employer. To do so, Steppan needed to prove both that (1) he was the contract architect in more than name and (2) that he retained FFA to work for him as his subcontractor, such that FFA's and its employees' work was performed "through" Steppan. As shown below, Steppan failed on both counts. (3) Furthermore, even if Steppan had demonstrated that he was a proper lien claimant for FFA's work, that work was performed by FFA illegally, as a foreign architectural firm not authorized to perform work in Nevada, in any event, under NRS Chapter 623, and could not properly be the basis of any lien. (4) In addition, Steppan failed to substantially comply with Nevada lien statutes when he attempted to perfect his lien

claim.

Based on these four points, this Court should alter and amend its Decision, Judgment, and the related orders, and should invalidate the Steppan lien.

C. Steppan Was the Contract Architect In Name Only.

(i) Plaintiff's and His Employer's Own Trial Testimony Contradicted any Evidence that Steppan Was the "Contract Architect."

The only evidence supporting a claim that Steppan was the contract architect was: (1) his signature on the architectural contracts negotiated by Friedman; and (2) Steppan's own oral testimony claiming that he had supervised and exercised "responsible control" over FFA's and its employees' work.

However, the trial evidence showed that Steppan's signature on the agreements was directed by Friedman (TT 351 l. 20 - TT 332 l. 2), the person who actually negotiated the same, on behalf of FFA. Steppan's testimony of having supervised the work was pre-rebutted by the testimony of Steppan's boss at FFA, Friedman, who testified twice, that *he* was the person supervising all of the work (TT 258, ll 3-9; TT 269-70), and that Steppan would only have done so if Friedman were ever away from the office. *Id.* This does not appear to have ever occurred, given that Friedman logged three to four times more hours on the project than did Steppan. *See*, Defendant's October 27, 2014 Motion for NRCP 60(b) Relief, at page 22 lines 5-14 and the exhibits attached thereto, incorporated herein by reference.

Steppan's claim to have exercised "responsible control" of the work was also undermined by his explanations, provided twice during his trial testimony, of what "responsible control" meant to him. For example, prior to first indicating that he exercised responsible control, Steppan testified that his personal definition of that phrase "in [his] mind" is "supervision of the project **as it's approaching a time for sealing and signing**" (TT 639 at ll. 21-24)[1] a point in time which was never reached on this project (TT 269, ll. 12-15). Likewise, at TT pages 777 l. 22 through 778 l. 2, Steppan again claimed that the "type of full oversight" required of an architect of record who will one day stamp and sign the

[1]All emphasis and all bracketed language within trial transcript quotations are added, throughout this brief.

design documents, "occurs at the time of building permit submission".

However, the relevant rules governing the architectural profession, including NCARB Rule 5.2 (which has been adopted in Nevada), does not define responsible control as oversight which can wait until, or become more substantive, later in the project, but instead indicates that responsible control requires detailed oversight from the outset, "during . . . preparation" of the work product: "[o]ther review . . . of technical submissions **after they have been prepared** by others **does not constitute the exercise of responsible control** because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions **throughout their preparation**." [Emphasis added.]

Even *if* Steppan *had* played a supervisory role on the project, this does not mean he was the contract architect. Steppan's role (even as described in testimony designed to bolster his claimed level of involvement) was admitted by Steppan to be "on behalf of Fisher-Friedman Associates" as to work "performed by Fisher-Friedman Associates" (TT 785, ll. 7-23), rather than being described as work which Steppan did *on behalf of the client*, with FFA's work then being done on behalf of Steppan as FFA's alleged customer, as should have been the case if Steppan were working for BSC, and FFA was working for him.

(ii) By Contrast, the Evidence that Steppan Was Merely the Nominal Contract Architect Was Overwhelming.

The evidence indicating that Steppan was merely the *nominal* contract architect, but in fact played no such *substantive* role, is, by contrast, overwhelming: As stated above, Steppan merely signed but did not negotiate the contract. Furthermore, the original stop-gap proposal letter and subsequent stop-gap agreement provided a list of 28 categories of employees allegedly employed by the Contract Architect. TE 9; TE 14. Inasmuch as Steppan had no employees of his own, the 28 categories of Contract Architect employees listed were all, in fact, FFA employee categories, such that the actual contract architect whose employees would be doing the work was FFA. Similarly, as the work commenced, invoices were sent to the developer which were initially sent on "Mark A. Steppan" letterhead but which likewise listed several categories of personnel performing the work, all of which

were categories of FFA employees, not of Steppan employees! TE 24. The time billed by Steppan, for example, who was the "Executive Vice President" of FFA (TT 37 l. 1) its second highest ranking official (Exh. "1" at p. 13), is therefore shown on the invoices as that of the "Executive Vice President" whereas Friedman's time is shown, above Steppan's, as that of the "Principal/Officer" billing at a higher rate than Steppan even though the initial invoices' letterhead claims that this is an invoice submitted by some purported entity or proprietorship named Mark A. Steppan. TE 24. Thus, Steppan is not even listed on *Steppan* Letterhead invoices as the "Principal/Officer" of his own purported entity, and he does not even have the highest rates on what are supposedly *his* proprietorship's invoices. Furthermore, the invoices were sent by FFA, and showed FFA's address at the bottom, and an email address for Steppan of "Mark@fisherfriedman.com." *Id.* Steppan indicated at trial that this Steppan letterhead was utilized merely to maintain the "form" that Steppan was the Contract Architect. TT 673 at ll. 2-4. However, all of the payments from the Developer made under the initial invoices and credited on later invoices **were paid directly to FFA**, and not to Steppan (TT 670-71) and Steppan admitted he never expected to be paid directly, as a true contract architect would have been (TT 673), such that the substance of the relationships was always very different from this "form."

Eventually, the invoices started being sent, accurately, on FFA letterhead, which reflected the reality of who was actually performing the work, being paid directly, and expecting payment for the work (latter part of TE 24 and 26; all of TE 25). Indeed, after the AIA Agreement was signed, no further work thereunder was completed. Rather, all that then occurred is that the new, substantially higher, invoices were sent, rebilling on a flat fee percentage-basis, for the same work which had already previously been performed and billed. Exh. "1", at p. 255 11. 14-21. These new invoices were all on FFA letterhead (TE 25), and corresponded to the amount of the final Mechanic's Lien in Steppan's name, for these FFA invoices. TE 3.

From the outset, the contract billing number was an FFA numbering system number and all of the invoices were generated internally at FFA, which also made all decisions as to how time allocations on the invoices should be treated, with the fees on the invoices being based on FFA's employees'

work, and with FFA, not Steppan, maintaining all project files. (Exh. "1" at pp. 18 and 67 and 304; TT 381-382; 668-670; Decision at ¶19). Steppan did not create the design work product and contract drawings, which he indicated were primarily created by Friedman and FFA employee David Tritt (Exh. "1" at pp. 21; 256-57). FFA's employee Nathan Ogle, not Steppan, was listed on the invoices as the Project Manager. TE 24-26. Steppan did not seek out and hire the other subcontractor professionals, which was done by Friedman and FFA. TT 262-63; Exh. "1" at p. 85. Steppan, by contrast, had essentially two roles: to sign the contracts and to someday sign and stamp the final architectural renderings, which day never arrived. TT 780; 785.

Steppan did not set up any independent method for working on the Wingfield Towers project, distinct from his other work for and as an employee of FFA, but handled it "the same way I handle my oversight on other projects" as an in-house employee for FFA (TT 639 at ll. 11-13), even though this was the only time he had ever signed as the named contractor for FFA's work. TT 735 ll. 4-15. Although he apparently claimed to be working as some sort of Nevada independent contractor to BSC, there is no evidence that Steppan obtained a local business license, or became registered with the State's taxation department, or took any of the other necessary steps to fulfill such a Nevada role. Instead, Steppan remained an FFA employee throughout the work performed on the contracts, receiving his regular salary, and he was not anticipating any special bonuses or profit sharing on this job. Exh. "1" at pp. 85-86; Decision at ¶9.

Even though Steppan had signed in order for FFA to benefit from his *Nevada* license, Steppan's name was not even referenced as the architect in submissions to local Nevada entities (which instead listed the architect for the project, and its contact person, as FFA and Nathan Ogle), or on Nevada extension requests (in the name of Rodney Friedman). TE 35 at p. Steppan 2371; TE 36, TE 37; TE 51 at Steppan 7404; TT 183-84; 320-21; 763-764. Steppan admitted that such submissions were accurate, based on his relative lack of involvement compared to Ogle and Friedman. TT 764-769. Nor was Steppan aware of a single e-mail which would show he had any communications with anyone external from FFA (such as Nevada governmental entities or the client Developer) on the

project. TT 757-58. Nor, despite his sole Nevada license, was it even anticipated that Steppan would have been the on-site architect in Nevada during construction. TT 421 ll. 5-20.

Further evidence and legal arguments as to Steppan being only a nominal contract architect, who played no such actual role, are set forth in the Defendant's October 27, 2014 Motion for Relief under NRCP 60(b), at pages 2-25, and 28-39 thereof, and in the Reply filed in support thereof on December 16, 2014 at pages 1-2; and 7-20, all of which analysis, together with the exhibits referenced therein, are hereby incorporated herein by reference.

D. <u>FFA Performed Its Work Directly for the Developer, Under a Direct Contractual Relationship With the Developer, and Was Never "Hired" or "Retained" by Steppan, for Steppan to Lien for FFA's Work (and Indeed, Never Claimed Otherwise at Trial).</u>

(i) The Instant Case Was Pursued on Behalf of FFA and Is Thus Barred By Post-Trial Case Law.

The *DTJ Design Inc. v. First Republic Bank*, 318 P.3d 709, 709, 130 Nev. Adv. Op. 5 (Feb. 13, 2014) decision, issued after trial, summarized its holding at the beginning of the opinion as follows: "regardless of whether a foreign firm employs a registered architect [the applicable provisions of NRS Chapter 623] mandate that the firm be registered in Nevada in order to maintain an action **on the firm's behalf**." [Emphasis added] Although the present action was brought under the name of Steppan, as the purported lien claimant and plaintiff hereunder, it was repeatedly acknowledged throughout trial that this case was in fact brought on FFA's behalf, as the real party in interest.

See, e.g., TT 237 ll. 7-14 (under questioning by his own counsel Friedman acknowledges that his firm (*i.e.*, FFA) was promised payment by the developer under the AIA); TT 336, ll. 10-15 ([Questioning by Plaintiff's Counsel Michael D. Hoy to Friedman):] "Q: Was **your company** [*i.e.*, FFA] motivated to record the mechanic's lien on November 7, 2006 . . . . ? A: Yes."); TT 343 l. 6 - 348 l. 124 (Friedman acknowledges, under questioning by Defendant's counsel Mr. Pereos as to why "**your company caused the lien to be recorded**" that "**we** were going to file a lien in case" the deal didn't go forward, and further acknowledges that he is financing this litigation, as he has a financial interest therein, having retained the lien claim pursued herein from FFA upon selling that entity). *See, also*, TT 323-325 (Friedman's colloquy with the Court as to Friedman's rights under what he describes

as his AIA Contract).

Similarly, during Steppan's trial testimony, the parties and the Court recognized that this suit was brought in order for FFA, not Steppan, to obtain compensation. *See, e.g.*, TT 656 at ll. 15-21 ("The Court [to Steppan, during testimony regarding the add-on contracts]: So it is something **you would be reimbursed – and by 'you,' of course, I mean Fisher-Friedman and Associates** – reimbursed for separately? The Witness [Steppan]: Yes."); TT 658 ll. 19-24; TT 660 ll 15-16; TT 663-664 (Hoy questions and Steppan responses regarding whether "Fisher-Friedman Associates" did the work in question and billed for the same to the developer); TT 659, at ll. 21-22 and 677 at ll. 10-13 (Court, in admitting unsigned add-on contract exhibits notes without contradiction from Plaintiff or his counsel that "whether or not **Fisher-Friedman Associates** is entitled to compensation" based on these admitted exhibits is the question to be adjudicated). Although this case was not prosecuted in the name of the real party in interest, as it should have been under NRCP 17, no one at trial provided any evidence to explain why Steppan's name on the contract suddenly made FFA's work, which FFA performed directly for the customer, BSC, lienable.

(ii) FFA Was Working Directly For the Customer and Was Never Shown to have been Retained by Steppan or Working for Steppan.

Even if Steppan were, somehow, more than a nominal contract architect, it is clear that FFA performed its work under its own direct relationship with the Developer, BSC and was never "retained by" Steppan as *his* subprovider. Friedman negotiated the terms directly with the Developer, as stated above. Moreover, when the AIA Agreement was finally executed, on April 21, 2006, but with an effective date of October 31, 2005, it listed FFA as a **direct party** to that Agreement. (TE 6 at Steppan4127.) This was consistent with the fact that FFA's employees had been doing the work, and FFA had been getting paid directly for that work, by BSC, from the outset. TT 670-71.

Furthermore, (i) FFA was not mentioned at the location in the AIA contract (§ 1.1.3.5.) where the architect's consultants are to be identified–despite claiming to be acting as a "design consultant"; (ii) the portion of the AIA Contract –the Addendum– which did list FFA, listed FFA as a direct party to the agreement, not a subcontractor to Steppan; (iii) a direct FFA relationship with BSC/Consolidated

is verified by Steppan's testimony that "both" he and FFA were working for the customer, rather than he working for the customer and retaining FFA to work under him (Exh. "1" hereto, at p. 257); (iv) **no written agreement exists** or was even claimed to have been entered into substantiating that Steppan ever retained FFA, either as a design consultant or in any other capacity, even though the AIA Agreement was to be in effect for 32 months (TE 6 at section 1.1.2.6.) such that any subcontract to provide the services thereunder would need to have been in writing under Nevada's statute of frauds (NRS 111.220(i)) and any claimed oral subcontract agreement by which Steppan allegedly hired FFA was otherwise **"void"** under the language of that statute (not that any testimony or evidence concerning the existence of any such oral retention agreement or the terms thereof, was ever offered at trial either).

(v) No evidence was provided at trial that any invoices were ever delivered from FFA to its purported customer, Steppan; (vi) nor were any payments ever claimed to have been made by Steppan to his purported subprovider "design consultant" FFA; (vii) despite the payment liability which would exist if Steppan had ever retained FFA, no demands or suits for payment were ever filed by FFA against Steppan, before or after expiration of the applicable four year statute of limitations for suit on an unwritten obligation. The post-trial assertion that Steppan "hired" FFA is an open farce.

That FFA was never hired by Steppan but was hired by and had a direct contractual relationship with the Developer, BSC, was acknowledged throughout trial. For example, Plaintiff's own counsel Mr. Hoy, in questions to Friedman regarding Friedman and his firm FFA ("you" "your firm") elicited answers from Friedman regarding he and FFA ("I" "we" "us" "our") that: Tony Iamesi (an early member of the Developer group) hired Friedman/FFA to do the project based on their proposal to Iamesi (TT p. 212, ll 21-23, TT 229); the developer client never disputed the invoices sent by Friedman's firm (TT 232-33); the developer assisted FFA in locating mistakes in FFA's invoices (TT 232-33) "the **developer agency** or entity with respect to the Wingfield Towers project in Reno did actually **commit to pay** a fee **to your firm** based on a percentage . . . ? A: Correct." (TT 237 ll. 7-14); the stop-gap hourly fee letter agreement authorized Friedman ("you") to proceed with the work (TT 242, ll 7-22); the developer, BSC, asked Friedman to go study city staff questions and FFA billed BSC

for doing so (TT 250-51); the designs were created by Friedman's firm FFA which also retained its own longstanding subcontractors for assistance (TT 262-263); Friedman's firm was to be paid pursuant to the provisions of the AIA Agreement signed by the developer, which Friedman testified "we" (i.e., his firm, FFA) "signed," demonstrating Friedman's awareness of Steppan's signature being on behalf of FFA; and it was Friedman's expectation that he (the owner of FFA) would be paid on the terms outlined under the AIA Agreement. TT 325, 11 3-14; TT 417; ll 1-21.

That FFA was working directly for the Developer and not for Steppan was also reiterated during testimony elicted from Defendants' trial counsel, Mr. Pereos, and from this Court. *See*, e.g., TT 241, ll. 4-7; TT 247, ll. 14-18; TT 342-344 (in which, under questioning from Pereos, Friedman acknowledges that his firm was paid by the developer, and that he considers the AIA Agreement to be FFA's --"our"-- Agreement); TT 368-69 (the work product belonged to FFA and could not be obtained by the seller of the property without FFA's –"our"– approval); TT 373 ll. 13-15 (Friedman knew from the outset that Friedman's "client, the developer" was not the owner of the property); TT 436 ll. 1-5 (Friedman acknowledges that Friedman and the developer orally modified the AIA Contract [which Friedman could obviously only do if his company FFA was a party thereto]).

Plaintiff's counsel, Mr. Hoy's questions of Mr. Steppan during trial, and Steppan's answers, likewise demonstrated that the Plaintiff understood that FFA was working directly for the Developer and had not been hired by Steppan. Steppan considers FFA "our firm" (TT 634 at l. 20) and bore testimony throughout trial as to what "we" "us" and "our firm" at FFA were doing, rather than using pronouns such as I, me, or my indicating that he was acting in any independent capacity. "The FFA general time" was tracked for billing the client (TT 651 l. 19 et. seq.) The time parameters under the AIA Agreement were "negotiated between Fisher-Friedman and the client" (TT 715 at ll. 21-24). Sam Caniglia (of the Developer), rather than Steppan, was "the main contact person between **Fisher-Friedman and Associates** and **the developer** on the other hand" (TT 784).

Hence, **any ruling by this Court that FFA was working for Steppan, having been retained by Steppan, as opposed to FFA being involved in a direct contractual relationship with the**

Customer, for whom its work was provided and from whom it obtained direct payments, is not only unsupported by *any* trial evidence, but constitutes a finding which Plaintiff never even directly sought or directly alleged to be the case during trial! Steppan cannot, however, lien for work FFA performed directly for the customer.

FFA, not Steppan, was the only potential claimant who could possibly have shown that it was the party "by or through" whom the work was performed. That FFA could not bring such a lien claim in its name due to the prohibitions of NRS 108.222(2), as it was not licensed in Nevada to provide the architectural services being liened for, does not somehow give FFA the right to have an individual firm member's name be used to pursue a lien on FFA's behalf. *See*, *Nevada Nat'l Bank v. Snyder*, 108 Nev. at 157, 862 P.2d at 562-64. Further evidence that FFA worked directly for the lien claimant, and not for Steppan, and further analysis of the legal implications of that fact, is set forth in the Defendant's October 27, 2014 Motion for Rule 60(b) relief, at pp. 1-8; and 25-39, as well as in pages 1-2, and pp. 7-20 of the Reply brief in support thereof, which are incorporated herein by reference.

E. <u>FFA Performed Its Work Illegally and Steppan Therefore Cannot Lien for the Same</u>.

Even if it were Steppan's subcontractor, FFA was not authorized to perform architectural work in Nevada in any event. NRS 623.180(1)(a) (only Nevada registered architects may practice architecture in Nevada). *DTJ Design Inc. v. First Republic Bank*, 318 P.3d 709, 710-712, 130 Nev. Adv. Op. 5 (2014) (foreign architectural firm which was not registered in Nevada and [like FFA] was not owned by two-thirds Nevada licensees so as to become so registered, could not legally provide architectural services in Nevada). FFA and its employees were clearly providing architectural services and not mere consulting, and FFA's employees were not employed by Steppan, such that the exemptions to this rule, as found at NRS 623.330(1)(a) do not apply. *See*, previously filed Reply in Support of Defendant's Rule 60(b) Motion at pages 16-18, incorporated herein by reference.

Accordingly, *even if* Steppan were the contract architect and *even if* he did hire, retain, and subcontract with FFA, FFA's work was still performed in Nevada illegally and the lien for the same must still be rejected. *See, e.g., Holm v. Bramwell*, 67 P.2d 114 (Cal. Ct. App. 1937) (Prime

Contractor's mechanic's lien claim could not include advances which had been paid by Prime Contractor to an unlicensed subcontractor).

F. Lien Perfection Problems.

This Court should also alter and amend the Orders and Decision and Judgment sought to be reevaluated herein, on the basis of FFA's many failures to substantially comply with the methods required to perfect the so-called "Steppan" lien, as described in the facts and legal analysis set forth in Defendants' prior October 27, 2014 Rule 60(b) Motion, at pages 30-45 thereof, which are incorporated herein by reference.

V. CONCLUSION

For the reasons set forth above, in order to comply with Nevada law, this Court's Decision and Judgment and related pre-trial and post-trial Orders and Partial Summary Judgments must be altered and amended to invalidate, rather than to uphold, the so-called "Steppan" lien, and the Court should instead enter a new judgment in favor of the Defendants, rejecting Plaintiff's lien, and his lien foreclosure lawsuit, in its entirety.

DATED this 10th day of March, 2015.

By _____

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AFFIRMATION

The undersigned does hereby affirm this 10th day of March, 2015, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 10th day of March, 2015, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR COURT TO ALTER OR AMEND ITS JUDGMENT AND RELATED PRIOR ORDERS,** and a copy mailed to the following person:

Michael D. Hoy, Esq. HOY CHRISSINGER KIMMEL P.C. 50 West Liberty Street, Suite 840 Reno, Nevada 89501 mhoy@nevadalaw.com *Attorney for Mark Steppan*	_____ Certified Mail __X__ Electronic Filing/Service _____ Email _____ Facsimile _____ Hand Delivery _____ Regular Mail

An Employee of Albright, Stoddard, Warnick & Albright

INDEX OF EXHIBITS

1. Deposition Transcripts of Mark B.Steppan

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EXHIBIT "1"

EXHIBIT "1"

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

--oOo--

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

AND RELATED ACTIONS.

Case No. CV07-00341
Dept. No. B6

DEPOSITION OF MARK STEPPAN

TUESDAY, FEBRUARY 16, 2010

Reno, Nevada

REPORTED BY: Janet Menges, CCR #206, RPR
Computer-Aided Transcription

taking all the licensing exams, and at that time it would generally take anywhere from five to eight years, nine years after graduation depending on your undergraduate or graduate degree.

Q Do you have any other higher education besides the bachelor of arts in architecture?

A No.

Q Can you give me a history of your employment starting from the time of your graduation from college?

A I was already working for Fisher Friedman Associates at the time I was in college. I started full-time with them in January of 1980 and I'm still presently employed by Fisher Friedman Associates.

Q What positions or titles have you held there?

A Well, everything from starting at the bottom doing filing, et cetera, and drafting all the way up to my current position, which is executive vice-president.

Q Can you go through them for me so I can understand the hierarchy?

A Drafter, designer, job captain, project architect, project manager. I don't know if there is any other title between that and executive vice-president. Given the size of the office many of those functions were performed at the same time and we're not structured on pure category.

Q I know from your earlier deposition that there were nine or ten architects in the firm at the time of that deposition. Is that still true?

A No, there are currently nine people in the firm total currently.

Q Okay.

And of those how many are architects?

A Five.

Q Of the hierarchy that just described starting with drafter, designer, job captain, project architect, project manager, and then executive vice-president, how many of those jobs were held before you became a licensed architect?

A Probably just the drafter and job captain and designer.

Q So the first three are the sorts of positions that are held by unlicensed or unregistered architects?

A Incorrect.

Q Incorrect?

A Um-hum.

Just by their nature and by the order of how I have presented them does not make them held by unlicensed architects. Typically a job captain role can be held by a licensed architect, as can a designer. So one of the people I have told you was licensed in the

office is one of the two main designers in the office. He is licensed.

There is no -- There is no distinct correlation. The only one that is typical to be not licensed is the drafter.

Q As I understood your answer, the three jobs that you mentioned, drafter, designer and job captain, are ones that you held before you were an architect?

A I believe so, although I'm sure the job captain morphed over.

Q So it's not necessary within your profession that those particular types of jobs be held by architects, although I understand they may be from time to time?

A Correct.

Q But to be called a project architect, which I think is the next in the order that you gave me, that is a job that must be held by a licensed architect?

A Correct.

Q Now, there are other titles that are held within Fisher Friedman Associates beyond the executive vice-president, or not beyond, but in addition to the executive vice-president that have more corporate sounding names like vice-president, senior vice-president, executive vice-president; correct?

A Yes, there are a couple of those.

Q There were people who held those positions back in 2005 and 2006?

A Yes.

Q Tell me how those particular positions fit into the hierarchy, if in fact they are part of the hierarchy?

A I'm not sure how best to answer your question. Are you talking about people -- Let me rephrase.

Are you asking about people that have worked on this project or just in the office?

Q Well, my question certainly is prompted by the titles that were held by some of the people that worked on this project, but I'm trying to understand how Fisher Friedman works in terms of its titular hierarchy, if there is such a thing, and maybe there isn't?

A There isn't any particular hierarchy. Other people that worked on the project have titles such as senior vice-president, I believe for the other two people of that senior level, but that does not really come into play in the role they might play. They may do designer's work, job captain's work, project architect's work, project manager's work.

Q Let me see if I understand correctly.

The initial names and positions you talked

about were how the profession is arrayed, at least in your firm, with regard to the jobs that they perform.

In addition to that these people may have other positions as corporate officers. Is that an accurate characterization of what you're trying to say?

A I suppose they could, but the corporate officer component is not a necessary component of the office functioning of the projects.

Q I understand that distinction. You define people's roles by their titles within the profession, but they may also have other roles as officers of the corporation?

A They might.

Q So with that in mind, let's go back to 2005 and 2006 and talk about the people that were employed then, the professionals or paraprofessionals, and what their titles or positions were on both sides of the hierarchy?

A Working on this project?

Q Yes.

Let's start at the most senior and go down.

A Well, you would have Rodney Friedman, who is the president, CEO, director of design. You would have me --

Q Just a second.

A Sorry.

Q Rodney Friedman held the position of president of the corporation?

A Correct.

Q Okay.

Did he also hold an architectural type of title?

A You could call it director of design. It's not on a business card.

Q Okay.

So he was the --

A He is the sole proprietor so he oversees everything that goes on.

Q So Mr. Fisher was not engaged in the business back then?

A No, Fisher retired around '97.

Q All right.

And by sole proprietor do you mean the sole owner of Fisher Friedman Associates?

A Correct.

Q And in terms of how long had Mr. Friedman been a licensed or registered architect back in -- Well, it's easier to figure from today, I guess?

A I don't remember when he first got licensed in California.

Q How old is he?

A Seventy-six.
Q Is there a relationship, a family relationship between you and he?
A Yes, I'm his son-in-law.
Q So you're married to his daughter?
A That follows.
Q How long have you been married to Rodney Friedman's daughter?
A Since 1985.
Q Then in terms of seniority within the firm back in 2004, 2005, are you the next most senior?
A Yes.
Q And your corporate title then was executive vice-president?
A Yes, it says that and director of operations on the business card. It's not a corporate title. That is just an architectural functioning title.
Q Can you explain to me what the director of operators does in your firm?
A Oversee the operation of the firm from the standpoint of things such as taking out the garbage, looking at invoicing, running projects, ordering supplies, handling the computer system.
Q All right.
It says --

Q For the purposes of the fee schedule the vice-president and architect III and a project manager III all billed out at the same rate. Would it be fair to assume from that those people were generally of the same level of experience and hierarchy within the firm?

A I suppose that is reasonable.

Q For instance, on a particular job is a project manager III senior to an architect III or are these just interchangeable?

A They are somewhat interchangeable and I don't set how they are used. That is a full list of possible titles and positions, some of which are used, some of which are never used.

Q All right.

Then the next level down is the architect II, project manager II. Would those also be somewhat interchangeable?

A Somewhat.

Q So who filled this basically level below that of senior vice-president on the Reno project in 2005, 2006, do you know, and I'm talking about the vice-president, architect III or project manager III?

A Well, Nathan effectively was acting as the project manager. So that is a point of multi-tasking, if you want to look at it.

was defined other than as executive vice-president?

A I'm not sure I understand the question as it relates.

Q Is there a professional role above that of project manager on a particular project?

A Not that I'm aware of from a title standpoint.

Q Well, how would you define your role on the Reno project as executive vice-president, and if it changes over the course of time, tell me about that as well?

A The project was being performed under my purveyance as the supervising architect. That included involvement from attending of meetings and meeting parties and participating in decision making to looking over people's shoulders and seeing if they were properly drawing items or to telephone calls, whatever it might be. It was an oversight role as is typical of someone in my position.

Q All right.

Was that pretty much how you would define your role from the time it started in late 2005 until the time you stopped doing work in late 2006?

A I don't know how else to define it.

Q I'm sorry?

A I don't know how else to define it.

Q So you think that Sam Caniglia was an owner of Consolidated Pacific?

A That is what I understood.

Q Did you understand that Anthony Iamesi was as well or that he was not an owner?

A I didn't really think about it. I just assumed he worked for Sam.

Q Do you remember why this was addressed to Tony rather than Sam?

A No.

Q In the last sentence on page 2, which is Steppan 3051, it identifies a project number, and this is the project number used within Fisher Friedman Associates?

A Correct.

Q I see you give two alternatives. It could be 0515 or 0515-R. I presume the R stands for Reno?

A No.

Q What does it stand for?

A 0515 is the base job number. 0515-R is reimbursables. Reimbursables are tracked separately than base fee.

Q So this became project number 515?

A 0515.

Q There is a difference?

Q That wasn't my question.

Did you enter into an agreement or understanding?

A The understanding was that Fisher Friedman would get the monies on the project.

Q And then how would it be distributed after that?

A As part of Fisher Friedman's income.

Q Let's talk, then, about how that would happen if this project had been in California. Under the terms of your employment were you paid a salary or a performance based compensation?

A Salary.

Q So it was a straight salary?

A Yes.

Q With bonuses?

A No.

Q Was that to be the case with this Nevada contract?

A Yes.

Q Did you have any expectation either in your own mind or based upon what you were told by anyone else that you would enjoy some additional financial benefit by virtue of the fact that you were being the architect of record on the Reno job?

A No.

Q There was no revenue sharing arrangement at Fisher Friedman beyond Mr. Friedman?

A Correct.

Q In this case later on in 2006 there were payments that were made under the contract. Did you receive any of those funds beyond what you would have received otherwise from your salary?

A No.

Q Was your salary a fixed amount each year?

A Yes.

Q It wasn't dependent upon the success or lack of success of the business?

A It's not dependent upon the success of the business, but if the business is not doing well there have been times when we have taken salary reductions to compensate for reduced business.

Q But on the really good years there were no bonuses that were paid or salary adjustments up?

A Generally not. I don't think I have had a bonus in fifteen years.

Q And for this project once it was signed in April you had no expectation of any financial benefit to come from this contract, other than the possibility that it might help your firm pay your salary; is that

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

--oOo--

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

AND RELATED ACTIONS.

Case No. CV07-00341
Dept. No. B6

DEPOSITION OF MARK STEPPAN

VOLUME II

TUESDAY, MARCH 2, 2010

Reno, Nevada

REPORTED BY: Janet Menges, CCR #206, RPR
Computer-Aided Transcription

A Yes.
Q It's a letter to Calvin Bosma?
A Yes.
Q And do you recognize this as a letter in which Mr. Friedman was writing about nonpayment of some outstanding billings?
A Yes.
Q It makes references to invoices that are three months overdue, which would put them into June or so. I couldn't find in all of the records that were produced by you any invoices in June, July or August. Do you know if these invoices were on the hourly billing part for $573,000 or the percentage part?
A Well, once the contract was signed in April and backdated to October, the only thing that would have gone out on hourly were the added services that were kept on hourly. Everything else was referenced and related and credited back to a percentage of construction cost phase fee amount due, so there was no hourly any more period, other than as I stated any work done on an added service.

So this would be against the base contract which was effectively -- excuse me, which was effective October of '05.

Q Do you recall that there had not been any

payment on that contract from February when that 200 some thousand dollar check that we saw last time that we were together up until September of 2006?

A That sounds right, but I don't remember if we received any payments at all in that time frame.

Q Is that something that you were watching over?

A A little bit. Rodney and Nathan and Susie were more on top of that and I would just check in on occasion.

Q Do you recall some discussion within the firm about having Rodney Friedman write this demand letter as opposed to you or Nathan Ogle or anybody else?

A I'm not aware if there was any discussion about it.

Q Would it be fair to say in light of this letter and the language in it about the carried costs for this amount that this was becoming a significant problem within the firm in September of 2006?

A Yes, and it had been a problem earlier than that, that's correct.

Q Is there some reason why you didn't write this letter?

A Well, as I have stated before, this project was being done as sort of in a standard way where the firm is not licensed in the state, but one of its employees

is, and so the reality is that both of us were doing the project for the client who fully understood the relationship between my being licensed for signing of the drawings and having responsible control, so to speak, and Rodney designing the project and how that all worked. So it was not unreasonable at all for Rodney to be writing this letter.

Q Is it also fair to say that basically the design, the principal source of design output from the firm was coming from Rodney?

A The firm to which I belong, yes. Fisher Friedman was doing the design.

Q But the person within the firm who was providing the vision and the conceptual design of this project was primarily Rodney Friedman?

A Rodney with David.

Q With David Tritt?

A Tritt.

Q Tritt?

A Yes.

Q Is the statement in this letter true that in the meantime as a result of this nonpayment we, in this case it's hard to tell who we means if it's written on Mark B. Steppan's letterhead, have been forced to borrow capital at prime plus two percent to cover the

documents produced each marked Steppan starting with 17 through the 7,000 range. My preliminary question is did you gather up those records for production?

A Did I personally gather them up?

Q That is my question.

A No.

Q Are all of the documents that have been produced with the Steppan, what we call Bates number, 17 through 7,000 period, are those from the files of Fisher Friedman Associates?

A Yes.

Q Do you, Mark Steppan, have any separate file with respect to the Reno project?

A No.

Q To your knowledge does any architectural professional at Fisher Friedman have any separate file regarding the Reno project?

A No, all the files are in that set of boxes.

Q Does any non-architectural professional, someone who is clerical, accounting or other staff functions have any separate files for the Reno project, other than what has been produced?

A No, I believe all the administration files are there.

Q Could you look at Exhibit 4 to your previous

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Transaction # 4971032

CODE: 3025

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., et al.,

Defendants.
_____/

Case No. CV07-00341
Dept. No. 10

ORDER DENYING DEFENDANTS' MOTION FOR COURT TO ALTER OR AMEND ITS JUDGMENT AND RELATED PRIOR ORDERS

Presently before the Court is a DEFENDANTS' MOTION FOR COURT TO ALTER OR AMEND ITS JUDGMENT AND RELATED PRIOR ORDERS ("the Motion"). The Motion was filed by the Defendants JOHN ILIESCU, JR., SONNIA SANTEE ILIESCU, JOHN ILIESCU, JR., SONNIA SANTEE ILIESCU as trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST ("the Defendants") on March 10, 2015. The Plaintiff MARK B. STEPPAN ("the Plaintiff") filed an OPPOSITION TO DEFENDANTS' MOTION TO ALTER OR AMEND JUDGMENT AND RELATED ORDERS ("the Opposition") on March 11, 2015. The Defendants filed a REPLY POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO ALTER OR AMEND JUDGMENT AND RELATED ORDERS ("the Reply") on March 20, 2015. The Motion was submitted to the Court for consideration on March 26, 2015.

These proceedings arise out of a bench trial conducted December 9-12, 2013. The trial was an action to enforce a mechanic's lien. The Court entered its FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION ("FFCLD") on June 28, 2014. The Court ruled in favor of the Plaintiff. There has been extensive post-trial motion practice. Specifically, the Court entered a DECISION AND ORDER DENYING NRCP 60(b) MOTION on March 13, 2015. The pending Motion re-argues issues previously raised in the trial and during the subsequent motion practice, but using a different rule of civil procedure. The Court has thoroughly reviewed the previous pleadings, the entire record of the trial to include all of the exhibits admitted and the transcript thereof, the case law that has been announced post-trial,[1] and the previous arguments of counsel on these issues. The Motion will be denied.

The Motion is predicated primarily on NRCP 59(e).[2] In *Stevo Design, Inc. v. SBR Marketing, Ltd.*, 919 F.Supp.2d 1112 (D.Nev. 2013), Judge Hicks analyzed the requirements for relief under FRCP 59(e), the Federal counterpart to NRCP 59(e). Federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when examining the Nevada Rules of Civil Procedure. *Nelson v. Heer,* 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005). The Federal Court held a motion to alter or amend a judgment under rule 59(e) is, "an extraordinary remedy which should be used sparingly." *Id.*, 919 F.Supp. at 1117 (*citing*, *McDowell v. Calderon*, 197 F.3d 1253, 1255 n. 1 (9th Cir. 1999)). The Court went on to hold that this infrequent relief is granted in the following limited situations:

> (1) where the motion is necessary to correct "manifest errors of law or fact upon which the judgment rests;" (2) where the motion is necessary to present newly discovered or previously unavailable evidenced; (3) where the motion is necessary to "prevent manifest

[1] *See generally, Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. Adv. Op. 57, 331 P.3d 850 (Nov. 2014) and *DTJ Design, Inc. v. First Republic Bank*, 130 Nev. Adv. Op. 5, 318 P.3d 709 (Feb. 2014).

[2] The Motion also cites NRCP 52(b).

injustice;" and (4) where the amendment is justified by an intervening change in controlling law.

Id. (*citing, Allstate Insurance Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)).

A court's findings regarding a materialman's lien must be "supported by substantial evidence." *Simmons*, 331 P.3d at 855-56. "Substantial evidence" is that evidence which "a reasonable mind might accept as adequate to support a conclusion." *Id.*, 331 P.3d at 356 (*citing, Yamaha Motor Co. U.S.A. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998)). The Motion raises no issue that has not previously been fully briefed and a disposition rendered. The Court still finds that the FFCLD is the appropriate conclusion in these proceedings. The Court believes that the FFCLD is supported by substantial evidence. The Court finds that there is no manifest injustice in the FFCLD; nor is there manifest error in the decision in this case. The Court has considered the subsequent opinions of the Nevada Supreme Court referenced by the parties and concludes they do not alter the Court's analysis in any way.[3]

Now, therefore, it is ORDERED that the DEFENDANTS' MOTION FOR COURT TO ALTER OR AMEND ITS JUDGMENT AND RELATED PRIOR ORDERS is hereby DENIED.

DATED this 27 day of May, 2015.

DISTRICT JUDGE

[3] The Motion does not allege that there is any "newly discovered or previously unavailable" evidence for the Court to consider.

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 27 day of May, 2015, 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:

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 27 day of May, 2015, 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:

MICHAEL D. HOY, ESQ.

G. MARK ALBRIGHT, ESQ.

Sheila Mansfield

CODE: $2515
G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
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Attorneys for Appellants/Applicants/Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU, individually, JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT Applicants, vs. MARK B. STEPPAN, Respondent.	CASE NO. CV07-00341 (Consolidated w/CV07-01021) DEPT NO. 10
MARK B. STEPPAN, Plaintiff, vs. JOHN ILIESCU, individually, JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; DOES I-V, inclusive; and ROE CORPORATIONS VI-X, inclusive, Defendants.	**NOTICE OF APPEAL BY JOHN ILIESCU, JR., INDIVIDUALLY, and JOHN ILIESCU, JR. AND SONNIA SANTEE ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT**
AND RELATED CLAIMS.	

NOTICE is hereby given that JOHN ILIESCU, JR., individually, and JOHN ILIESCU AND SONNIA SANTEE ILIESCU as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, the Applicants in Case No. CV07-00341 and the Defendants in Case No. CV07-01021 consolidated therewith (jointly hereinafter the "Appellants" or the "Iliescus") hereby appeal to the Supreme Court of the State of Nevada from the following orders, judgments and

rulings entered against them and in favor of Mark B. Steppan, the Respondent in Case No. CV07-00341, and the Plaintiff in Case No. CV07-01021 consolidated therewith (hereinafter "Respondent" or "Steppan") in these proceedings:

(i) the "Judgment, Decree and Order for Foreclosure of Mechanic's Lien" entered by the District Court on February 26, 2015 (Washoe County Clerk Transaction No. 4836215);

(ii) the June 22, 2009 "Order" denying a Motion for Partial Summary Judgment filed by the Iliescus, and granting a Cross-Motion for Partial Summary Judgment filed by Steppan (Transaction 850528);

(iii) the May 9, 2013 "Order Granting Motion for Partial Summary Judgment" in favor of Steppan (Transaction 3715397);

(iv) the August 23, 2013 "Order Granting Motion to Strike or Limit Jury Demand" (Transaction 3946236);

(v) the May 28, 2014 post-trial "Findings of Fact, Conclusions of Law and Decision" (Transaction 4451229);

(vi) the March 13, 2015 "Decision and Order Denying NRCP 60(b) Motion" (Transaction 4860752);

(vii) the May 27, 2015 "Order Denying Defendants' Motion for Court to Alter or Amend Its Judgment and Related Prior Orders" (Transaction 4971032);

(viii) any and all other orders, judgments, decisions, or rulings of the District Court during this litigation which led to or resulted from any of the foregoing orders, rulings, and partial or full summary or final judgments, or which would need to be overturned in order to afford the Iliescus, as Appellants, full and adequate appellate relief herein, such as, without limitation: any oral rulings from the bench regarding the admissibility of evidence during trial (including the Court's ruling excluding and limiting certain expert testimony as described in the Iliescus' Offer of Proof, filed on October 2, 2013); any oral decisions from the bench in response to oral motions (such as motions to dismiss) during trial or during other pre-trial or post-trial appearances, together with any follow-up written orders on such matters; the Amended Order regarding Plaintiff's

LAW OFFICES
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A PROFESSIONAL CORPORATION
QUAIL PARK, SUITE D-4
801 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89106

Motion for Attorneys' Fees and the Amended Order regarding Plaintiff's Motion for Costs, both entered on December 12, 2014 (Transactions 4734845 and 4734821), as well as the original versions of said Orders amended thereby, and the intervening orders on motions to clarify or reconsider said original versions of the subsequently amended orders.

DATED this 23rd day of June, 2015.

By _____

G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
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LAS VEGAS, NEVADA 89106

AFFIRMATION

The undersigned does hereby affirm that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

DATED this 23rd day of June, 2015.

By _____

G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
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801 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89106

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 23rd day of June 2015, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **NOTICE OF APPEAL BY JOHN ILIESCU, JR., INDIVIDUALLY, and JOHN ILIESCU, JR. AND SONNIA SANTEE ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT,** and a copy mailed to the following person(s):

Michael D. Hoy, Esq. HOY CHRISSINGER KIMMEL VALLAS, P.C. 50 West Liberty Street, Suite 840 Reno, Nevada 89501 (775) 786-8000 mhoy@nevadalaw.com *Attorney for Plaintiff Mark Steppan*	____ Certified Mail __X__ Electronic Filing/Service ____ Email ____ Facsimile ____ Hand Delivery __X__ Regular Mail
David R. Grundy, Esq. Todd R. Alexander, Esq., LEMONS, GRUNDY & EISENBERG 6005 Plumas Street, Third Floor Reno, Nevada 89519 drg@lge.net / tra@lge.net *Attorneys for Third-Party Defendant Hale Lane*	____ Certified Mail __X__ Electronic Filing/Service ____ Email ____ Facsimile ____ Hand Delivery __X__ Regular Mail

An Employee of Albright, Stoddard, Warnick & Albright

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Jacqueline Bryant
Clerk of the Court
Transaction # 5069048

CODE 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK B. STEPPAN,

Plaintiff,

vs.

Case No. CV07-00341

Consolidated with CV07-01021

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, individually; DOES 1-V, inclusive; and ROE CORPORATIONS VI-X, inclusive,

Defendants.

_____/

ORDER

Presently before the Court is a DEFENDANTS' MOTION FOR STAY OF EXECUTION OF "JUDGMENT, DECREE, AND ORDER FOR FORECLOSURE OF MECHANIC'S LIEN" PENDING APPEAL, WITHOUT THE NECESSITY OF ANY BOND ("the Motion") filed by Defendants JOHN ILIESCU JR. and SONNIA ILIESCU, as trustee of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; JOHN ILIESCU, individually, (collectively "the Defendants") on June 1, 2015. Plaintiff MARK B. STEPPAN ("the Plaintiff") filed an OPPOSITION TO MOTION FOR STAY OF JUDGMENT PENDING APPEAL WITHOUT SUPERSEDEAS BOND ("the Opposition") on June 8, 2015. The Defendants filed a

DEFENDANTS' REPLY POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION FOR STAY OF EXECUTION OF JUDGMENT WITHOUT THE NECESSITY OF ANY BOND ("the Reply") on June 12, 2015. The Motion was submitted for the Court's consideration on June 15, 2015.

These proceedings arise out of a bench trial conducted December 9-12, 2013. The trial was an action to enforce a mechanic's lien. The Court entered its FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION on June 28, 2014. After extensive post-trial motion practice, the Court entered a JUDGMENT, DECREE, AND ORDER FOR FORECLOSURE OF MECHANIC's LIEN ("the Judgment") on February 26, 2015. The Court entered an ORDER DENYING DEFENDANTS' MOTION FOR COURT TO ALTER OR AMEND ITS JUDGMENT AND RELATED PRIOR ORDERS on May 27, 2015.

The Motion seeks a stay of execution by Plaintiff pursuant to the Judgment without the necessity of any security bond beyond the mechanic's lien currently securing Plaintiff's claim. Pursuant to NRCP 62(d), an appellant may obtain a stay by giving a supersedeas bond. The Supreme Court of the State of Nevada ("the Supreme Court") has recognized the purpose of a security for stay pending appeal "is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo." *Nelson v. Heer,* 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005), *as modified* (Jan. 25, 2006). "[A] bond should not be the judgment debtor's sole remedy, particularly where other appropriate, reliable alternatives exist." *Id.* A "district court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond when unusual circumstances exist and so warrant." *McCulloch v. Jeakins,* 99 Nev. 122, 123, 659 P.2d 302, 303 (1983). The Supreme Court noted the focus should be what security maintains the status quo and protects a judgment. *Nelson,* 121 Nev. at 835, 122 P.3d at 1254. Based upon such reasoning, the Supreme Court adopted the following test to determine when a full supersedeas bond may be waived or alternate security may be substituted:

> 1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious

> financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Id.

While the Motion does acknowledge the *Nelson* factors, the Motion alleges this Court "needs to decide whether Plaintiff or Defendants are correct in their assertions regarding Nevada law." The Motion, 7:3-4. The Motion contends the Judgment is not a personal judgment, but only an amount of the Lien which can be satisfied up to the value of the property, thus precluding the application of the *Nelson* factors. The Motion invites the Court to rule upon the potential for personal liability in the event of a deficiency. The Court again finds this issue is not ripe for decision.

The Opposition asserts the Motion fails to present any evidence upon which the Court can evaluate the *Nelson* factors. The Opposition contends the collection process will be complex due to the Defendants routine engagement in delay tactics. The Opposition 4:13-14. The Opposition argues the time to obtain the judgment after appeal may be lengthy if the Defendants succeed on any one theory on their appeal. As to the third, fourth, and fifth factors, the Opposition asserts the Motion fails to present any evidence upon which the Court can evaluate the availability of assets and the Defendants' ability to pay the bond.

The Court finds the Motion has failed to demonstrate unusual circumstances permitting a reduction in, or alternative to, the required bond. The Motion does not provide this Court with evidence to adequately consider the *Nelson* factors.

IT IS HEREBY ORDERED the Motion is DENIED.

DATED this 29 day of July, 2015.

ELLIOTT A. SATTLER
DISTRICT JUDGE

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 29 day of July, 2015, 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:

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 29 day of July 2015, 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:

Michael D. Hoy, Esq.

G. Mark Albright, Esq.

Sheila Mansfield
Administrative Assistant

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., INDIVIDUALLY; AND JOHN ILIESCU, JR. AND SONNIA ILIESCU, AS TRUSTEES OF THEJOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT,

Appellants,

vs.

MARK B. STEPPAN,

Respondent.

No. 68346

CV07-00341
DID

FILED

OCT 23 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING MOTION FOR STAY WITHOUT POSTING ANY FURTHER SECURITY AND ORDER TO SHOW CAUSE

This is an appeal from numerous district court orders entered in consolidated actions regarding a mechanic's lien. Appellants have filed a motion for a stay of the execution of judgment or foreclosure pending appeal without posting any further security. Respondent opposes the motion and appellants have filed a reply. Having considered the parties' arguments, we conclude that the existing lien adequately protects respondent from prejudice due to a stay and preserves the status quo. *See Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005). Accordingly, we grant the motion and stay the foreclosure proceedings pending further order of this court. Appellants shall not be required to post a supersedeas bond or any other bond.

Our initial review of the docketing statement and documents submitted to this court reveals potential jurisdictional defects. First, it

appears that the district court's February 26, 2015, order is independently appealable pursuant to NRS 108.2275(8) to the extent it resolves appellants' motion to release the lien. However, the February 26, 2015, order also resolves respondent's complaint to foreclose on the lien. To the extent the order resolves the foreclosure complaint, it is not appealable as a final judgment pursuant to NRAP 3A(b)(1) because third party claims remain pending. And it is unclear whether the order resolves all of the cross-clams because appellants have not included a copy of the September 2, 2009, third party complaint with the docketing statement. The district court purported to certify the February 26, 2015, order as final pursuant to NRCP 54(b), however, the certification appears improper because the district court did not make an express direction for the entry of judgment. *See* NRCP 54(b); *Knox v. Dick*, 99 Nev. 514, 516, 665 P.2d 267, 268 (1983). Further, in the absence of the September 2, 2009, third party complaint it is not clear whether appellants or respondent have been completely removed from the action. *See Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 797 P.2d 978 (1990).

Second, appellants identify the district court's May 27, 2015, order denying a motion to alter or amend as an order challenged on appeal. But an order denying a motion to alter or amend is not appealable. *Uniroyal Goodrich Tire v. Mercer*, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995), *superseded on other grounds by statute as stated in RTTC Communications, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 110 P.3d 24 (2005).

Accordingly, appellants shall have 30 days from the date of this order to show cause why this appeal should not be dismissed in part

for lack of jurisdiction. We caution appellants that failure to demonstrate that this court has jurisdiction may result in the dismissal of this appeal.

It is so ORDERED.[1]

Saitta, J.

Gibbons, J.

Pickering, J.

cc: Hon. Elliott A. Sattler, District Judge
Second Judicial District Court Dept. 6
J. Douglas Clark, Settlement Judge
Albright Stoddard Warnick & Albright
Hoy Chrissinger Kimmel, PC
Washoe District Court Clerk

[1]We note that the settlement judge has filed a report indicating that the parties were unable to agree to a settlement of this matter. The requesting of transcripts and the briefing schedule in this matter shall remain stayed pending resolution of the jurisdictional issue.

3105

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

MARK B. STEPPAN, Plaintiff, v. JOHN ILIESCU, JR. and SONNIA ILIESCU, as trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement; JOHN ILIESCU; DOES I-V, INCLUSIVE, AND ROE CORPORATIONS VI-X, INCLUSIVE, Defendants. And Related Claims.	Consolidated Case Nos. CV07-00341 and CV07-01021 Dept. No. 10

Decision and Order Granting Motion Seeking Clarification of Finality of Judgment

On February 26, 2015, this Court entered a Judgment, Decree and Order for Foreclosure of Mechanics Lien ("Judgment"). The Applicants in Case No. CV07-00341 and the above-captioned Defendants in Case No. CV07-01021, consolidated therewith (hereinafter the "Defendants" or "Appellants") appealed the Judgment, thereby commencing *Iliescu et al. v. Steppan*, Nevada Supreme Court Case No. 68346 (the

"Appeal"). On October 23, 2015 the Nevada Supreme Court entered an "Order Granting Motion for Stay Without Posting Any Further Security and Order to Show Cause" ("Order to Show Cause") in the Appeal, which, among other matters, provides in relevant part:

> The district court purported to certify the February 26, 2015 [Judgment] as final pursuant to NRCP 54(b), however, the certification appears improper because the district court did not make an express direction for the entry of judgment. Further . . . it is not clear whether the appellants or respondent have been completely removed from the action.

Order to Show Cause, page 2.

On October 29, 2015, Defendants (and Appellants) filed a "Motion Seeking Clarification of Finality of Court's Recent Judgment for Purposes of Maintaining Appeal...." ("Motion"). The Motion was fully briefed, submitted for decision, and argued at a hearing on November 13, 2015. Based on the briefing and oral arguments, it is plain that both Plaintiff/Respondent and Defendants/Appellants agree that the Judgment is a final, appealable order. Such was also this Court's intent. Furthermore, no claims remain pending herein against the Defendants/Appellants or the Plaintiff/Respondent.

For purposes of clarification, this Court hereby amends, with retroactive effect, the Judgment, as set forth hereinafter. In the event that this Court currently lacks jurisdiction to amend the Judgment, this Court indicates that upon dismissal of the Appeal it will amend the Judgment to comply with NRCP 54(b) and any other

requirements of the Nevada Supreme Court to make the Judgment final and appealable, as set forth herein.

Therefore, good cause appearing,

IT IS HEREBY ORDERED as follows:

Paragraph 7 of the Judgment is hereby amended, *nunc pro tunc*, as aforestated, to read as follows:

7. This Judgment finally and fully adjudicates all of the claims and all of the defenses between Mark B. Steppan ("Steppan") on the one hand, and John Iliescu Jr., individually, and John Iliescu, Jr., and Sonnia Iliescu as Trustees of the John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust Agreement ("Iliescus") on the other hand, in both of these consolidated cases. Notwithstanding the existence of certain pending third-party claims by the Iliescus against certain third-party defendants which remain pending and have not yet been fully resolved or adjudicated herein, this Court, pursuant to NRCP 54(b): expressly determines that there is no just reason for delay; expressly directs entry of this Judgment in favor of Steppan and against the Iliescus as of February 26, 2015; and certifies this Judgment as final.

DATED November 17 2015.

Hon. Elliott A. Sattler
District Judge

//

//

Form of order submitted by:

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D. Chris Albright (NV 4904)
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

vs.

MARK B. STEPPAN, Respondent.

MARK B. STEPPAN,

Plaintiff,

vs.

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

Defendants.

AND RELATED CLAIMS.

CASE NO. CV07-00341
(Consolidated w/CV07-01021)

DEPT NO. 10

AMENDED NOTICE OF APPEAL BY JOHN ILIESCU, JR., INDIVIDUALLY, and JOHN ILIESCU, JR. AND SONNIA SANTEE ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT

NOTICE is hereby given that JOHN ILIESCU, JR., individually, and JOHN ILIESCU AND SONNIA SANTEE ILIESCU as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, the Applicants in Case No. CV07-00341 and the Defendants in Case No. CV07-01021 consolidated therewith (jointly hereinafter the "Appellants" or the "Iliescus")

hereby appeal to the Supreme Court of the State of Nevada from the following orders, judgments and rulings entered against them and in favor of Mark B. Steppan, the Respondent in Case No. CV07-00341, and the Plaintiff in Case No. CV07-01021 consolidated therewith (hereinafter "Respondent" or "Steppan") in these proceedings. This Amended Notice is filed as a precautionary measure, at this time, in recognition of: the Nevada Supreme Court's October 28, 2015 Order to Show Cause; the District Court's issuance of a "Decision and Order Granting Motion Seeking Clarification of Finality of Judgment" entered on November 17, 2015, which again certified the Judgment (listed as item (i) herein, below), as final, notice of entry of which Decision and Order was served on December 16, 2015; Appellants' Response to the Order to Show Cause, filed on November 19, 2015; and the fact that the Nevada Supreme Court has not yet ruled on the Order to Show Cause, but the re-certification of the Judgment, as final, was entered within the past 30 days. This Amended Notice also deletes a reference to a May 27, 2015 Order denying a motion to alter or amend, which the Supreme Court has indicated, in its October 23, 2015 Order to Show Cause, was not appealable. This Amended Notice of Appeal is not intended to prejudice any rights which appellants already enjoy under their original Notice of Appeal, and if this Amended Notice of Appeal is unnecessary it may be disregarded, depending on the outcome of the Order to Show Cause. The following District Court Orders, Decisions, rulings, and Judgments are appealed:

(i) the "Judgment, Decree and Order for Foreclosure of Mechanic's Lien" entered by the District Court on February 26, 2015 (Washoe County Clerk Transaction No. 4836215);

(ii) the June 22, 2009 "Order" denying a Motion for Partial Summary Judgment filed by the Iliescus, and granting a Cross-Motion for Partial Summary Judgment filed by Steppan (Transaction 850528);

(iii) the May 9, 2013 "Order Granting Motion for Partial Summary Judgment" in favor of Steppan (Transaction 3715397);

(iv) the August 23, 2013 "Order Granting Motion to Strike or Limit Jury Demand" (Transaction 3946236);

(v) the May 28, 2014 post-trial "Findings of Fact, Conclusions of Law and Decision" (Transaction 4451229);

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(vi) the March 13, 2015 "Decision and Order Denying NRCP 60(b) Motion" (Transaction 4860752);

(vii) any and all other orders, judgments, decisions, or rulings of the District Court during this litigation which led to or resulted from any of the foregoing orders, rulings, and partial or full summary judgments or final judgments, or which would need to be overturned in order to afford the Iliescus, as Appellants, full and adequate appellate relief herein, such as, without limitation: any oral rulings from the bench regarding the admissibility of evidence during trial (including the Court's ruling excluding and limiting certain expert testimony as described in the Iliescus' Offer of Proof, filed on October 2, 2013); any oral decisions from the bench in response to oral motions (such as motions to dismiss) during trial or during other pre-trial or post-trial appearances, together with any follow-up written orders on such matters; the Amended Order regarding Plaintiff's Motion for Attorneys' Fees and the Amended Order regarding Plaintiff's Motion for Costs, both entered on December 12, 2014 (Transactions 4734845 and 4734821), as well as the original versions of said Orders amended thereby, and the intervening orders on motions to clarify or reconsider said original versions of the subsequently amended orders, and all other appealable pre-trial, trial, and post-trial orders and judgments of the Court which accrued to the benefit of Respondent Steppan.

DATED this 16th day of December, 2015.

By _____

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AFFIRMATION

The undersigned does hereby affirm that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

DATED this 16th day of December, 2015.

By _____

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 16th day of December, 2015, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **AMENDED NOTICE OF APPEAL BY JOHN ILIESCU, JR., INDIVIDUALLY, and JOHN ILIESCU, JR. AND SONNIA SANTEE ILIESCU, AS TRUSTEES OF THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT,** and a copy mailed to the following person(s):

Michael D. Hoy, Esq. HOY CHRISSINGER KIMMEL VALLAS, P.C. 50 West Liberty Street, Suite 840 Reno, Nevada 89501 (775) 786-8000 mhoy@nevadalaw.com *Attorney for Plaintiff Mark Steppan*	____ Certified Mail __X__ Electronic Filing/Service ____ Email ____ Facsimile ____ Hand Delivery __X__ Regular Mail
David R. Grundy, Esq. Todd R. Alexander, Esq., LEMONS, GRUNDY & EISENBERG 6005 Plumas Street, Third Floor Reno, Nevada 89519 drg@lge.net tra@lge.net *Attorneys for Third-Party Defendant Hale Lane*	____ Certified Mail __X__ Electronic Filing/Service ____ Email ____ Facsimile ____ Hand Delivery __X__ Regular Mail

An Employee of Albright, Stoddard, Warnick & Albright

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., INDIVIDUALLY; AND JOHN ILIESCU, JR. AND SONNIA ILIESCU, AS TRUSTEES OF THEJOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT ,

Appellants,

vs.

MARK B. STEPPAN,

Respondent.

No. 68346

ORDER DISMISSING APPEAL IN PART AND REINSTATING BRIEFING

This is an appeal from district court orders entered in consolidated actions regarding a mechanic's lien. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

We previously entered an order directing appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, we questioned whether the district court's February 26, 2015, order was appealable as a judgment certified as final under NRCP 54(b) where it was not clear whether a party had been completely removed from the action or the certification contained an express direction for entry of judgment. *See* NRAP 3A(b)(1); *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 797 P.2d 978 (1990); *Knox v. Dick*, 99 Nev. 514, 516, 665 P.2d 267, 268 (1983). We also noted that although appellants purported to appeal from an order denying a motion to alter or amend, such an order is not appealable. *Uniroyal Goodrich Tire v. Mercer*, 111 Nev. 318, 320 n.1, 890 P.2d 785, 787 n.1 (1995), *superseded on other grounds by statute as stated*

in RTTC Commc'nc, LLC v. Saratoga Flier, Inc., 121 Nev. 34, 110 P.3d 24 (2005).

Appellants have filed a response wherein they concede that the order denying the motion to alter or amend is not appealable. Accordingly, we dismiss this appeal as to the May 27, 2015, order denying the motion to alter or amend. Appellants also assert that the February 26, 2015, order was properly certified as final and have attached several district court documents to support that assertion. Having considered appellants' argument and the attached documentation, we conclude that the district court order was properly certified as final. Accordingly, this appeal may proceed as to the February 26, 2015, order.

Briefing of this appeal is reinstated. Appellants shall have 11 days from the date of this order to file and serve a transcript request form. *See* NRAP 9(a).[1] Appellants shall have 120 days from the date of this order to file and serve the opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1). We caution the parties that failure to comply with this order any result in the imposition of sanctions. NRAP 31(d).

It is so ORDERED.

Douglas, J.

Cherry, J.

Gibbons, J.

[1]If no transcript is to be requested, appellants shall file and serve a certificate to that effect within the same time period. NRAP 9(a).

cc: Hon. Elliott A. Sattler, District Judge
Albright Stoddard Warnick & Albright
Hoy Chrissinger Kimmel, PC
Washoe District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR., individually, JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, Appellants, vs. MARK B. STEPPAN, Respondent.	**Supreme Court No. 68346** Washoe County Case No. CV07-00341 (Consolidated w/CV07-01021)

APPELLANTS' OPENING BRIEF

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RULE 26.1 DISCLOSURE STATEMENT

I certify that the following are persons and entities described in NRAP 26.1, that must be disclosed:

The Appellants are JOHN ILIESCU, JR., individually, and JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU, as Trustees of the JOHN ILIESCU JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT (the "Iliescus").

The attorneys who have appeared on behalf of Appellants in this Court and in district court are:

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///

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

DATED this 12th day of May, 2016.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

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JURISDICTIONAL STATEMENT

This is an appeal from a final Judgment. The basis for appellate jurisdiction herein is NRAP 3A(b)(1). Notice of Entry of the final Judgment was served on February 27, 2015. X AA2381-2383. A Motion to Alter or Amend under NRCP 52 and 59 was then filed on March 10, 2015 (X AA2384-2420), delaying the Notice of Appeal deadline under NRAP 4(a)(4)(B) and (C). Notice of Entry of an Order denying this Motion was served on May 28, 2015. X AA2447-2448. Notice of Appeal was then filed within thirty (30) days on June 23, 2015. X AA2449-2453. Finality of the Judgment and appellate jurisdiction was recognized by prior Order of this Court. XI AA2490-2492.

ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(3).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the district court erred in excusing mechanic's lien claimant Steppan's failure to provide the Iliescus, as property owners, with the Pre-lien Notice required by NRS 108.245, by relying on the "actual notice" exception to that statute, established in *Fondren v. K.L. Complex Limited Co.*, 106 Nev. 705, 800 P.2d 719 (1990), even though no actual notice by the Iliescus of the *identity* of lien claimant Steppan was demonstrated, and the lien was solely for *offsite* design services, with no construction commencing "upon" the property, as had occurred in *Fondren*.

II. Whether the district court erred in failing to identify the

date on which actual notice purportedly occurred, while still upholding the entirety of the lien, without addressing whether any of the allegedly lienable work had occurred after 31 days before that date, pursuant to NRS 108.245(6).

III. Whether the district court erred in excusing Steppan's other numerous failures to substantially comply with Nevada's lien statutes.

IV. Whether the district court erred in upholding Respondent Steppan's mechanic's lien, which was manifestly not for services performed "by or through" Steppan, as required by NRS 108.222(1)(a) and (b), but was a lien for the unpaid invoices of, and alleged value of services provided directly for the customer by, Steppan's employer, Fisher Friedman Associates ("FFA"), a foreign architectural firm not registered to provide licensed architectural services in Nevada, working directly for the customer and not as a subprovider of Steppan, which had not been hired by Steppan, and whose unlicensed services were in any event not legally provided.

V. Whether the district court erred by including language in its Judgment suggesting that the Iliescus might be personally liable to Steppan for amounts beyond the value of their liened Property.

STATEMENT OF THE CASE

This is the Iliescu property owners' appeal from a Judgment upholding a $4,536,263.45 mechanic's lien in favor of Mark Steppan against their property, for the unpaid invoices of Steppan's employer, a non-Nevada licensed California architectural firm, for offsite architectural services performed for a would-be purchaser and developer of the liened property, during an escrow which never closed.

On November 7, 2006, a mechanic's lien notice was recorded in Steppan's name against the Iliescus' "Property" as described therein. VIII AA1730-1734.

The Iliescus filed an Application for Release of Mechanic's Lien on February 14, 2007 (I AA0001-0007) initiating the first of these two consolidated cases, and arguing that Steppan had failed to provide the required pre-lien notices under the mechanic's lien statute. Steppan's initial lien was replaced by an amended lien (VIII AA1735-1740) and a separate lawsuit, to foreclose thereon, was then filed in Steppan's name on May 4, 2007. I AA0172-0177. The two suits were then consolidated. I AA0205-0212.

On June 22, 2009 the district court issued a partial summary judgment Order (III AA0508-0511), which excused Steppan from his failure to ever serve the Iliescus with the pre-lien notice required by NRS 108.245(1), ruling that such notice was not required due to the Iliescus' having actual notice of architectural work being performed. On May 9, 2013, another partial summary judgment Order issued (III AA0578-0581) holding that the amount of Steppan's lien would be based on a flat fee percentage-based AIA Agreement signed by the customer, claimed as controlling by lien claimant Steppan. Steppan later filed a "Second Amended Notice and Claim of Lien" (VIII AA1741-1750) prior to a four day bench trial held in December 2013, which trial did not allow for any possible reconsideration of the prior Summary Judgment Orders. III AA0643; IV AA0770 ll. 3-20, VI AA1468 ll. 15-18. Six months after trial, the district court entered its Findings of Fact, Conclusions of Law, and Decision (hereinafter the "Decision") in

favor of Steppan. VIII AA1911-1923. No Judgment having yet been entered on this Decision five months thereafter, a motion to set aside this Decision was filed under Rule 60(b) (IX AA1964-2065), but denied (X AA2425-2431), and the district court entered its final Judgment on February 26, 2015 (X AA2378-2380). A motion to alter or amend this Judgment (X AA2384-2424; X AA2436-2442) was then filed, which was also denied (X AA2443-2446). This appeal followed.

SUMMARY OF THE ARGUMENT

Steppan's lien should have been repudiated due to his failure to abide by NRS 108.245 requiring a right to lien notice to be sent, within 31 days of any work for which a lien is later sought.[1] The Iliescus were deprived of their statutory protections to such notice on the basis of their alleged awareness that offsite design work was being performed, without any finding as to when such knowledge on their part had allegedly occurred, for purposes of allowing a lien for only such work as was performed after 31 days before said date (pursuant to NRS 108.245(6)), and without any finding that the Iliescus knew of the *identity* of the lien claimant who would pursue a lien for the performance of this work, as required by Nevada case law.

Steppan also failed to substantially comply with Nevada's lien perfection

[1] As this section of the brief is intended solely as argument, citations to the record on appeal are not included, but are set forth below, in the more detailed recitation of facts.

statutes in other regards, beyond his failure to serve an NRS 108.245 Notice.

Furthermore, a mechanic's lien claimant may only lien for the value of services provided "by or through" the lien claimant. NRS 108.222(1)(a) and (b). Thus, a Nevada mechanic's lien claimant may lien for moneys owed to him for his own work, or for the work of his employees or of his subcontractors, but not for money owed to another party, for that party's and its employees' and its subproviders' work, or for such other party's unpaid direct invoices to its customer. The "Steppan" lien was, however, not for Steppan's work, or for that of his employees or his subcontractors, but was for unpaid invoices sent by his employer, a foreign architectural firm, Fisher Friedman and Associates ("FFA"), which was not licensed to perform work in Nevada, for the services provided by it and by its employees, and its subcontractors, directly to the customer, under its own direct relationship with that customer. There was no evidence, let alone the substantial evidence required, to reasonably support the court's finding that Steppan had hired this foreign architectural firm to work as Steppan's subprovider. The Judgment based on that finding, and the other Orders based on that inaccurate ruling, must therefore be set aside. Furthermore, even if Steppan had retained FFA to work under Steppan, the unlicensed work performed by FFA was not lienable as part of Steppan's lien, and its claims to be exempt from Nevada's architectural licensing statutes, because it acted as a mere "consultant," are preposterous.

The Judgment is also erroneous in that it suggests the possibility that, following any lien foreclosure sale of the Iliescus' Property, by Steppan, the Iliescus may be personally liable for amounts unable to be satisfied by the value of the Property, which is directly contrary to Nevada's mechanic's lien statute and the Nevada case law explaining the same.

STATEMENT OF FACTS

A. The Iliescus Agreed to Sell their Property, and the Purchaser Retained FFA.

The Iliescu Appellants are the owners of vacant and unimproved real property in downtown Reno, as described in the mechanics lien at issue herein (the "Property"). VIII AA1748-1749. Appellants entered into a Land Purchase Agreement and Addendums (I AA0024 *et seq.*) to sell the Property to a purchaser, Consolidated Pacific Development, which, unbeknownst to the Iliescus (I AA0008) eventually assigned its rights to purchase the Property to an entity known as BSC. VIII AA1913. (Consolidated Pacific Development and BSC are jointly hereinafter referred to as "BSC," and are sometimes described as the "purchaser" or "developer"). BSC planned to develop a multi-use high-rise development to be known as the "Wingfield Towers" at the Property. *Id.* IV AA0957-0958.

During escrow (which would never close), BSC negotiated with Rodney Friedman ("Friedman"), to have his California architectural firm, Fisher Friedman Associates ("FFA") design the Wingfield Towers. IV AA0948 at ll. 14-16; 0957 at

l. 24; AA0962-0966. Friedman was the sole owner of FFA (Fisher having retired). V AA1003-1004; 1085; IX AA2029. FFA was not registered to perform licensed architectural services in Nevada (VI AA1481-VII AA1482), nor could it be, as its sole owner Friedman was not licensed in Nevada (VIII AA1913, at ¶9), such that it lacked the 2/3 Nevada licensee ownership required by NRS 623.349 to become so registered. IX AA2044. *See also*, *DTJ Design Inc. v. First Republic Bank*, 318 P.3d 709, 711, 130 Nev. Adv. Op. 5 (2014) (foreign architectural firm, not registered in Nevada, and not 2/3 owned by Nevada licensees, could not lien for its improperly performed unlicensed Nevada work).

B. FFA Directed Steppan to Sign the Initial Contract on its behalf and Work Began, Without Any Pre-Lien Notice Being Provided.

Steppan, who was Friedman's son-in-law, and had worked for FFA in California his entire career, was the only FFA employee with a Nevada architectural license. VIII AA1913, at ¶9; IX AA2030; III AA0698;VI AA1377-1378; IX AA2029. Thus, Friedman had Steppan sign the contract(s) for FFA's services to BSC (V AA1089 at l. 23 thru 1090 at l. 2) beginning with an hourly fee letter agreement dated November 15, 2005 (VIII AA1751-1752), which the FFA firm decided to enter into (IV AA0978 at ll. 2-5), as an initial "stop-gap" until a later AIA Agreement would be signed. VIII AA1914 at l. 26 - 1915 at l. 8.

It is undisputed that, as work began, neither FFA nor Steppan sent any Notice to the Iliescus that rights to lien their Property were being created due to

offsite architectural work being performed, as required by NRS 108.245. I AA0004; AA0019-0020; VIII AA1916, at ll. 9-11. Pursuant to NRS 108.245(3), where no such notice is provided, "[n]o [mechanics] lien for . . . work or services performed . . . may be perfected or enforced." If notice is given, then a lien may be pursued for work performed commencing 31 days prior to the date on which the notice was provided. NRS 108.245(6).

Dr. Iliescu was aware that architectural work would take place during escrow, but understood that the purchaser had an in-house architect. VI AA1277. He was never told (prior to receiving the lien)[2] that Mark Steppan was the architect and did not know of his identity. VI AA1311; 1347.

C. Steppan Did Not Retain FFA to Work for Him, but FFA Provided Its Services Directly to BSC, Under a Direct Relationship with BSC, and Was Paid Directly by BSC, until Payments Ceased, Whereupon "Steppan's" Lien Was Recorded and this Suit Pursued for *FFA's* Unpaid Invoices to BSC.

A key question for this Court will be to determine whether it was appropriate to allow Steppan to lien for FFA's and its employees' work product. It is anticipated that Steppan will argue that this was appropriate because FFA was retained by Steppan, who employed FFA to work as a subprovider to him on his work for BSC (such that FFA's work was provided "by or through the lien claimant" Steppan, and is therefore lienable by him, under the language of NRS

[2] Trial testimony regarding subsequent communications with the architect are in regard to later events, after the initial, November 2006 lien. VI AA1350.

108.222(1) (a) and (b)). This is the position taken by Steppan in post-trial filings (IX AA2082 at ll. 9-11) and accepted by the district court in an oral post-trial statement. X AA2363 at l. 20 – AA2364 at l. 4. However, as will be shown herein, this position is completely unsupportable: FFA was not retained by Steppan (who remained FFA's employee), but, rather, FFA had its own direct contractual relationship with BSC, worked directly for BSC, communicated directly with BSC, and was paid directly by BSC until payments ceased, at which point FFA sent invoices to BSC, on FFA letterhead, which *FFA* invoices are the basis of the "Steppan" lien, and of this suit to foreclose thereon. Thus, the district court's oral finding at a hearing on a post-trial motion that Steppan was employing FFA during the project, was clearly erroneous as a matter of law, as shown by the following demonstrated facts:

(i) <u>The Contract Facts</u>. Evidence of three types of contract with BSC were presented at trial, and will be discussed herein: an hourly fee agreement, pending the later execution of an AIA Agreement; various side or add-on agreements (some of them never signed) for miscellaneous extra-contractual work; and, finally, the AIA Agreement. As to the relationship between Steppan and FFA, **no written agreement was ever entered into between Steppan and FFA**, by which Steppan hired FFA, either as his design consultant or in any other capacity. IX AA2045. This fact alone is legally fatal to the claim that Steppan retained FFA as his client,

because: (a) the AIA Agreement was to be in effect for at least 32 months (II AA0259 at § 1.5.9 and II AA0274),[3] such that any oral subcontract for FFA to sub-provide services to Steppan thereunder would be void under Nevada's statute of frauds for contracts to last more than one year (NRS 111.220(i)). (b) NRS 623.325, would also require any such architectural services contract (for FFA to act as a sub-architect to Steppan), to be in writing.

The hourly agreement. Although the initial hourly agreement which Friedman had negotiated was signed by Steppan, as the purported "Contract Architect", this document listed 28 categories of the Contract Architect's employees (VIII AA1752-1753). Steppan, however, continued to be employed by FFA (VIII AA1913 at ll. 16-20), and therefore had no employees of his own, such that these 28 categories of employees were in fact FFA employees/employee categories, and FFA was the contract architect in all but name, whose employees were billing under this hourly agreement. Indeed, Friedman testified that the initial hourly agreement authorized not Steppan, but Friedman ["you"] to proceed with the work, after "the firm decided to proceed" on that basis. IV AA0978 at ll. 3-9, and 22.

The side agreements. As the work was being performed, certain extra-

[3] The time parameters under the AIA Agreement were "negotiated between Fisher-Friedman and the client" and the 32 month time frame was the "expected" duration "pending normal situations" for this project. VI AA1461-1462.

contractual work allegedly came to be requested of or volunteered by FFA such as responding to city staff questions, reviewing information as to an adjacent church parking lot, etc., and letter proposals for this side work were generated, including as presented to BSC by Nathan Ogle of FFA (VIII AA1771), some of which were never signed by BSC. VIII AA1758-1771; VIII AA1743. Steppan has verified (under questioning by his own counsel) that "Fisher Friedman" performed this side work, and "Fisher Friedman" billed the client for it, and did not receive any objections about its invoices for the same. VI AA1404, 1408. Based thereon, the district court understood, and Steppan confirmed, that the question before the court was whether "Fisher Friedman Associates" would be "reimbursed" for the work performed under these side add-on agreements. IV AA1402, 1405.

Friedman also acknowledged that these side agreements were between FFA and BSC, testifying for example, as to one of these agreements, that the purchaser BSC asked *Friedman* ["you"] to go study city staff questions and his firm FFA ["your firm"], billed BSC for doing so. V AA0986 at l. 19, and 0988 at l. 11. Nevertheless, the district court upheld the entirety of the Steppan lien (compare VIII AA1742-1750 with X AA2378-2380) which included a lien claim for these side projects (VIII AA1747-48), and thereby allowed *Steppan*, rather than FFA, to lien for these FFA side agreements, which FFA was asked to perform, and which were performed by FFA, and which were invoiced by FFA. XI AA2557-2571.

The AIA. This final form AIA Agreement (II AA0250-0274), calling for a flat fee tied to the anticipated cost of construction (which never commenced), was ultimately signed on April 21, 2006 (II AA0265; 0271) but was allegedly to be treated as effective October 31, 2005 (II AA0250; III AA0524, AA0528) in order to supplant the earlier hourly fee agreement. FFA employee Nathan Ogle, rather than Steppan, would have been involved in negotiating the language of this AIA Agreement. VII AA1520. Steppan cannot remember any communications with BSC, regarding the language of the AIA Agreement. VII AA1527-1528. This Agreement allowed flat fee invoices to be sent, but apparently no work was performed under this document after it was signed. IX AA2052. The Iliescus were not parties to any of these contracts, which each listed BSC as the "owner" based on an anticipated closing. VIII AA1914 ll. 4-5.

FFA was not listed in the AIA Agreement as a subcontracting consultant to Steppan, the location for such a designation being left blank (II AA0252 at § 1.1.3.3.), but was instead listed in the Addendum to the AIA, as a direct party thereto (II AA0272) (namely as BSC's "Design Consultants"), such that the AIA was between BSC, on the one hand, and both Steppan and FFA, on the other. This conforms with Steppan's testimony, that "both" he and FFA were working for BSC (IX AA2053-2054), and with Friedman's testimony, that "the **developer agency** or entity with respect to the Wingfield Towers project in Reno [*i.e.*, BSC] did actually

commit to pay a fee" not to Steppan but "**to [his, Friedman's] firm** based on a percentage" flat fee as called for in the AIA Agreement. IV AA0973 at ll. 3-7 (emphasis added). Friedman repeatedly confirmed his position that FFA (and or he, himself) was a direct party to the AIA Agreement, which he repeatedly described as "our" or "my" agreement, which "we" had "signed" under which "I would be entitled to my compensation" based on the terms thereof. V AA1063, 1081-82, 1155, 1165. Friedman also acknowledged the identity of his "client" as "the developer" [*i.e.*, BSC] which developer was not the Iliescus, as owners of the property. V AA1111 at ll. 13-15. Thus, FFA's client, who employed FFA, was not Steppan, but BSC.

(ii) <u>The Work Performance Facts.</u> As the district court noted in its initial post-trial Decision, rather than FFA performing its work by or through lien claimant Steppan (as required by NRS 108.222(1)(a) and (b)), the work product the court attributed to Steppan was provided "at or through FFA." VIII AA1916 at ll. 2-3. The district court did not however correctly apply the law to this factual finding. Moreover, Steppan did not himself create the designs or the drawings attributed to him by the district court's Decision, which were FFA's work product, primarily created by FFA sole owner Friedman and FFA employee David Tritt. IX AA2053-2054. Friedman admitted that the work product belonged to FFA and could not be obtained without FFA's –"our"– permission. V AA1107.

Steppan's hourly involvement in the project was minimal, his counsel conceding that almost ninety-five percent (95%) of the work thereon was performed by FFA employees other than Steppan, including over 90% of the architects' work. X AA2339 at ll. 5-12. It is respectfully submitted that this work, performed by non-Nevada licensed architects, employed by a non-Nevada registered architectural firm, was, however, illegal, under NRS 623.180(1) and NRS 623.360(1)(c) for the reasons set forth at IX AA1988-1992, and at IX AA2199-2203. Nevertheless, Steppan admitted in post-trial briefs that *FFA's* employees, including its "unlicensed designers" performed the vast majority of the design work for which Steppan now liens. IX AA2079, ll. 8-13; IX AA2083 at ll. 11-13; IX AA2084 at l.1; IX AA2201.

Steppan did not treat his work on this project any differently from his other work for and as an employee of FFA, but handled himself "the same way" as on other FFA projects (VI AA639), even though this was the first time he had ever signed as the purported architect for FFA's work. VI AA1481; IX AA2038 at ll. 19-21. Steppan presented no evidence that he obtained any local business license, or registered with the State's taxation department, or took any other steps to fulfill the purported role of a Nevada independent contractor, reaching out to and subcontracting with other entities such as FFA. Instead, Steppan remained an FFA employee throughout the project (IX AA2017), receiving his regular salary, and

not anticipating any special bonuses or profit sharing on this job. IX AA2040-2041.

Steppan maintained no independent project files for this project, but rather, FFA maintained all such files, and the "Steppan" bates-labelled file documents produced during discovery were provided by FFA, as Steppan had no separate files of his own. IX AA2057. Steppan did not seek out and hire the other subcontractors, which was done by Friedman/FFA. V AA0999-1000.

Although Steppan had only two real roles, to sign the contracts and to someday sign and stamp the final architectural renderings (VIII AA1526), he never performed the second role, as the day for doing so never arrived. VIII AA1531; V AA1006. This is important because Steppan did not believe his own involvement as the person with alleged responsible control over the documents he would sign and seal would need to become more substantive until shortly before the time approached for signing and sealing the documents (VI AA1385) (a claim which is inaccurate under uniform architectural regulations --IX AA2197-2198-- but which for present purposes further confirms Steppan's own lack of material involvement in comparison to others at FFA).

Contrary to the district court's finding (VIII AA1913 at 11.21-21), FFA's employee Nathan Ogle, not Steppan, was listed on the invoices as the Project Manager (VIII AA1781; 1783; 1785; 1787; 1789; 1791 *et seq.*), which Ogle role

Steppan confirmed. IX AA2031, at 11. 23-25. Although they had no Nevada license, submissions to local Nevada entities, such as use permit applications, listed FFA and Ogle as the architectural contacts for this Nevada project, and Friedman as an applicant. I AA00189; 0195; VIII AA1851; 1862; 1867; 1879; IV AA0919; 1058; VII AA1510. Steppan did not contest the accuracy of such submissions, based on Ogle and Friedman's primary involvement as designer and project manager. VII AA1512. FFA and Ogle were so listed because they had done the primary work. V AA1192, at ll. 21-24.

Steppan did not attend the Reno City Council Planning Commission meetings at which these applications were addressed. VII AA1515. Steppan could not remember if he, Steppan, even reviewed such applications, but recognized Nathan Ogle's handwriting on the drafts. VII AA1490-1491. "Fisher Friedman" worked with another BSC contractor (David Snelgrove of Woods Rogers) (V AA1187) to prepare submittals to the City of Reno, and Snelgrove testified that "Fisher Friedman" did a "substantial portion" of this work (V AA1198), including architectural elevations provided by "Fisher Friedman" (V AA1199) and fly over visuals and power-points created by "Fisher Friedman." V AA1202.

Friedman testified that he, Friedman, supervised the work (V AA0995), and Steppan would only have played such a supervisory role on this project if Friedman were to have become unavailable, due to illness or vacation. V AA1006-

1007. Given that Friedman's time on the project far exceeded Steppan's (IX AA1985; AA2059), this obviously did not occur. Steppan also acknowledged that the project, like every FFA project, was done under Friedman's ultimate purveyance. IX AA2033. Nathan Ogle, of FFA, rather than Steppan, was present during Reno, Nevada meetings to present information about the project, where either Nathan Ogle or FFA would be identified as the "project architect." V AA1206. Nor was it even anticipated that Steppan would necessarily have been the one to move from California to be the on-site supervising architect had construction ever commenced at the Nevada site. V AA1159, ll. 16-19.

(iii) <u>The Communication Facts.</u> Steppan may not have sent a single e-mail communicating with anyone external from FFA, such as Reno, Nevada governmental entities or the client BSC, about the project. VII AA1503. Friedman, on the other hand, communicated directly with BSC's principals, such as Cal Bosma, including even to orally amend the contract (V AA1173 at l. 20 through AA1174 at l. 2) which Friedman obviously could not have done if his company FFA was not a direct party thereto. Nathan Ogle of FFA also communicated directly with BSC, not necessarily bothering to even copy Steppan. VIII AA1771. Ogle sometimes signed letters on Steppan letterhead (VIII AA1755), and when such an Ogle-authored letter was instead signed by Steppan, this was simply because Ogle, was "not around" to sign it instead. VI AA1390 at ll. 21-22.

The City of Reno "cc-ed" its communications with BSC (or its predecessor) not to Steppan, but to FFA and Ogle (II AA0385), as Reno officials had apparently been told to do (such that, when the Iliescus were also copied thereon, they would not thereby have learned Steppan's identity). Sam Caniglia (of developer BSC), rather than Steppan, was "the main contact person between Fisher-Friedman and Associates and the developer on the other hand" (VII AA1530 at ll. 3-6) and if Steppan ever had a phone conversation with Caniglia, it would only have been with Friedman also on the line. VII AA1529 at l. 24 - AA1530 at l. 2.

FFA was the party BSC was to contact with disputes over invoices. IV AA0968.

(iv) <u>The FFA Invoices and Direct Payment Facts.</u> No evidence was provided that any invoices were ever delivered from FFA to its purported customer, Steppan. Nor were any payments ever claimed to have been made by Steppan to his purported retained subprovider FFA. Nor were any W2's or 1099s from Steppan, to FFA or its employees, ever produced or claimed to exist. No demands or suits for payment were ever shown to have been asserted by FFA against Steppan for non-payment to his purported vendor FFA. Rather all of the invoices were sent directly to BSC, by FFA, and all of the payments from BSC were made directly to FFA, as shown below:

Four types of invoices to BSC were provided at trial; namely, $380,870.00

in Hourly Fee Invoices through May of 2006 (Trial Exhibit –"TE"- 24, VIII AA1779-1796); Post AIA-execution Flat Fee Invoices, treated as cumulative up to $2,070,000.00 allegedly superceding and replacing the hourly invoices, based on FFA having signed the AIA Agreement and allegedly completed the "Schematic Design" (or "SD") phase of the work (TE 25, VIII AA1797-1815); Reimbursable Expense Invoices (TE 26, VIII AA1816-1843) in the amount of $37,411.50 (VIII AA1745) (admitted by the court in order to determine whether "Fisher Friedman" was entitled to payment thereunder (VI AA1423)); and, finally, invoices for claimed add-on side agreements (XI AA2555-2571). A review of these exhibits demonstrates that, initially, the hourly fee and reimbursables invoices were sent on phonied-up "Mark A. Steppan" letterhead, rather than FFA, letterhead, but eventually these invoices were sent on FFA letterhead, beginning in February of 2006. VIII AA1789; 1799; 1824. This was more accurate, based on Friedman's testimony that the invoices were in fact sent by his firm (IV AA0968), that BSC assisted FFA by locating mistakes in its invoices (IV AA0968-0970) and that FFA never received any complaint or objection that its invoices were too high, or to the billing methodology employed therein. IV AA0970 at ll. 13-15; V AA1071.

Steppan admits that use of the "Steppan" letterhead on the initial hourly and reimbursable invoices was merely to maintain **"the form"** that Steppan was the

Contract Architect. VI AA1419 at ll. 2-4. The truth, as opposed to the form, is shown by the Steppan letterhead invoices being sent from FFA's address, shown (together with FFA's phone and fax number) at the bottom thereof (VIII AA1781-1788), which match the address and numbers of FFA as shown on its own letterhead invoices. VIII AA1789-1796. The billing number on all of the invoices was an FFA invoice numbering system number (IX AA2036) and the invoices were generated internally at FFA based on its employees' work, and the "FFA general time" which was tracked for these billings. VI AA1413-1416; VI AA1397. Steppan provided no testimony, to support "his" lien, with respect to how "he" calculated "his" invoices, but testified instead on the system utilized by FFA for that "firm to generate invoices for the company." VI AA1412-1416. Nevertheless, the district court accepted this testimony as somehow upholding a Steppan, rather than an FFA lien. VIII AA1917 at ll. 18-22.

Significantly, **$480,000 in payments were made by BSC on the hourly fee invoices. V AA1081. Thus, more than the entirety of the hourly invoices and more than the entirety of the reimbursables invoices, combined, was paid. <u>All of these payments all of which BSC payments were made directly to FFA</u>**, and not to or through Steppan, it being understood from the outset that *FFA* would receive all BSC payment moneys directly from BSC. VI AA1416-1417, 1419; V AA1080-1081; IX AA2040.

Nor was FFA treated as a subprovider to Steppan on the invoices. For example, moneys owed or paid to actual consultants or subproviders (such as landscape architects or renderers) who did not have a direct relationship with BSC, were referenced and treated as a separate cost to be reimbursed by BSC, primarily, but not solely, on the reimbursables invoices. *See, e.g.*, VIII AA1793, AA1822, 1827; VI AA1421-23. Tellingly, Steppan had "no personal knowledge" and could not say whether or not these subproviders had or had not been paid (VI AA1422-1427) even though a lien in his name was upheld by the trial court, which included reimbursable expenses, as though he was the one who had incurred these subprovider bills, which was clearly not so. Indeed, had the subprovider not been paid, any complaint in that regard would have been as likely to be made to Ogle or to Friedman or to the FFA accounting department, as to Steppan (VI AA1425-1426) further verifying that these were FFA subproviders not Steppan subproviders. No evidence was presented at trial that *Steppan* had paid these subproviders himself, nor was any suggestion that he might have done so even made. Nor could he have, as he was not receiving the payments to do so from BSC, but rather FFA was.

Unlike the actual subproviders, FFA was not treated on the invoices as a subprovider to a contract architect, whose billings were shown as a "reimbursable" expense on that entity's invoices. In other words, Steppan did not receive invoices

from FFA, which were then shown as a cost or reimbursable advance on the Steppan invoices to BSC; rather, the hourly invoices to BSC (whether on Steppan or FFA letterhead) like the initial letter agreement, listed several categories of FFA employees performing the work whose time was billed directly to BSC, pursuant to the FFA firm titles and hierarchy (VIII AA1781-1788; IX AA2031). Thus, by way of illustration, on hourly Invoice No. 22282 (VIII AA1783), Steppan, who was the Executive Vice President and second highest ranking official of FFA (IX AA2030 at ll. 7-17), billed 11 hours to BSC at $200.00 an hour (the second highest rate billed, even on his own letterhead), under that title, whereas the "Principal/Officer" (*i.e.* Friedman) billed 124 hours at $220.00 an hour, the highest rate billed, and other FFA employees similarly billed in accordance with their FFA titles and rates, none of which were however separately called out or treated as a reimbursable sub-cost to or advance from Steppan, being forwarded to the client. *See also*, VI AA1413-1416; VI AA1397.

Steppan's final lien, upheld by the Court's Judgment was based on (1) the unpaid reimbursable invoices, (2) the unpaid side-agreement invoices, and (3) the post-AIA flat fee invoices. VIII AA1742-1750. **Significantly, all of the unpaid invoices, for which Steppan claimed "his" lien were on FFA letterhead.** (1) For example, only $4,802.49 of the $37,411.53 in reimbursable invoices was not paid. VIII AA1745. Thus, only post February 2006 reimbursable invoices (on FFA

letterhead) would have been involved. Specifically (if one does the math from the invoice list in the final lien notice), those sent after, and including part of, the April 19, 2006, invoice. VIII AA1744-1746; AA1827-1843. (2) The add-on agreement invoices included in the lien were likewise all after February of 2006, commencing no earlier than June 2006 (VIII AA1747-1748) and were all on FFA letterhead. XI AA2555-2571. (3) *All* of the post-AIA Agreement TE 25 flat-fee invoices were also sent **solely** on FFA letterhead. VIII AA1797-1815.

The vast majority of the lien was for unpaid amounts due and owing on these flat-fee Trial Exhibit 25 invoices: When FFA procured BSC's April 21, 2006 signature on the AIA Agreement (II AA0329, IX AA2052) this document called for flat fee payments on a percentage basis, which were to accrue as various design phases were completed. FFA avers that, before ceasing its design work, it first completed the "schematic design" phase thereof, so as to reach the "SD" milestone in order to seek flat fee compensation up to that phase. III AA0525, 0597; VIII AA1914-1915. The post-AIA Agreement flat fee invoices were to supplant the much lower hourly fee invoices, based on the SD phase completion. IV AA0762-0765; VIII AA1797-1815. As shown by the notation on the cover sheet (VIII AA1798) of TE 25 ("% SD complete"), this exhibit was provided at trial to establish that 100% of the Schematic Design was allegedly completed and that the amounts shown in the flat fee invoices (rather than the lower earlier hourly

invoices) were owed based thereon.[4]

The amount of the lien claim pursued and upheld after trial was therefore not based on any of the hourly fee invoices (some of which were on Steppan letterhead), but was based on a ruling that this SD phase had been completed (VIII AA1914; 1920), together with the earlier second Summary Judgment Order that the (flat fee) AIA Agreement controlled the calculation of the lien amount (III AA0578-0580) such that the flat-fee invoices were treated as supplanting the earlier hourly fee invoices, as controlling,[5] and as allowing a flat fee through the SD phase, although BSC was given credit for the payments it had made to FFA under those earlier invoices.

Thus, **all of the invoices** being liened for in the "Steppan" lien **are on FFA letterhead**, including all of the relevant reimbursable invoices, side agreement

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[4] It should be noted that the expert witness who testified that the SD work had been completed did not differentiate between Steppan and FFA in his testimony, that "Steppan and FFA" had completed the work to this phase (IV AA0877; 0883; 0910; 0912-13; 0938-39) and had no opinion as to whether FFA was licensed to perform the work (IV AA0919) such that his opinion did not support the district court's finding (VIII AA1915, at ¶13) referencing this testimony, and giving credit solely to Steppan for this work based thereon.

[5] The correspondence between the TE 25 flat fee FFA invoices and the vast majority of the final lien (other than the reimbursables and side agreement invoices) is also demonstrated by a comparison of (i) the final flat fee invoice (VIII AA1814-15), showing the total fees for "Professional Services" earned standing at $2,070,000.00 before add-ons and deductions, with (ii) the final Steppan amended lien (at VIII AA1745) which likewise shows the "Fee earned" before other add-ons or deductions, as $2,070,000.00.

invoices, and flat fee invoices, such that the **entirety of the "Steppan" lien amount ultimately upheld was based on moneys owed to FFA, for unpaid FFA invoices, sent from FFA, on FFA letterhead**, with the invoices also showing the prior payments that had been made directly **to FFA** by BSC.

(v) The Facts that the Lien and the Suit Were on Behalf of FFA. Although recorded in Steppan's name (because it would be illegal for the non-Nevada licensed FFA to lien for Nevada architectural work under NRS 108.222(2) and NRS 623.360(c)), the "Steppan" lien, as amended, was in fact filed by and on behalf of FFA, as was this suit to foreclose thereon. Indeed, Steppan admitted that, notwithstanding the use of "Steppan" letterhead (and even Steppan business cards) by some FFA employees working on the project, FFA was the firm expecting payment, and which was hurt by nonpayment (IX AA2052-2056). Steppan further admitted that, when the sham Steppan letterhead was utilized by Friedman, to write payment demand letters to BSC, he was actually writing on behalf of FFA. IX AA2054-2055; including AA2055 at ll. 6-9. It was FFA, not Steppan, which caused the "Steppan" lien to be recorded (V AA1074, AA1081-1088) because FFA's owner, Friedman, came to fear that FFA might not be paid by BSC. V AA1073.

Steppan, in trial testimony, did not refer to BSC as "my" client, but as "our" client, and did not refer to the architect as "I" or "me" but as "we" and "us" or the

"firm," clearly referring to FFA. VI AA1393, 1394, 1396, 1397 *et seq*. VI AA1444 *et seq*. Nowhere in his testimony did Steppan suggest that FFA was working for him, as opposed to his employer firm, FFA, working for the client BSC. *See, e.g.*, VI AA1402 at ll. 11-20. Steppan, for example, testified as to whether FFA had billed separately for the add-on side-work, and whether FFA had received any objections to those billings from its client, rather than testifying as to whether he had billed BSC separately, or whether he (as FFA's purported client, who the district court found had been employed by Steppan) had ever objected to bills from FFA that he received. VI AA1408.[6]

While this suit was pending, but two years before trial, FFA was sold to a new owner, but Friedman retained the mechanic's lien rights at issue in this suit *from FFA* (not from Steppan) as part of that sale. V AA1086. Therefore, Friedman understood all along that FFA, not Steppan, was the owner of the lien rights, and non-Nevada licensed architect Friedman is the person financing this suit (*id.*), as the real party in interest with a financial stake herein, having retained that interest from non-Nevada registered architectural firm FFA. Steppan confirmed Friedman's testimony regarding FFA's retention of the lien foreclosure lawsuit claims at the time of the sale of FFA (VI AA1383 ll. 12-21) even though that sale

[6] All evidence at trial regarding BSC never objecting to the FFA invoices, and/or asking FFA to do certain add-on work, is hearsay. No one from BSC testified on Steppan's or FFA's behalf at trial.

of FFA should have been irrelevant, and no such retention from FFA of the lien claims needed, if Steppan were the true lien claimant, as "Steppan" was never sold, and "Steppan" was the purported Plaintiff.

D. The Steppan Lien Was Not Properly Recorded or Pursued.

Financing for the project was never obtained, escrow never closed, and no on-site improvements ever commenced. VIII AA1913 at ll. 8-11. Thus, when the Iliescus received their completely unimproved Property back out of escrow, it was now subject to Steppan's multi-million dollar lien claim, for the unpaid FFA invoices to BSC, and the moneys owed to FFA thereon, leading to the instant litigation.

Although the Wingfield Towers was to include residential condominiums, no notice of intent to lien was provided 15 days before the November 7, 2006 lien's recordation, as required by NRS 108.226(6). Steppan attempted to remedy this failure after the fact, by sending a subsequent 15-day lien notice, followed by an amended lien. I AA0100-0107. However, failure to send a required *prior* notice cannot, by definition, be remedied *after* the fact. The district court ignored this failure without explanation, although it was referenced in the Iliescus' original lien expungement application. I AA0005. Steppan's lien, as amended, also violated numerous other provisions of NRS Chapter 108 (IX AA2003-2008) which were also ignored.

ARGUMENT

A. The District Court's Decisions and Orders and Judgment Should Be Reversed, Based on the Applicable Standards of Review.

The key elements of Steppan's claims were treated as established based on Summary Judgment rulings (III AA0508-0511, and III AA0578-0581) which the district court indicated it would not upend or reconsider during or as the result of trial, leaving the same for appellate review (IV AA0770; VI AA1468), such that the trial was of uncertain purpose, with a predetermined outcome. Based thereon, this Court should review at least the summary judgment rulings, as well as the final Judgment which was based thereon, *de novo*. *MB America Inc. v. Alaska Pacific Leasing Co.*, 132 Nev. Adv. Op. 8, 367 P.3d 1286, 1287 (Nev. 2016) (a district court's order granting summary judgment is reviewed *de novo*).

Furthermore, both the first Order for Summary Judgment (III AA0508-510) and the second (III AA0578-580), should be reversed because they failed to "set forth" a recitation of "the undisputed material facts and legal determinations" on which they were based, as required by NRCP 52(a), as they instead merely described the parties' arguments and counterarguments, and the court's ultimate ruling, without clearly indicating whether certain arguments were accepted as the grounds for the same.

These orders prejudiced the Iliescus, by creating ambiguity as to what the purpose of the trial even was, and by foreclosing for review at trial, certain issues

on which genuine issues of material fact existed. For example, in opposing the second Motion for Summary Judgment, the Iliescus argued that Steppan was actually trying to lien for FFA's unlicensed work (III AA0532) which contention was ignored when the second summary judgment was granted. This issue was then raised again in the Iliescus' opposition to a motion to strike their jury demand (III AA0588-0589) and the district court treated this argument as an attempt to re-litigate a matter which had been adjudicated in the prior summary judgment rulings. III AA0626 at ll. 12-15. It was therefore understood that review of the propriety of Steppan liening for FFA's unlicensed work had been cut off by the second summary judgment ruling and would not be considered at trial. III AA0632-33. (Indeed, Steppan claimed that the *first* Summary Judgment Order precluded any further adjudication of the validity of the lien. II AA0540.)

Given this broad scope, the summary judgment rulings were obviously premature, as there were in fact substantial genuine issues of material fact regarding the propriety of Steppan liening for FFA's unlicensed work. *Tom v. Innovative Home Systems, LLC*, 132 Nev. Adv. Op. 15, __ P.3d __ (2016)(genuine issue of material fact as to whether mechanic's lien claimant's lien should have been stricken due to work being performed without a license should have precluded summary judgment in his favor). The Iliescus were prevented during trial from providing expert witness testimony that the AIA Agreement upheld by

the second summary judgment ruling (allowing for much higher-than-hourly flat fee bills) would not have been considered effective, pursuant to industry standards, until entitlements had been received and financing for the project was obtained. VII 1629-31. However, the testimony which would have been presented on that point (VIII AA1898-1892) demonstrates that there was a genuine issue of material fact with respect thereto, such that summary judgment should not have been granted, and this testimony not precluded (especially as no one from BSC testified at trial as to what BSC understood about its own contractual obligations). Despite the existence of the second summary judgment, however, Steppan was allowed to provide evidence of additional amounts due and owing for extra-contractual work, outside the AIA Agreement, which the Iliescus understood to have been cutoff by the second summary judgment ruling. VI AA1428-1430.

To the extent that the court's final Judgment rulings were also based on trial evidence, beyond the Summary Judgment rulings, this Court reviews the same, in a mechanic's lien case, to determine whether the findings were supported by "substantial evidence" meaning evidence "which a reasonable mind might accept as adequate to support a conclusion." *Simmons Self Storage Partners, LLC v. Rib Roof, Inc.,* 130 Nev. Adv. Op. 57, 331 P.3d 850, 855-56 (2014). As set forth above, the district court's post-Decision oral finding, that Steppan "employed" FFA was not based on any such substantial evidence, on which any such reasonable

conclusion could be drawn, as there simply is no such evidence of any agreement by which Steppan hired FFA to work under him, or that the parties acted as though he had done so in their dealings. Instead, voluminous truckloads of evidence exist that FFA worked directly for BSC, was a party to the contract with BSC, invoiced BSC directly, communicated directly with BSC, and was paid directly by BSC, for work performed by FFA's employees and FFA's subcontractors, none of whom were paid by or treated as employees of Steppan.

To the extent that this Court bases its decision to reverse on a review of the post-trial motion for relief under NRCP 60(b), an abuse of discretion standard would apply, under which however some "competent evidence" must exist "to justify the court's decision" *Stoecklein v. Johnson Electric, Inc.*, 109 Nev. 268, 272, 849 P.2d 305, 307 (1993). In this case, the district court's decision to find, at the hearing on the motion for NRCP 60(b) relief, that Steppan had "employed" FFA, is not based on any competent evidence of any such agreement having been reached pursuant to which Steppan hired FFA. As to the second of the two post-trial motions, to alter or amend the Judgment, including under NRCP 59(e) (X AA2384) it should be noted that, "although not separately appealable as a special order after judgment" and therefore stricken from the Notice of Appeal herein (XI AA2491) the order denying this NRCP 59(e) motion "is reviewable for abuse of discretion on appeal from the underlying judgment." *AA Primo Builders, LLC v.*

Washington, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). Because the motion to alter or amend clearly demonstrated a manifest error in law and fact by the district court, it should have been granted, and its arguments are therefore submitted to this Court for this Court's review on an abuse of discretion standard, if the Judgment is not simply set aside on its face without the need to reach these post-Judgment motions. *See* X AA2384-2420 and X 2346-2442.

B. Steppan's Failure to Provide the Requisite NRS 108.245 Notice Should Have Been Fatal to His Claims.

(i) The *Fondren* actual notice exception does not apply to off-site work, nor to unknown information.

It is undisputed that Steppan failed to abide by NRS 108.245 and never sent the Iliescus any 31-day right-to-lien notice, so as to advise them of potential lien rights against their Property arising due to FFA's California work. The first Summary Judgment ruling determined that no such notice was needed, because the Iliescus allegedly had sufficient actual knowledge that an architect was performing work, to qualify Steppan for the exception to NRS 108.245 created by *Bd. of Trustees v. Durable Developers*, 102 Nev. 401, 724 P.2d 736 (1986) as further set forth in *Fondren v. K.L. Complex Ltd.*, 106 Nev. 705, 800 P.2d 719 (1990).

Three primary arguments were advanced to support this claim: first, that Dr. Iliescu was aware of his purchaser's plans to seek approval for a development at the project, which would necessitate architectural work, because the contract

indicated that this would occur; secondly, that the Iliescus attended certain meetings where the architectural work product was shown; and, finally, that certain lawyers at the Iliescus' law firm were also representing BSC, and knew of BSC's retention of FFA/Steppan, which knowledge should be imputed to the Iliescus. III AA0509.

However, the district court erred in accepting these arguments. *Fondren* should be strictly construed, given that it strips property owners of the protections afforded them by NRS 108.245, the language of which requires a notice not only that work has been performed, but that a "RIGHT TO LIEN" may have arisen, and that a lien claimant may therefore "record" a lien in the future. In this case, where the work was being performed offsite, such that there was no reason for the Iliescus to even be aware of when it commenced or to be focused on its legal implications (VI AA1264-1265), they were entitled to the notice.

Moreover, given the off-site nature of the work, *Fondren* does not apply. As footnote 2 of the *Fondren* decision states, the reason a pre-lien notice is even important, is because, within three days of an owner becoming aware of construction work being performed *upon* her property, if she does not take steps to protect herself by recording a notice of non-responsibility (under NRS 108.234(2)), then, under NRS 108.234(1) the "improvement **constructed, altered or repaired upon property** shall be deemed to have been constructed, altered or repaired **at**

the instance of each owner having or claiming any interest therein." [Emphasis added.] This, in turn, matters, because work must be performed "at the instance of the owner" in order for lien rights to arise. NRS 108.222(1). However, the subject work herein was *off-site* design work, not performed "upon" the property. (By contrast, in *Fondren*, there was "construction on [owner *Fondren's*] property" of which she was aware, as it was regularly "inspected" for her. *Id.* at 709, 721.) Based thereon, NRS 108.234(1) does not even apply to this case, and the *Fondren* rationale collapses, since, even if Iliescu did have notice of architectural services, those services did not involve on-site construction, and therefore the services were not statutorily deemed to have been performed "at the instance" of the Iliescus, absent timely action to avoid that result. Based thereon, the Iliescus' Property did not suddenly become statutorily subject to a lien upon either of the Iliescus developing an alleged awareness of the work being performed *off-site*, in any case. Indeed, the lien may be expunged on this additional basis: that the value of FFA's services did not become lienable, as the work was not performed at the Property owners' real or constructive instance.

As noted in *Fondren*, "The purpose underlying the notice requirement is to provide the owner with knowledge that work and materials are being *incorporated into the property*." *Fondren*, 106 Nev. at 710, 800 P.2d at 721-22 [emphasis added]. Recognition of this distinction between offsite and on-site work for

purposes of the *Fondren* actual notice exception to NRS 108.245, would be in line with other cases which have differentiated between the effect of on-site construction and off-site design work under the lien statutes. *See, e.g., J.E. Dunn Northwest, Inc. v. Corus Constr. Venture*, 49 P.3d 501, 508, 127 Nev. Adv. Op. 5 (2011) (rejecting architect's argument that its lien's priority vested, vis-a-vis a lender's deed of trust, before on-site construction work had occurred, even where the bank had actual knowledge of the offsite work, given statutes' indication that a lien vests upon commencement of visible **on-site** construction.) Thus, the *Fondren* exception to the requirements of NRS 108.245, should not have been applied herein. NRS 108.245(3) *does* therefore apply, which indicates that "[n]o [mechanic's] lien for ... services performed . . . may be perfected or enforced pursuant to [the mechanic's lien statutes] unless the [right to lien] notice has been given [by the potential lien claimant]." This dispositive point requires reversal.

It is also troubling that the district court apparently accepted an argument that the Iliescus should be treated as having notice of the architectural work because some lawyers at the Iliescus' law firm were aware of Steppan or FFA being hired (III AA0509; VII AA1557-1560), which knowledge, it was argued, should be imputed to the Iliescus, in order for this "imputed" knowledge to be treated as "actual" knowledge by the Iliescus. II AA0356-0359. However, there is no evidence that any of their lawyers ever shared this information with the Iliescus,

but, instead, just the opposite testimony exists. VII AA1558 at l. 24; VIIAA1560-1561, 1618. Indeed, the Steppan Summary Judgment briefs admitted that Iliescu had not been provided with this information by his attorneys. II AA0358 at l. 10.

By contrast, as noted by the Nevada Supreme Court in *Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 528, 540, 245 P.3d 1149, 1157 (2010): "In *Fondren,* the property owner received regular updates from her lawyer and approved specific construction activities" such that it was appropriate to impute the lawyer's knowledge to the client. However, where no such facts exist, "we will not impute knowledge when there is no evidence that [the property owner] knew of both the existence and the identity of" the third party who will assert the lien. *Id.*

Based thereon, the summary judgment ruling should not have been issued before trial on this issue.

(ii) The District Court failed to make the necessary finding to uphold the Steppan lien despite the violation of NRS 108.245, under Nevada case law.

After Summary Judgment on this issue was entered in this case, this Court issued its *Hardy Companies, Inc. v. SNMARK, LLC*, 126 Nev. 1149, 245 P.3d 1149, 1157 (2010) decision. That case clarified that, in addition to notice of work being performed, the *Fondren* actual notice exception to NRS 108.245 requires the owner to be "made aware **of the identity** of the third party **seeking to record and enforce a lien** [*i.e.*, in this case, Steppan]." *Id.* 126 Nev. At 1157, 245 P.3d at 540.

[Emphasis added.] This requires "more than mere knowledge of construction occurring on [the owner's] property" but "requires . . . knowledge as to the identity" of the potential lien claimant. *Id.* at 542, 1158. Indeed, "mere knowledge of construction" without knowing "of **both** the existence **and the identity** of" the third party who will be liening for the work, is insufficient. *Id.* at 542, 1159 [emphasis added]. Otherwise, "the exception would swallow the rule." *Id.* Moreover, whether such actual knowledge exists is "a question of fact" such that Summary Judgment is inappropriate. *Id.* at 542, 1158.

In the present case, given the lack of involvement by Steppan in the work actually being performed by FFA, and its owner Friedman, and its employees Tritt, Ogle, and others, it should come as no surprise that no persuasive evidence exists that the Iliescus ever learned of Steppan's identity as the party who would someday "seek to record and enforce a lien." Steppan admitted he had no basis to assert any such knowledge of his identity by the Iliescus. II AA0464 at p.69 ll. 24-25. Indeed, the key testimony which was repeatedly utilized against Dr. Iliescu (II AA0464 at p. 69 ll. 1-2; III AA0481, 0486) to claim he would have had knowledge of Steppan's identity, namely a July 30, 2007 affidavit from David Snelgrove, regarding Iliescu seeing plan documents which had Steppan's name on them (III AA0572-0574), was ultimately shown to be meaningless, when Mr. Snelgrove was deposed on November 18, 2008, and admitted he had no knowledge of whether Dr.

Iliescu ever saw the relevant pages of the documents in question, and he did not discuss Steppan's name with Dr. Iliescu. II AA0468-0470; XI AA2524-2525. Based thereon, the original summary judgment ruling was issued despite serious questions of fact as to the basis thereof, and certainly should have been overturned on the basis of the *Hardy Companies* ruling, decided thereafter, such that it was error for the district court to instead insist that said ruling would not be reconsidered as part of the trial, which is the only explanation for the district court's Decision, which does not comport with *Hardy Companies*.

Indeed, Snelgrove's trial testimony, as to certain of the meetings which the Iliescus allegedly attended [another point emphasized in his assertions], such as an Arlington Towers HOA meeting, at which architectural plans were allegedly discussed,[7] indicated that Nathan Ogle of FFA, rather than Steppan, was the architect's representative in attendance. V AA1206-1209.

Nevertheless, the district court upheld the earlier summary judgment, despite acknowledging the lack of evidence as to when, if ever, either of the Iliescus knew of Steppan's identity, as follows: "Iliescu was aware that . . . instruments of service were being produced. **Iliescu may not have known**, at all times, **Steppan's name**; however, there is no doubt in the Court's mind that Iliescu was **aware of the work being done** by Steppan" (VIII AA1915) Decision at ¶ 14. This

[7] Dr. Iliescu does not recall whether he actually attended such meeting, more than momentarily. VI AA1299-1301.

finding (of awareness that work was being done, without a clear finding of when, if ever, Dr. Iliescu [let alone Mrs. Iliescu],[8] knew *the identity* of the potential lien claimant performing the work) is precisely what the *Hardy Companies* decision repeatedly indicated was **insufficient** to invoke the *Fondren* exception! Indeed, the district court's finding on this point almost reads as an illustrative example of the type of finding which *Hardy Companies* explicitly deemed insufficient, and expressly warned against: stripping a property owner of his NRS 108.245 rights by a finding of awareness of work being performed (which in this case is not even the type of on-site *construction* work that *Fondren* and *Hardy* discuss), without any determination that the property owner knew the identity of the person performing the work! As such, the district court's decision must be overturned, and the Steppan lien revoked, under the plain language of *Hardy Companies*.

Similarly, and significantly, a pre-lien notice allows a lien claimant to lien only for any work performed within a time period commencing 31 days prior to the date on which the notice was provided (NRS 108.245(6)). Therefore, the district court's failure to indicate when, if ever, the Iliescus may have learned of Steppan's identity (as a judicially created substitute for the statutorily required Notice

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[8] Where property is owned by more than one owner, NRS 108.245 must be satisfied as to both, and notice "to one owner is not sufficient to affect the interest of other owners." *DTJ Design*, at 1159, 543. No competent evidence was provided at trial to suggest that Mrs. Iliescu was aware of Steppan's identity. *See* VII AA1561-1571.

Steppan failed to give, despite the legislature's clear indication that this is a prerequisite to his statutory rights) means that the court erred when it nevertheless upheld the entirety of the Steppan lien, for **all of the unpaid work,** without making any finding as to how much of the liened work was performed after 31 days before that knowledge was received (if ever). Nothing in the district court's Decision or Judgment explains how the court determined that all of the unpaid invoices were entirely lienable under NRS 108.245(6), where no date of the "actual notice" event has been provided. The district court's rulings must also be set aside on this basis, and should be vacated with prejudice, given Steppan's failure (as the lien claimant with the burden of proof on his claims) to produce sufficient evidence to allow a determination of the date on which the alleged knowledge of Steppan's name, if any, ever occurred.

For example, much was made in the Summary Judgment briefs regarding Dr. Iliescu's attendance at an October 4, 2006 Reno City Planning Commission meeting, at which a single power point slide containing Steppan's name was apparently presented. II AA0344; IV AA0733-34. A November 15, 2006 Reno City Council meeting has also received much attention IV AA0734; VIII AA1916 even though, by that date, the first "Steppan" lien had already been recorded (VIII AA1731), such that any information learned at that meeting is irrelevant. (Steppan, of course, did not attend these meetings. VII AA1515.) However, David

Snelgrove, who was retained by BSC in early 2006 (XI AA2500-2501), testified that by the time of his involvement (for February 2006 submissions by his firm Wood Rogers VIII AA2519) FFA's architectural work was already substantially completed (VI AA1246) with only "tweaks" later that year, in May (VI AA1254).

Thus, long before the October 2006 date of the first of these Reno City government meetings, the vast majority of FFA's work was complete. Indeed, the flat fee invoices show 77.69% completion of the Schematic Design phase prior to October 25, 2006, and 100% completion before November 21. VIII AA1813; VIII AA1810. Thus, even assuming for the sake of argument that these invoices were accurate, if the Iliescus had learned of Steppan's identity at one of these meetings, this would not have entitled Steppan to lien for the vast majority of the work, which had been completed more than 31 days before said meeting, such that the vast majority of the work was not lienable. However, there is no reason to assume that even these invoices bore any relation to reality. Expert testimony was presented at trial indicating that no further work was done by FFA, and its instruments of service were essentially complete, before the April 2006 execution of the AIA Agreement. VII AA1619-28; 1636-1638. (*See also*, VIIIAA 1889-91 for a further written explanation of the expert's position on this issue which was not however admitted at trial.) This analysis accords with certain of Snelgrove's and Steppan's testimony cited above. On cross-examination of this expert,

Steppan's counsel suggested that further work may have been done in May of 2006, based on amendments to the earlier use permit applications. VII AA1640. However, even if this claim were accepted, work which was completed in May of 2006 still wouldn't be lienable if the Iliescus only learned of the identity of the lien claimant in October or November of 2006. No such analysis was however performed by the district court, as it didn't bother to identify whether the Iliescus ever learned of Steppan's identity before the lien was recorded, or, if so, when.

It was therefore error for the district court to uphold the earlier summary judgment, and enter a Judgment upholding the entire lien, without even reaching and addressing these questions of fact and law, as to when the Iliescus (if ever) learned of Steppan's identity as a potential lien claimant, and how much work had been completed 31 days prior to said date, so as to be lienable under NRS 108.245(6) (assuming it was otherwise lienable, which it was not, for other reasons). To the extent that the court's inability to reach this determination was based on a failure by Steppan to sufficiently plead and prove this element of his claim, on which he bore the burden of proof, the Judgment must be reversed and vacated with prejudice.

C. Steppan's Other Failures to Abide By the Lien Statutes Should Also Have Been Fatal to His Claims.

The Iliescus argued that Steppan's failure to provide the 15 day notice required by NRS 108.226, before recording his initial lien, was fatal to his claims. I

AA0005. This argument has never been directly addressed in any of the court orders. Further failures to properly comply with the lien statutes were also presented to the court in the Rule 60 Motion, including verification failures, violation of the timing requirements for the suit to foreclose, mis-timed amendments, etc. IX AA2004-2008. These arguments were likewise simply ignored in the Order denying the motion. X AA2425-2433. This was an abuse of discretion.

D. Steppan Also Failed to Meet His Burden to Prove the Key Element of His Case, That He Was Liening for Work Performed By or Through Him.

(i) Steppan failed to demonstrate that his lien was in compliance with NRS 108.222.

Under NRS 108.222, a mechanic's lien claimant may only lien for the value of services provided "by or through" the lien claimant. Thus, a mechanic's lien claimant may lien for his own work, or that of his employees, or that of his hired subcontractors, but he cannot lien for someone else's work, or for that of someone else's hired employees or hired subcontractors. This is simply axiomatic and self-evident: If Jack's Framing Company and Jill's Framing Company both provide framing to a project under their own direct relationship with the customer, Jack cannot lien for Jill's work. In this case, likewise, Steppan cannot lien for FFA's work, which FFA was performing directly for the customer.

For example, in *Nevada National Bank v. Snyder*, 108 Nev. 151, 157, 826

P.2d 560, 562-64 (1992) (partially abrogated on other grounds by *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002)) a district court was reversed after it allowed an individual member of a foreign architectural firm to act as the plaintiff foreclosing the firm's mechanic's lien, including because the relevant "invoices were submitted . . . on behalf of the corporation; the construction drawings for the proposed project were prepared by the corporation; [and] the individuals who worked on the drawings were employees of the corporation" not of the individual lien claimant, who thus had no right to prosecute the corporation's lien. *Id.* Similarly, herein, each of these facts is also true, together with dozens of other factors demonstrating that Steppan is liening for a foreign firm's work, not his own, as demonstrated above. *See also*, *DTJ Design, Inc. v. First Republic Bank*, 318 P.3d 709, 711, 130 Nev. Adv. Op. 5 (2014) [which was decided after the Steppan trial] (rejecting mechanic's lien of unlicensed foreign architectural firm for unlicensed work performed in Nevada, and noting that it could not substitute its Nevada licensed employee as the lien claimant to overcome this ruling, where he owned less than 2/3 of the company, as would be required for the company to become licensed in Nevada).

"Lien claimant" Steppan failed, in this case, to prove up a valid lien at trial, in that he failed to demonstrate that the lien was for unpaid amounts owed *to Steppan* for *his* services (as alleged in Paragraph 9 of "Steppan's" Complaint) (I

AA0174) "furnished by" him or furnished by *his* employees or *his* subproviders, acting "through" him as their customer or employer. As the *DTJ* decision notes, Steppan had a duty to "plead and prove" his *prima facie* case under the lien statutes. *DTJ*, at 318 P.3d at 710. Steppan's failure to demonstrate any basis for being allowed to lien for FFA's work, therefore requires the district court's Judgment upholding the lien to be overturned. (For further legal analysis on this point see, IX AA1992- 2008; VIII AA2190-2203; X AA2387-2398.)

The district court's oral finding that Steppan had retained FFA, to work under Steppan, was not based on substantial evidence, or any real evidence, with both FFA owner Friedman, and Steppan, instead conceding repeatedly that the lien was being pursued on behalf of FFA, who had interacted directly with BSC. At the very least, given the substantial evidence that FFA's work was performed directly for the customer, any Steppan lien should have been limited to the value of his own performance, exclusive of the performance of FFA and its other employees.

Moreover, given the substantial evidence that Steppan's involvement in the project was *de minimis*, the lien in his name should not have been allowed under *DTJ*, which noted that, even had the Colorado architectural firm in that case done what FFA did here, and had its one Nevada licensed employee put the contract and the lien claim in his name, this would have been inappropriate where the work was actually performed by others: "to the extent that DTJ argues that Thorpe should

individually be able to foreclose on the lien as a registered architect, we disagree" including because Thorpe was not truly involved as a co-principal on the project for much of the time it was underway, "until nearly a year after the development contract was signed." *DTJ Design*, 318 P.3d at 711. *See also, Snodgrass v. Immler*, 194 A.2d 103 (Md. Ct. App. 1963) (refusing to enforce architectural services contract where the "evidence shows that in reality it was [the unlicensed party] that performed the functions of an architect, and [the licensee] was used as a mere strawman to allow [him] to do indirectly what he could not do directly."); *Dalton, Dalton, Little, Inc. v. Mirandi*, 412 F. Supp. 1001, 1004) (D. N.J. 1976) (Maryland architect could not provide architectural plans for a New Jersey building merely by utilizing its New Jersey licensed employee to seal and certify the plans; "subterfuge, pretense, or improper circumvention of the law" warrants "penetration of the form to reach the substance.").

(ii) FFA's Work Was in any event Illegally Performed, and Could Not Be the Basis for a Steppan Lien.

Even if it were hired by Steppan as his subcontractor, FFA was not authorized to perform architectural work in Nevada, in any event, for any customer, including Steppan. NRS 623.180(1)(a) (only Nevada registered architects may practice architecture in Nevada); NRS 623.360(1)(c) (practicing architecture without a license is prohibited). *DTJ Design Inc.*, 318 P.3d at 710-712, 130 Nev. Adv. Op. 5 (2014) (foreign architectural firm which was not registered in

Nevada and [like FFA] was not owned by 2/3 Nevada licensees so as to become so registered, could not legally provide and lien for architectural services in Nevada). In order to overcome this problem, FFA asserts that "FFA only worked as a design consultant to Steppan and is therefore exempt from NRS Chapter 623" pursuant to NRS 623.330(1)(a), which exempts from Nevada licensure "a consultant retained by a registered architect." VIII AA2086 at ll. 2-4. FFA's invocation of this exemption, because it claims to have acted as a "design consultant" (although accepted by the district court (VIII AA1915 at ¶12)) is preposterous. A "design consultant" is not even a category of design professional recognized by NRS Chapter 623; and FFA should not have been treated below as though it were providing mere "consulting" services, just because of what it called itself. *See*, AGO 19 (4-1-1963) [VIII AA2207-2208] (a party "cannot legally" exempt itself from the requirements of NRS Chapter 623 "merely by refraining from calling [itself] an architect, if [it], in fact, accepts work which falls within the purview" of the practice of architecture). The State Architectural Board may only issue prescribed certificates, not make up its own. AGO 305 (11-24-1953). *See also* VIII AA2200 at n. 5.

NRS 623.023 defines the practice of architecture as "rendering services . . . embracing the scientific, esthetic and orderly coordination" for the "production of a completed structure [for] human habitation or occupancy" including by

producing "plans [and] specifications". A consultant, by contrast, is a person who merely gives advice to the professional actually performing substantive work, whereas a person actually producing the essential work product is acting as more than a consultant. *See, e.g.*, the New Webster's Encyclopedic Dictionary of the English Language (1992) at p. 210 ("con·sult·ant . . . a person (engineer, doctor etc.) giving expert or professional advice."); *Gleeson M.D. v. State Bd. of Medicine*, 900 A.2d 430, 437-38 (Penn. 2006)(unlicensed out-of-state medical doctor did not merely "consult" and, thus, was not statutorily exempt from licensure requirement, where he physically touched patient and performed a procedure); *Bilazzo v. Portfolio Recovery Assoc., LLC,* 876 F.Supp.2d 452, 462-465 (D. N.J. 2012)(unlicensed attorneys from another state were not acting merely as "consulting attorneys" to licensed lead attorney who signed the pleadings, where they billed far more hours than he, worked independently, and had substantial direct contact with opposing counsel and agency); *Gsell v. Yates*, 41 F. Supp. 3d 443 (E.D. Penn 2014) (out-of-state attorney wishing to fulfill a "consulting" role must refrain from direct contact with client, from significant contact with opposing counsel, and should not draft substantial portions of pleadings, but may only engage in advisory activities such as editing motions prepared by lead counsel, while recording only a modest number of hours compared to the licensed attorneys). FFA clearly fails all of these tests, or any other reasonable test for being

able to claim it was acting as Steppan's or BSC's mere consultant, as shown by the statement of facts above, which demonstrate that FFA and its owners and employees produced the work product, billed the vast majority of hours, and maintained all contact with the client and Nevada officials, directly, rather than did Steppan.

Indeed, Steppan repeatedly admitted, in post-trial briefs, **that FFA and its employees were engaged in the direct production of architectural designs and plans and work product**, and were not merely providing advice. *See, e.g.*, VIII AA 2079 ll. 9-13 (purported Contract Architect "Steppan could not accomplish" the services he was to provide without the help of "other designers" because the scope of the project was "much too large to expect" a "single architect [to] design it" instead requiring more than "3,396 billable hours" recorded, from all of FFA's other architects and designers.); 2081, l. 10 (FFA's work described as "design services") 2083-2084 (Steppan was merely to "sign and seal technical submissions **prepared by Fisher Friedman Associates**" including "drawings **prepared by unlicensed designers**.") [Emphasis added.] Clearly, by Steppan's own admission, FFA and its employees were not acting as mere "consultants" but as designers and providers of architectural instruments of service and work product including technical submissions and drawings and instruments of service, etc.

Because FFA's work was performed improperly without the requisite

Nevada license, and in violation of NRS 623.160(1)(c) and NRS 623.180(1), Steppan cannot lien for the same, even if the district court's unsupportable finding that Steppan employed FFA were upheld. *See, e.g., Holm v. Bramwell*, 67 P.2d 114 (Cal. Ct. App. 1937) (prime contractor's mechanic's lien claim could not include advances which had been paid by prime contractor to an unlicensed subcontractor).

E. Paragraph 6 of the Final Judgment should be reversed and rejected, to prevent any future misapplication of Nevada Law.

The district court's final Judgment indicates in Paragraph 6 that, upon some future lien foreclosure sale of the subject Property, which does not result in sale proceeds sufficient to pay off Steppan's multi-million dollar lien, Steppan retains the right to ask the court to rule on theories he asserted in his pre-trial statement, that he should be allowed to collect any deficiency from the Iliescus personally. X AA2380; X AA2369-2371; 2374. This provision of the Judgment should be stricken, as no such possibility of personal liability against the Iliescus exists, beyond Steppan's claim to foreclose on the Mechanic's Lien in his name for FFA's work (if the district court's Judgment were to be upheld after this Appeal, which it should not be).

Steppan claims that the Iliescus might be subject to personal liability beyond the value of their liened Property (III AA0709), based on a misinterpretation of NRS 108.239(12), which Plaintiff contends means that "[if] the proceeds from the [Mechanic's Lien foreclosure] 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" such that, after any lien foreclosure sale, Steppan contends that he may "apply to the court for a personal judgment against Iliescu" if "the net sale proceeds [from the mechanic's lien foreclosure sale] are less than the monetary amount of the judgment." *See*, II AA0709 ll. 16-24. The final paragraph of the Judgment was meant to allow Steppan to preserve this claim, subject to the Iliescus' rights to contend otherwise. In the unlikely event the lien is upheld (which it should not be), the Iliescus should not then have to also face this uncertainty as to the result of any foreclosure sale.

Steppan's contentions are simply untrue, and no Nevada case law or statute supports the same. To claim otherwise, Plaintiff's above-quoted Trial Statement misconstrued NRS 108.239(12) by omitting its key passage. That statute actually reads, in full, as follows: "12. Each party whose claim is not satisfied in the manner provided in this section is entitled to personal judgment for the residue **against the party legally liable for it** [*i.e.*, the defaulting customer of the lien claimant, with whom it had privity of contract in this case BSC] *if* that person has been personally summoned or has appeared in the action [which Steppan did not do, as to BSC, herein, although most mechanic's lien lawsuits also name the defaulting customer for breach of contract]." [Bracketed language added.]

The fact that a mechanic's lien proves insufficient to pay the contractor does not prevent the contractor from nevertheless seeking personal judgment for any post-foreclosure residue or deficiency still owed, as against the party with whom he contracted, as the person who is and has always been "legally liable for" payment to the contractor, or as against other liable parties, such as the contractor's guarantor. This simple principle was clarified by subsection 12 of the statute merely in order to avoid any confusion or any claim that mechanic's lien rights somehow supplant a contractor's other rights to seek other more traditional remedies, such as by simply suing for a money judgment against his or her breaching contract customer. This simple principle is also clarified by NRS 108.238, with NRS 108.239(12) providing further procedural instruction, that the party legally liable to the lien claimant for the debt, such as the claimant's customer, should also be named and sued for breach of the underlying contract, as part of the lien foreclosure suit, which Steppan did not do here.

NRS 108.239(12) does not magically transform the owner of liened real property into defendants who are themselves now legally and personally liable for any amounts owed the lien claimant, and unable to be satisfied from the Property's sale, simply by being summoned and appearing in the lien foreclosure action. This is not what the statute says, on its face, or by any reasonable construction.

Nor does the relevant case law support this contention. *See, e.g., Didier v.*

Webster Mines Corp., 49 Nev. 5, 234 Pac. 520 (1925) (property owner was not personally liable for any amount of a miner's lien claim which could not be satisfied from the property, in the absence of privity of contract between the real property owner and the lien claimant.); *Milner et al. v. Shuey,* 57 Nev. 159, 179, 69 P.2d 771, 772 (1937) (there must be a contractual relationship regarding the furnishing of labor and materials between the party foreclosing the lien and the party against whom personal liability is sought. "[S]uch a relation is essential to establish personal liability against the owner of the property in addition to a judgment foreclosing a lien...."); *Nevada National Bank v. Snyder*, 108 Nev. 151, 157, 826 P.2d 560, 563-64 (1992) (partially abrogated on other grounds by *Executive Mgmt Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 38 P.3d 872 (2002)("The district court judgment stated that [the mechanic's lien claimants] were entitled to a 'personal judgment for the residue against [the property owner].' The [property owner] asserts that the remedy to enforce a mechanic's lien is to force a sale of the property and that it is not liable for any deficiency if the monies from the sale do not cover the amount of . . . [the] liens. We agree. . . . It is unjust to hold the [property owner] personally liable for a deficiency when it was not a party to the contract, and because [it] is not the person liable for the debt under NRS 108.238."). *Reeder Lathing Co., Inc. v. Allen*, 425 P.2d 785, 786 (Cal. 1967)("The part of the judgment that defendant is personally liable to plaintiff is clearly

erroneous. In the absence of a contract between a lien claimant and the property owner, the right to enforce a mechanic's lien against real property does not give rise to personal liability of the owner.")

The Nevada Supreme Court in *Snyder* also rejected the argument that the owner of liened real property could be held liable for the residue beyond the value of the liened property on an "unjust enrichment" theory, even where the work had benefitted the property, and therefore its owner. *Snyder*, 108 Nev. at 157, 826 P.2d at 563. In the present case, Steppan's complaint contains but one cause of action, for the foreclosure of a mechanic's lien against the Iliescu Property, and does not assert any unjust enrichment theory (or any other claims) against the Iliescus in any event, such that allowing such a claim at this late date would be a violation of due process. This is especially true given that **Steppan *successfully* struck the Iliescus' Jury Demand, on the grounds that his suit was solely for foreclosure of a mechanic's lien, on which no jury is allowed**. III AA0582-0584; III AA0625-627. Steppan is not entitled to have his cake and eat it too, and, having successfully insisted that his case was solely for a non-jury mechanic's lien claim, should not now be heard to contend that he has other personal claims against the Iliescus as well.

Moreover, the Property was not improved to the unjust enrichment of the Iliescus, as it is now just as vacant and unimproved as it was the day it went into

escrow, at which time it was not subject to a seven figure Mechanic's Lien claim.

F. Summation.

The court erred in ruling, on a summary judgment basis, that Steppan could be excused for his failure to comply with a statutory prerequisite to his lien claims, namely, providing notice of his right to lien under NRS 108.245, where there remain genuine issues of material fact with regard to the Iliescus' alleged notice of Steppan's identity as the party who would lien for the work, which remained unresolved even after trial. The court therefore erred in upholding this earlier summary judgment ruling, while simultaneously acknowledging that Steppan's identity may not have been known to the Iliescus, as expressly required by Nevada case law to invoke the subject statutory exception. The district court further erred by declining to identify a date on which any notice occurred, and to then analyze whether any work had been performed within 31 days prior to that date, instead allowing the entirety of the lien claim to stand, for all of the unpaid work performed, even while acknowledging insufficient basis to determine at what times, if any, the work became lienable. Because Steppan had the burden of presenting evidence which would have allowed the necessary rulings on these issues, the court's inability to make complete findings prevents any award in his favor.

Furthermore, the court erred in determining that Steppan had "retained"

FFA, even though no evidence exists of any such retention, in the form of any written agreement (as would have been required under Nevada law) or in the form of any course of dealing, payments or invoices between Steppan and FFA to even suggest that FFA was working for Steppan as its client, and given the volumes of evidence that in fact FFA was working directly for the customer, such that Steppan's lien should have been invalidated, or at the very least restricted to the value of his own services, as opposed to that performed by the unlicensed FFA. The court also erred in accepting an argument that FFA's architectural services for this Nevada project were appropriate under the "consultant" exemption to Nevada's architectural licensing statutes, where FFA's own testimony clearly admits that FFA was doing far more work than Steppan was, and was not merely a consultant to Steppan, or to BSC, under any stretch of the imagination. The court also erred in upholding a lien in Steppan's name which was entirely for unpaid FFA invoices, on FFA letterhead, crediting prior direct payments to FFA, and which included claimed payments (not from Steppan but from FFA) to FFA's subproviders, which were not substantiated by Steppan, except by reference to *FFA's* invoicing procedures, and which also included invoices for add-on work performed by FFA, for which the customer agreed to pay FFA.

Finally, the district court erred in retaining language in its Judgment which suggests the possibility that the Iliescus may somehow be personally liable for

some portion of the Judgment beyond the value of their Property, should the Property be foreclosed upon and not sell for a price adequate to fully satisfy the lien, given that the only cause of action claimed against the Iliescus was for foreclosure of a mechanic's lien, and the lien statutes do not allow for any claim against the Property owner in these circumstances (where no privity of contract exists) beyond the value of the Property itself.

CONCLUSION

Based on the foregoing, the court's pre-trial Summary Judgment Orders should be reversed, and its Judgment entered after trial (at which those Orders were not subject to reconsideration) should also be reversed. The district court's post-trial Orders denying an NRCP 60 Motion for relief and an NRCP 52 and 59(e) Motion for relief, should likewise be reviewed and reversed, as not based on evidence and as legally erroneous, and therefore an abuse of discretion.

DATED this 12th day of May, 2016.

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ATTORNEYS' RULE 28.2 CERTIFICATE

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 13,873 words.

3. Finally, I certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 12th day of May, 2016.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 12th day of May, 2016, service was made by the following mode/method a true and correct copy of the foregoing **APPELLANTS' OPENING BRIEF**, to the following person(s):

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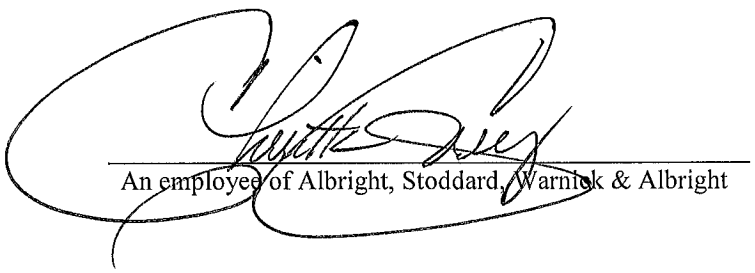

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN ILIESCU, JR., et al., Applicants,

vs.

MARK B. STEPPAN, Respondent.

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.

AND RELATED CLAIMS.

CASE NO. CV07-00341
(Consolidated w/CV07-01021)

DEPT NO. 10

THIRD-PARTY PLAINTIFFS' MOTION TO AMEND THIRD-PARTY COMPLAINT AND MOTION FOR CLARIFICATION AS TO STAY

COMES NOW, Third-Party Plaintiffs, JOHN ILIESCU, JR., and SONNIA ILIESCU, individually and as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY

TRUST AGREEMENT (hereinafter "Third-Party Plaintiffs" or the "Iliescus"), and hereby move for leave of court to file a Restated Answer containing an Amended Third-Party Complaint against Hale Lane Peek Dennison & Howard ("Hale Lane"), which Amended pleading will provide a more definite statement of the nature of the third-party claims, and will also re-add new Third-Party Defendants, previously dismissed, without prejudice, by Stipulation or by Order (namely Karen D. Dennison, R. Craig Howard, Jerry M. Snyder and John Schleining). The proposed Amended pleading for which leave to file is sought herein is attached hereto as **Exhibit "1."** Third-Party Plaintiffs also hereby move for clarification that no stay currently prevents the filing of this amended pleading.

These motions are made and based upon the Points and Authorities set forth below, any exhibits and affidavit referenced in or attached hereto, all papers and pleadings on file with the Court, and any argument of counsel at any hearing of this matter.

DATED this 16th day of September, 2016.

By _____

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POINTS AND AUTHORITIES IN SUPPORT OF THIRD-PARTY PLAINTIFF'S MOTION TO AMEND THIRD PARTY COMPLAINT

I. STATEMENT OF FACTS

A. The Iliescus Agree to Sell their Property.

This court is well aware of the background of this case. The action arises out of an agreement entered into by the Iliescus to sell certain property near Court Street and Arlington in downtown Reno

(sometimes hereinafter, the "Property") to a potential purchaser which intended to develop the Property for a high-rise mixed use condominium project known as Wingfield Towers.

B. Hale Lane Is Retained to Represent the Iliescus and Prepares Addendum No. 3, in October of 2005, Which Fails to Protect the Iliescus' Best Interests.

As part of that transaction, Karen Dennison and the (then) Hale Lane Law Firm was retained by the Iliescus to represent their interests in preparing certain Addendums (initially, a Third Addendum) to the purchase agreement by and between the Iliescus and the buyer/would-be developer (herein referred to as "BSC/Consolidated" or "buyer" or "purchaser"). An Addendum No. 3 to the purchase agreement was therefore drawn up on behalf of the Iliescus, by their counsel Hale Lane, which was signed in October 2005. **Exhibit "2" hereto**. This Addendum included, at Paragraph 1, a modification of certain terms relating to any extensions of the close of escrow date. The Addendum also included, at Paragraph 7, an indication that obtaining the necessary entitlements from the relevant government agencies, including any required height, set-back, or other zoning variances, and any required special use permit, or zoning changes, master plan amendments, etc., was a condition precedent to the parties' obligations under the purchase agreement, which entitlements were required to be obtained by the buyer, "at buyer's expense" and also noted the potential future involvement of an architect as that process progressed, at paragraph 8(1).

Based on these and other provisions, Karen Dennison/Hale Lane knew, or should have known, at the time this Addendum was drawn up, that architectural and design services would eventually be commencing with respect to the project, as necessary to allow the project to go through the entitlements process. Nevada law allows architects and other providers of design services to lien real property for their services, which put the Iliescus at special risk of having their property liened before any financing was in place to ensure that potential lien claimants were being paid for the work they claimed to be doing. Hale Lane therefore had a legal duty and obligation to include language within this Addendum No. 3 which would protect the Iliescus from such liens.

Moreover, Hale Lane had the perfect opportunity, within this Addendum, to address this issue, specifically in the Paragraph 1 terms relating to escrow closing date extensions. For example, those extension dates could have been made contingent and conditioned upon the architect providing

progress payment lien releases for all work performed to date through the date of any extension, in addition to or in lieu of the other conditions for such extensions set forth therein. Also, the Addendum could have required the establishment of a construction control account to ensure any design professionals were being regularly paid and signing unconditional progress payment lien releases, etc., or could have required the buyer to inform the seller before entering into such contracts, with a right to review and approve the same, so the seller could be protected against onerous provisions therein, such as flat-fee or percentage based billing provisions, and could timely record a notice of non-responsibility, etc.

However, no such provisions were included within this Addendum No. 3 by Hale Lane. Instead, Hale Lane merely included some boilerplate language about the duty of the buyer to protect and indemnify the seller from liens against the property. Such language is essentially worthless with respect to potential mechanic's lien claims, since the whole point of such liens is to ensure the provider of services has security for payment (in the form of a lien against the owners' property), if the party with whom he contracted cannot pay (in which event that same party will obviously also be unable to pay on an indemnity obligation). Nor did Hale Lane take the simple expedient of informing the Iliescus to record a notice of non-responsibility, as allowed by Nevada's mechanic's lien statutes. NRS 108.234.

C. Hale Lane Is Hired by the Buyer of the Iliescus' Property, and Hale Lane Reviews that Buyer's Contract With the Architect, in November of 2005.

The buyer/developer, BSC/Consolidated, sought out an architect to help obtain the entitlements, namely, the California architectural firm of Fisher Friedman Associates ("FFA"), which was not registered or licensed with Nevada's Architectural Board under NRS Chapter 623, to provide the subject services, such that it had one of its employees, Mark Steppan, who happened to be licensed in Nevada, sign the contracts with the buyer.[1]

In November of 2005, the potential buyer of the Iliescus' land (BSC/Consolidated) retained the same Hale Lane law firm which was representing the Iliescus as sellers, to provide assistance to

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[1]The validity of these arrangements has been upheld by this Court but challenged on appeal. Nothing stated herein is intended to negate the arguments currently pending on this or any other point on appeal. Nevertheless, this brief is based on the law of this case as it currently now stands before this Court.

the buyer, with regard to negotiating BSC's contract with its hired architect (*i.e.*, FFA/Steppan). Hale Lane accepted this November 2005 employment as counsel for the buyer, with Hale Lane attorney R. Craig Howard accepting the assignment from Sam Caniglia of BSC and passing it on to Hale Lane attorney Sarah Class. *See*, R. Craig Howard Deposition, portions of which are attached hereto as **Exhibit "3"** at pp. 18-20, 41-42, 45-46. *See, also*, Trial Exhibits 10, 11, and 12 jointly attached as **Exhibit "4"** hereto, consisting of certain November 2005 communications from Hale Lane attorney Sarah Class, to certain principals of BSC, with respect to recommended revisions to the buyer BSC's contract with the architect. Hale Lane thus placed itself in the highly unusual and potentially troubling role of concurrently representing both the buyer and also the seller on this multi-million dollar land acquisition and development transaction.

D. <u>In December 2005, Hale Lane Attorney Karen Dennison Learns of Hale Lane's Conflicting Work on Behalf of the Buyer</u>.

At some point in time prior to December 14, 2005, Hale Lane lawyers, R. Craig Howard and Doug Flowers, learned that the firm's lawyers, Sarah Class and Karen Dennison, were working for both the buyer and the seller, respectively, on the same Property transaction. **Exh. "3,"** Howard Depo., at p. 53. According to R. Craig Howard's deposition testimony, Karen Dennison was told these facts by R. Craig Howard in December of 2005. **Exh. "3"** at pp. 58-59. Four Hale Lane lawyers (Howard, Flowers, Class, and Dennison) then discussed these facts with each other. **Exh. "3"**, Howard Depo., at pp. 65-66. Nevertheless, Hale Lane attorney Dennison never informed the Iliescus of the architect's retention or of his identity. *See*, Trial Transcript ("TT") at pp. 811-815, attached as **Exhibit "5"** hereto.

E. <u>Hale Lane Writes to the Iliescus in December 2005, But Only to Protect Hale Lane and Obtain a Conflict Waiver, Not to Protect the Iliescus</u>.

Based on the information the four lawyers at Hale Lane discussed, in December of 2005, Hale Lane lawyers Sarah Class and Karen Dennison decided to communicate with the Iliescus about these matters via a letter dated December 14, 2005. *See*, **Exhibit "6"** hereto, December 14, 2005 letter from Karen Dennison, with attached cover fax sheet from Sarah Class, and attached client signatures. This letter was **not**, however, written to protect the Iliescus! This letter did not advise the Iliescus that an architect was being retained by the buyer, who would potentially thereby obtain lien rights against the

Iliescus' property (which knowledge by Hale Lane would subsequently be argued to be imputable to the Iliescus). Rather, this letter was written solely to protect Hale Lane: Hale Lane determined that it could overcome its direct, obvious, and concurrent conflict of interest in representing both the buyer for the Property and the seller for the Property in the same multi-million dollar transaction by merely having a short conflict waiver letter executed, after-the-fact. Thus, the December 14, 2005 letter, together with the cover fax sheet to the same, indicating that it was sent by Sarah Class on behalf of Karen Dennison (**Exh. "6"**), contained no information which the Iliescus should then have been provided about the retained architect. Instead, the letter solely addressed a conflict waiver request.

The letter contained only four brief paragraphs of explanatory text, which simply indicated the identity of the parties which the firm currently represented (the Iliescus) and the identify of new parties the firm now wished to also represent in the future (the BSC/Consolidated buyer related parties), as to entitlements work for the Property. Although Hale Lane had in fact already begun the representation of the buyer parties in November, **prior to** the December 14, 2005 date of this conflict waiver letter, the letter did not mention this fact, and did not inform the Iliescus of the architectural contract review work the firm had *already* performed for the buyer, a material omission. The letter asked for consent to future representation of the buyer, and for a waiver of any conflict arising from the same. The letter utilized language which gave the impression of a routine request, without providing any of the detail necessary to ensure that the conflict was only being waived with informed consent, as required by Nevada's Rules of Professional Conduct.

F. <u>The Hale Lane December 14, 2005 Letter Was Inadequate</u>.

The Iliescus contend and allege that this letter was inadequate as a matter of law, and contained inconsistent and false information, bad advice and bad counsel, and material omissions, such that Third-Party Plaintiffs allege the letter was itself an act of malpractice. For example, the letter from Class and Dennison did not advise that Hale Lane had already begun representing the purchaser before the letter was sent, did not inform the Iliescus that Hale Lane had thereby become aware of the nature of architectural services being provided at the project, the contractual rates potentially applicable to such work, and of the identity of the architect allegedly providing the same, who would later assert a multi-million dollar mechanic's lien against the Iliescus' property for FFA's architectural work. The

letter did not inform the Iliescus of the identity of FFA or Steppan, and did not counsel the Iliescus to record a Notice of Non-Responsibility to avoid a lien for the architect's services. Nor did the letter advise the Iliescus that they should contact the buyer and request that no binding architectural contracts be entered into, before closing of the sale, on any onerous flat fee terms.

Nevada Rule of Professional Conduct 1.8(h)(1) mandates that: "A lawyer shall not: Make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented." The letter did not however advise the Iliescus to obtain separate counsel before agreeing to the same. Moreover, this first conflict waiver letter did not provide sufficient information to Dr. and Mrs. Iliescu to provide for informed consent, as required by Nevada Rule of Professional Conduct 1.7(b)(4), as part of the waiver of a concurrent conflict of interest. The December 14, 2005 letter did not, for example, provide any of the information contemplated by the ABA in its comment to Model Rules of Professional Conduct (upon which Nevada's Rules of Professional Conduct are based) Model Rule 1.0(E), in which comment "informed consent" is discussed, and which comment requires that, in order to provide a client with informed consent, the client should receive a communication which ensures "that the client . . . possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes **a disclosure of the facts and circumstances giving rise to the situation**, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's options or alternatives." [Emphasis added.] The comment also discusses advising a client to seek separate counsel.

The letter was only four paragraphs long. It did not explain the advantages or disadvantages of allowing Hale Lane to represent the seller at the same time that the buyer was being represented by that same firm, or explain that information learned by the firm in that process might later be argued as imputed knowledge of the Iliescus. It did not advise the Iliescus of other options and alternatives, to allowing Hale Lane's conflicting representation. It did not advise Dr. and Mrs. Iliescu that they should seek the advice of independent counsel before signing the consent being requested. The letter also did not explain the unique nature of the conflict being asked to be waived, which was a concurrent and presently existing conflict between the seller and the buyer of real property, under a multi-million

dollar contract which had not yet closed, such that the buyer and the seller had currently existing inherently contrary interests.

The letter did not provide "a disclosure of the facts and circumstances giving rise to the situation." For example, the letter did not explain that the representation of the buyer by Hale Lane had already begun, did not disclose what Hale Lane had already learned in that representation (that a potential lien claimant was being retained to perform architectural work for the project) and the need for the Iliescus to do something to protect their Property from a lien from such retained party.

The letter also contained two sentences which were directly contrary to one another, such that one of the two sentences was, as a matter of logic, inaccurate, with respect to whether the Iliescus could continue to be represented by the Hale Lane firm in the event of any dispute between the seller and the buyer "involving the property" or could only count on such continued representation in a matter "not involving the property."

G. Hale Lane Represents the Iliescus in Drawing Up a Fourth Addendum, While Still Failing to Advise the Iliescus of the Threat of an Architectural Lien.

Nine months after this letter was sent, and then executed by the Iliescus, the Iliescus subsequently granted an extension to the close of escrow date to the buyer, via a fourth addendum to the purchase agreement, thereby providing the buyer with more time to purchase the property than was originally allotted, and utilized Hale Lane's services in drawing up this document.

Hale Lane did not warn the Iliescus to hold off on agreeing to this extension until after the potential mechanic's lien threat had been dealt with. Instead, prior to September 18, 2006, Hale Lane and Karen Dennison prepared Addendum No. 4 on behalf of the Iliescus (**Exhibit "7"** hereto), which allowed for this extension, and advised the Iliescus to sign it, which was bad advice. By the time this Addendum No. 4 was prepared in late 2006, Hale Lane had long since been exposed to even more information regarding the identity of the project architect, and certain of the terms of its retention. Hale Lane, nevertheless, still did not advise the Iliescus to demand a release of any such architectural lien as a condition to signing the 4th Addendum! Based on the entitlements work Hale Lane had by then done, by the time the 4th Addendum was signed, even further and stronger knowledge and duties had arisen on the part of Hale Lane and Dennison to advise the Iliescus of the relevant facts and their

implications, and to use the opportunity afforded by the buyers' request for this extension, to protect the Iliescus. Dennison and Hale Lane, however, despite the information previously learned in December 2005, and the information it would have obtained while working on entitlements thereafter, did not advise the Iliescus to take advantage of the extension request to protect themselves from any alleged architectural mechanic's lien, by negotiating for a release of any such lien as a condition to signing the 4th Addendum.

Perhaps Hale Lane felt that it could not provide such advice, in order to look after the best interests of its other clients, the buyers, who wanted the extension. But if so, the risk of such an outcome had not been properly or fully explained in the December 2005 conflict waiver letter, and Hale Lane should in that event have told one party or the other to seek alternate counsel to draw up this Addendum.

H. <u>Hale Lane's Inadequate Representation in Its Preparation of the Addendums, and in Its Communications to the Iliescus</u>.

Hale Lane thus committed the following acts of malpractice, among others:

- (including in conjunction with preparing the Addendums) never advised the Iliescus that architectural services were being performed in order to obtain the entitlements for the project and that these services created the possibility that the Iliescus' property could be liened by the architect;

- never advised the Iliescus that unlike other states, many of which only allow actual on-site works of improvement to form the basis of a mechanic's lien, Nevada allows liens for off-site architectural, engineering, and design services;

- did not inform the Iliescus that it would be essential for them to take steps to attempt to mitigate against this potential lien threat, such as by filing a notice of non-responsibility, or taking other protective measures;

- did not inform the Iliescus that they should not agree to any time extensions of the escrow date (such as those contemplated in Addendum No. 3 or later granted under Addendum No. 4) unless, as a condition of any such extension, the buyer obtained and provided to the Iliescus unconditional progress payment lien releases signed by the architect and all other design professionals indicating that they had been paid in full for all services performed to date as of the time of the execution of the

escrow extension, and would not be claiming any liens for any services performed and paid for prior thereto, utilizing the forms allowed under NRS Chapter 108;

- did not inform the Iliescus that obtaining such unconditional progress payment lien releases was especially important in this case, due to the potential, under the discussions held to date by and between the Architect and the buyer, that a flat fee AIA contract might come to exist which might be claimed by the Architect to retroactively apply to allow increased new retroactive billings for (and thus an increased lien amount for) work already completed and paid for under prior hourly contracts, such that unconditional progress payment lien releases would prevent the Architect from later claiming it could send new replacement invoices for astronomically higher flat-fee-percentage rates, superseding already paid invoices, which is exactly what the Architect later did;

- did not inform the Iliescus of Hale Lane's own in-house knowledge as to the terms of the potential AIA contract negotiated or reviewed by lawyers in the firm, and of Hale Lane's knowledge as to the identity of the lien claimant; and did not advise the Iliescus of the possibility that Hale Lane's knowledge might one day be argued to be imputable to the Iliescus themselves;

- did not advise the Iliescus that, in order to protect themselves they needed to obtain from the buyer a copy of any and all agreements which the buyer proposed to or had entered into with any architectural firm, design firm, or similar service provider, together with all invoices and payments on such invoices, in order to allow the Iliescus to finally become sufficiently informed as to the nature of any potentially threatened lien (which advice, had it been given, could have informed the Iliescus of the urgent need to ensure that they must not extend the escrow until and unless they obtained appropriate agreements from the architect expressly agreeing that any flat fee agreement would not be rendered effective until financing had been secured for the project, and the sale had closed, as it would be better to allow the sale to be cancelled, as it was anyway, than to allow the Architect to allegedly become vested in his alleged ability to lien on a percentage based flat fee contract based on the cost of a project which never even commenced on site).

I. <u>A Mechanic's Lien Is Recorded and Hale Lane's Failures Are Compounded</u>.

The buyers ultimately defaulted, as they were unable to obtain the necessary financing for the project and therefore failed to complete the purchase. Mark Steppan recorded (and later amended) a

mechanic's lien, for allegedly unpaid flat-fee architectural services fees. **Exhibit "8"** hereto, consisting of Trial Exhibits 1, 2 and 3. After this lien was recorded, realizing how poorly it had represented the Iliescus' interests, and in order to protect itself from the risks which it had subjected itself to, via its unusual concurrent representation of both the buyer and the seller on this subject transaction and via its failure to advise the Iliescus, during its representation of the Iliescus, how they might be protected during the entitlements process, from mechanic's liens which might arise as a result of that process, Hale Lane frantically attempted to nominally protect the Iliescus so as to protect Hale Lane from being sued by the Iliescus for Hale Lane's malpractice. However, the representation which Hale Lane offered during this time period was also inadequate, continuing the prior pattern.

Hale Lane first sought and obtained an indemnity agreement, whereby the purchasers would indemnify the Iliescus from any harm suffered by the Iliescus as a result of the lien. *See*, **Exhibit "9"** hereto. Hale Lane should, instead, have advised the Iliescus to obtain their own new counsel at that time, who might perhaps have negotiated for Hale Lane's execution of such an indemnity of their former client, to avoid a malpractice claim.

Hale Lane also asked for a second conflict letter to be signed by the buyer and the seller, a copy of which is attached as **Exhibit "10"** hereto, promising that Hale Lane would act to resolve the Mechanic's Lien filed by Steppan, a promise which Hale Lane never kept, and, on information and belief, did not adequately attempt to keep.

The second letter was provided to the Iliescus only after the Hale Lane firm's malpractice had been revealed to Hale Lane, by virtue of a lien having been asserted against the Property which lien might have been avoided had Hale Lane provided sufficiently adequate counsel and protections to the Iliescus while representing them. Thus, this second letter should have been especially clear in addressing all of the facts. It should have revealed that not only was there now a conflict between the parties being asked to execute this letter but that a conflict also now existed by and between the Iliescus and the Hale Lane firm, given the malpractice claim that the Iliescus now had against the Hale Lane firm. However, the second letter failed to address any of these items, and also failed to address the other items referenced in the above-quoted ABA commentary on informed consent.

J. The Litigation Commences.

Hale Lane then filed an Application on behalf of the Iliescus, dated February 14, 2007, for the release of Steppan's lien, initiating the first of the two herein consolidated cases. The Hale Lane-filed Application to discharge the lien filing initiated case number CV07-00341 in Washoe County, Nevada. Steppan then filed a Complaint to foreclose his mechanic's lien, commencing case number CV07-01021 on May 4, 2007. The two cases (No. CV07-00341 and CV07-01021) were subsequently consolidated (both cases are hereinafter the "Instant Consolidated Lien Litigation"). The Application to discharge the lien was five (5) pages in length and relied on two theories: that Steppan's lien was not valid because Steppan had failed to provide a statutorily required 31-day pre-lien notice that work was being provided by an architectural firm for the project, and was invalid due to the lack of any 15-day pre-lien notice as required for residential projects. The first of these two theories was ultimately rejected by the Court, including after the lien claimants argued that Hale Lane's knowledge of this architectural work should be imputed to the Iliescus. *See* Brent Adams June 22, 2009 Order attached as **Exhibit "11"** hereto at pg. 2, lines 6-9 and 25-28. The second theory was also ultimately rejected, as shown by the Final Judgment ultimately entered in Steppan's favor by this Court.

The Iliescus aver that Hale Lane's representation of the Iliescus' interests in the litigation was inadequate, and did not sufficiently draw on the firm's knowledge of the work Hale Lane had performed for the Iliescus and the buyer with respect to the transaction and the architect.

The Application filed by attorney Jerry M. Snyder, of Hale Lane, against Steppan's 7 figure lien claim, was, at best, a half-hearted effort, only five (5) pages in length, and relying solely on two theories. The Plaintiffs' proposed amended third-party complaint alleges that this representation by the attorney defendants during the initial phases of the litigation was inadequate.

K. Third-Party Malpractice Claims Are Asserted, and Then Stayed or Dismissed Without Prejudice.

Jerry M. Snyder and Hale Lane were ultimately replaced as counsel of record for the Iliescus in the Instant Consolidated Litigation, by new counsel for the Iliescus. Third-party claims were then asserted by the Iliescus in the second consolidated case as part of the Instant Consolidated Litigation, against various buyer BSC-related persons or entities, including Consolidated Pacific Development,

Inc., DeCal Oregon, Inc., Calvin Baty, and John Schleining. This Third-Party Complaint also asserted legal malpractice claims against the law firm of Hale Lane, and against lawyers Karen D. Dennison, R. Craig Howard, and Jerry M. Snyder. The original version of the Answer containing the original Third-Party Complaint against said parties is attached herewith as **Exhibit "12"** (without the exhibits thereto) and was filed on September 27, 2007.[2] John Schleining was dismissed as a Third-Party Defendant from the Third-Party Complaint via an Order dated November 22, 2011, which dismissal was without prejudice, and is attached hereto as Exhibit "15." Because this dismissal of Schleining was without prejudice, he has been named again in the proposed Amended Third-Party Complaint herein.

At one point, a number of the claims in the Steppan Lien Litigation, including both the Steppan claims and certain of the malpractice or other third party claims, were dismissed on procedural grounds, but this was overturned on appeal and cross-appeal, and the Instant Consolidated Litigation was then remanded on August 6, 2012 and January 4, 2013. **Exhibit "16"** and **"17"** hereto. A Stipulation and Order was thereafter entered on February 14, 2013, a true and correct copy of which is attached herewith as **Exhibit "18,"** which Stipulation and Order dismissed the "Hale Lane Partners" (*i.e.*, Third-Party Defendants Karen D. Dennison, R. Craig Howard, and Jerry M. Snyder) but did so "without prejudice" to a subsequent suit being brought against them (such as via the instant motion to re-name them as Third-Party Defendants at this time in this instant Consolidated Litigation). *See,* **Exh. 18** hereto, at p. 3, ll. 18-19. With respect to the law firm, Hale Lane, the Stipulation and Order provided that the 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." *See*, **Exh. 18** hereto at p. 3, ll. 20-22.

L. <u>Final Judgment Enters in the Primary Steppan-Iliescu Case</u>.

After a December 2013 trial, the District Court issued its "Findings of Fact, Conclusions of

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[2]The third-party case against Consolidated Pacific Development, Inc., has never been adjudicated and is not likely to ever be adjudicated based on that entity having apparently ceased to operate or exist. Similarly, DeCal Oregon Inc.'s attorneys withdrew from the case and subsequent attempts to determine whether DeCal has any ongoing existence or ability to defend or pay any judgment have to date been unsuccessful. Calvin Baty filed a bankruptcy which stayed the Third-Party Complaint against him, on May 30, 2008, and in which he received a discharge in September of 2008. *See* **Exhibits "13"** and **"14,"** respectively.

Law, and Decision" in that "primary case" between Plaintiff, Steppan, and the Iliescu Defendants, on May 28, 2014 ("Decision") a copy of which is attached hereto as **Exhibit "19."** Final judgment was thereafter entered in that same "primary case" between Steppan and the Iliescus via a "Judgment, Decree and Order for Foreclosure of Mechanic's Lien" (the "Judgment") entered by this District Court on February 26, 2015, which established the full monetary amount of the lien and ordered that it could now be foreclosed on. **Exhibit "20."** The Iliescus have filed a Notice of Appeal of that Decision and of that Judgment. **Exhibit "21"** hereto. Based on entry of the Judgment in that primary case involving the Steppan lien, the stay previously ordered therein, with respect to the third-party claims against Hale Lane, is apparently no longer in place. It is, thus, now appropriate to move forward with the claims against Hale Lane, and, in conjunction therewith, it has become appropriate to re-file the malpractice suit against the previously dismissed individual defendants, whose prior dismissals were without prejudice.

M. <u>Summary of Malpractice Claims</u>.

The Iliescus contend that Hale Lane's and its attorneys' malpractice committed in its representation of the Iliescus may be established on the basis of several distinct negligent and inadequate acts by Hale Lane and its attorneys in their representation, as set forth in the proposed Amended Third-Party Complaint attached as **Exh. "1"** herewith. These include, without limitation:

(i) Hale Lane's failure to properly prepare the Addendum No. 3, in a manner which protected the Iliescus from mechanic's lien claims, by, for example, failing to (a) include language in Paragraph 1 of the Addendum (which paragraph dealt with escrow extensions) conditioning escrow extensions on unconditional progress payment lien releases being obtained from any party who had performed any work with respect to the property through the date of the extension, or (b) require the buyer to immediately inform the Iliescus prior to executing any agreements or allowing any work to be performed which might lead to a mechanic's lien claim being asserted for offsite work, or (c) require that the Iliescus be allowed to review all contracts to be executed between the buyer and any such third-parties performing any such work to verify that the terms of such contracts were fair and reasonable before they could be signed, or (d) ensure, as part of the Addendum No. 3, that a construction control, surety bond, or other procedures were in place to protect the Iliescus from a

possible lien claim for work performed before financing was obtained, or advise the Iliescus of the need to timely record a notice of non-responsibility;

(ii) Hale Lane's failure, in its December 14, 2005 letter, to fully disclose to the Iliescus what services Hale Lane had by that date provided to the buyer of their Property, and what the firm then knew based thereon (a material omission), or to address the possible implications of this knowledge, and what the Iliescus could do to protect themselves at that time; and instead writing a letter solely designed to protect Hale Lane, while not lifting a finger to protect the Iliescus, and failing to provide any timely counsel to the Iliescus in November or December of 2015;

(iii) Hale Lane's failure to take advantage of the possibilities created by the buyer's request for Addendum No. 4 (which allowed the buyer an extension to close escrow) by preparing that Addendum in such a manner as to ensure that as a condition to the escrow extension granted therein, any lien claims which had accrued prior thereto had been released and paid off prior to the escrow being extended;

(iv) Hale Lane's providing self-contradictory and therefore necessarily inaccurate advice in the first conflict waiver letter, and violations of Professional Rules of Conduct in that letter;

(v) Hale Lane's conduct in assisting the buyer in negotiating contracts with an architect which were directly contrary to the best interests of the Iliescus, including an AIA contract for a flat fee rate on the basis of a percentage of the anticipated costs for the entire project, which flat fee contract was subsequently utilized and accepted by this Court to cause the lien to be astronomically high for a project on which not a single shovel of dirt was turned, such that the Hale Lane firm should have insisted, in order to protect its client the Iliescus (as well as its buyer client) that said AIA contract would not supersede any hourly contracts pursuant to which any earlier work was already performed and invoiced, and would not become effective, pursuant to the terms thereof, until and unless certain conditions precedent had been met, such as financing being obtained (the industry standard) or the sale closing;

(vi) Hale Lane allowing itself to represent the buyer at the same time it represented the seller and thus allowing itself to learn information which was later argued to be imputed to the Iliescus, without ever warning the Iliescus of this possibility;

(vii) Hale Lane's preparing of an ineffective indemnity agreement to supposedly protect the Iliescus;

(viii) Hale Lane's failing to advise the Iliescus to get their own counsel to advise them of their potential rights once the lien was asserted;

(ix) Hale Lane's promising, in the second conflict waiver letter, that Hale Lane would resolve the architect's lien and resolve the dispute with the architect, but then failing to adequately attempt to perform this promise or complete this promised task; and

(x) Hale Lane's filing of an inadequate Application to expunge the lien in this litigation, only five pages in length, which failed to attack the excessive amount of the lien in comparison to the improved value of the property on which it was based (zero, as no work was done on site), or other issues which were then known or should have been known to Hale Lane.

II. LEGAL ANALYSIS

A. Nature of Relief Sought by Movants Herein.

Based on the foregoing, the Iliescu Defendants have now moved herein for leave to file an Amended Third-Party Complaint, in order to provide a more definite statement of their malpractice claims against Hale Lane, and to now re-assert the previously dismissed claims against certain of the individual attorneys who were previously dismissed without prejudice. A true and correct copy of a proposed Amended Third Party Complaint is attached as **Exhibit "1"** hereto. This proposed pleading also adds an additional name of another potentially involved Third-Party Defendant, namely John Schleining. Schleining is to be sued on the basis of an indemnity executed by Schleining, relating to any losses suffered by the Iliescus relating to the Steppan lien. Given the Judgment enforcing that lien which has now been entered, the claims against Schleining are now ripe. Although Schleining was previously dismissed from this suit, this dismissal was without prejudice.[3]

B. Basis for the Relief Sought by Movants Herein.

Leave to Amend should be freely granted when justice so requires. NRCP 15(a) provides in

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[3]Schleining could, theoretically, also and alternatively, be named as a separate Defendant in separate litigation. Indeed, he has been so named, in Case No. CV-15-01388. However, this Court dismissed the other Defendants from that suit, such that Schleining has been granted an open extension to answer, pending the outcome of this Motion, to determine whether he should more properly be named as a third-party Defendant in this suit, or sued separately in a new suit.

pertinent part:

> A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; ***and leave shall be freely given when justice so requires***. . . . (Emphasis Supplied).

In determining whether leave to amend shall be granted pursuant to NRCP 15, the Nevada Supreme Court has adhered to the doctrine set forth by the United States Supreme Court in *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227 (1962). See, *Adamson v. Bowker*, 85 Nev. 115, 450 P.2d 796, 800 (1968). In *Foman*, the Supreme Court reiterated the philosophy of Rule 15, that amendments of the pleadings are to be freely granted, stating:

> If the underlying facts or circumstances relied on by Plaintiff may be the proper subject of relief, he ought to be afforded an opportunity to test his claims on the merits. In the absence of any apparent or declared reasons such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc., - - the leave should, as the rules require, be 'freely given'.

371 U.S. at 178, 83 S.Ct. at 230.

Based on the discovery which has been completed, the motions which have been heard, the trial which has been completed, and the rulings which have issued since the date on which the parties stipulated to stay the Third-Party Complaint, the Third-Party Plaintiffs are now in a much better position to provide a more definite statement of their Third-Party Claims. Based thereon, in order to allow those claims to be more fully and comprehensively articulated, this Court should grant this Motion for Leave to Amend, and allow the amended pleading, substantially in the proposed form attached as **Exh. "1"** hereto, to now be filed. Furthermore, now that Judgment has been entered in the underlying dispute between Steppan and the Iliescus, the time is ripe to re-name the previously dismissed individual Hale Lane attorneys.

C. <u>The Time Is Now Ripe to Move Forward Under the Prior Stipulation to Stay</u>.

Two objections are likely to be interposed to the relief sought herein. First, as this Court will recall (having issued the relevant ruling), the Iliescus previously, in 2015, filed a new lawsuit against the individual attorneys at Hale Lane rather than re-adding them in as Third-Party Defendants in this

case. Those attorneys then asserted, in that case, No. CV-15-01388, which they successfully moved to dismiss as duplicative of the instant case, that a stay is still in place, pursuant to the Stipulation attached as **Exh."18"** hereto, and will remain in place until the outcome of the appeal of the Judgment in favor of Steppan and against the Iliescus.

However, the plain language of that Stipulation seems to indicate that the stay ended upon Judgment entering in this action in favor of Steppan. The Stipulation provides as follows: "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, ..." **Exh. "18"** at p.3, ll. 20-22. Thus, it appears that this third-party case is now no longer stayed, and this Motion should therefore be granted.

Nevertheless, if a stay remains in effect, or if this Court feels a stay should remain in effect, pending the outcome of the appeal, then an Order clearly enunciating the ongoing existence of such stay, including with respect to new or restated claims against third-party Defendants who were previously dismissed without prejudice, would protect the parties and should be entered. Otherwise, at some future date, subsequent arguments might be raised herein, as to whether the time period for proceeding on the claims against Hale Lane or other proposed third-party Defendants, somehow expired, after the final Judgment entered, but before the appeal was complete. A clear ruling, one way or the other, on this issue, would thus be appropriate. Either the litigation as to the third-party claims should now resume, or it should be clearly established that a stay remains in effect which protects all parties.

It is respectfully submitted that the better answer to that question is to now lift any stay and grant the relief sought herein. The Stipulation staying the case was one-sided, allowing Hale Lane to defend and file dispositive defensive motions, but not allowing the Third-Party Plaintiffs, the Iliescus, to prosecute their claims. Moreover, the Iliescus, who were already advancing in years when they agreed to sell their property, are not getting any younger, and recollections of the subject events from ten (10) years ago are not getting any fresher. Even if an ultimate determination as to the amount of damages needed to be stayed, or bifurcated for a later proceeding, after the appeal has been completed, the question of the third-party Defendants' liability should now proceed, before key parties might pass

away or other events occur which would prevent any meaningful adjudication of liability to take place.

III. CONCLUSION

For the reasons set forth above, Third-Party Plaintiffs should be allowed to amend their Third Party Complaint at this time.

DATED this 16th day of September, 2016.

By _____
G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
D. CHRIS ALBRIGHT, ESQ.
Nevada Bar No. 004904
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
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Las Vegas, Nevada 89106
Tel: (702) 384-7111 / Fax: (702) 384-0605
gma@albrightstoddard.com
dca@albrightstoddard.com

AFFIRMATION

The undersigned does hereby affirm that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

DATED this 16th day of September, 2016.

By _____
G. MARK ALBRIGHT, ESQ.
Nevada Bar No. 001394
D. CHRIS ALBRIGHT, ESQ.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 16th day of September, 2016, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **THIRD-PARTY PLAINTIFFS' MOTION TO AMEND THIRD-PARTY COMPLAINT AND MOTION FOR CLARIFICATION AS TO STAY**, and a copy mailed to the following person:

Michael D. Hoy, Esq. HOY CHRISSINGER KIMMEL P.C. 50 West Liberty Street, Suite 840 Reno, Nevada 89501 (775) 786-8000 mhoy@nevadalaw.com *Attorney for Plaintiff Mark Steppan*	____ Certified Mail __X__ Electronic Filing/Service ____ Email ____ Facsimile ____ Hand Delivery ____ Regular Mail
David R. Grundy, Esq. Todd R. Alexander, Esq., LEMONS, GRUNDY & EISENBERG 6005 Plumas Street, Third Floor Reno, Nevada 89519 (775) 786-6868 drg@lge.net / tra@lge.net *Attorneys for Third-Party Defendant Hale Lane*	____ Certified Mail __X__ Electronic Filing/Service ____ Email ____ Facsimile ____ Hand Delivery ____ Regular Mail
Gregory F. Wilson, Esq. GREGORY F. WILSON & ASSOCIATES PC 1495 Ridgeview Drive, Suite 120 Reno, Nevada 89519 (775) 360-4910 gfw@gfwilsonlaw.com *Attorney for John Schleining*	____ Certified Mail __X__ Electronic Filing/Service ____ Email ____ Facsimile ____ Hand Delivery ____ Regular Mail
C. NICHOLAS PEREOS, ESQ. Nevada Bar No. 0000013 1610 Meadow Wood Lane, Suite 202 Reno, Nevada 89502 Tel: (775) 329-0678 cpereos@att.net	____ Certified Mail __X__ Electronic Filing/Service ____ Email ____ Facsimile ____ Hand Delivery ____ Regular Mail

An Employee of Albright, Stoddard, Warnick & Albright

INDEX OF EXHIBITS

EXHIBIT 1

EXHIBIT 1

CODE: 1090
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Attorneys for Applicants/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.

JOHN ILIESCU, JR. and SONNIA ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; JOHN ILIESCU, JR., 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 JANE DOE I; DOES II thru XX,

Third-Party Defendants.

AND RELATED CLAIMS.

CASE NO. CV07-00341
(Consolidated w/CV07-01021)

DEPT NO. 10

[PROPOSED] RESTATED ANSWER; RESTATED THIRD-PARTY COMPLAINT AGAINST CONSOLIDATED PACIFIC DEVELOPMENT, INC. AND DeCAL OREGON, INC., AND AMENDED THIRD-PARTY COMPLAINT AGAINST 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 JANE DOE I AND JOHN DOES II thru XX

LAW OFFICES
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
A PROFESSIONAL CORPORATION
QUAIL PARK, SUITE D-4
801 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89106

COMES NOW, JOHN ILIESCU, JR., and SONNIA SANTEE ILIESCU, as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT; and JOHN ILIESCU, JR., individually; by and through their undersigned counsel of record, ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and, as and for their Amended Third-Party Complaint against Third-Party Defendants, HALE LANE PEEK DENNISON & HOWARD, a Nevada professional corporation ("Hale Lane"); KAREN D. DENNISON; R. CRAIG HOWARD; JERRY M. SNYDER; JANE DOE I; JOHN SCHLEINING; CONSOLIDATED PACIFIC DEVELOPMENT, INC., a Nevada corporation; DECAL OREGON, INC., an Oregon corporation; and JOHN DOES II thru XX, hereby aver and allege as follows:

The instant amended pleading amends only the third-party claims against Hale Lane, Karen D. Dennison, R. Craig Howard, Jerry M. Snyder, and the DOE Defendants.

RESTATED ANSWER

Defendants JOHN ILIESCU, JR. and SONNIA ILIESCU, individually, and as Trustees of THE JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, by and through their undersigned counsel of record, ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, having previously answered the Complaint, filed by Plaintiff MARK STEPPAN, on May 4, 2007, hereby acknowledge, confirm, and restate their prior Answer and incorporate herein by reference all of the responses, admissions, denials, averments, affirmative defenses and prayers for relief set forth within said Answer to the Complaint which Answer was filed on September 7, 2007, by and on behalf of said Defendants. A Judgment has been entered on that Complaint and with respect to that Answer, which is now on appeal, such that this Restatement of the Answer is not an Amendment thereto, and said Answer is not amended hereby, but is merely referenced herein and acknowledged to remain on file in this action and not to have been withdrawn or omitted, merely as a placeholder and safeguard against any claim that the Answer was withdrawn by the filing of an Amended Third-Party Complaint.

RESTATED THIRD-PARTY COMPLAINT AGAINST CONSOLIDATED PACIFIC DEVELOPMENT, INC.

Third-Party Plaintiffs hereby restate, reaffirm and incorporate by reference all of their previously pled Third-Party Complaint allegations against DeCal Oregon, Inc., an Oregon corporation and Consolidated Pacific Development, Inc., a Nevada corporation, including without limitation, as set

forth in Paragraphs 44-50 of their Third-Party Complaint filed in this action on September 27, 2007. This restatement and acknowledgment of the existence of such claims is intended merely to prevent any misunderstanding or ruling from entering herein on the basis of any assertion that the Third-Party Claims against DeCal and CPD have been dismissed by virtue of the instant filing (as might be construed to be the case were said claims wholly omitted from this filing) or amended. The third-Party Claims against CPD and DeCal are not amended hereby, but are merely restated, to affirm that they remain in existence.

PARTIES

1. Third-Party Plaintiffs JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU, as Trustees of the JOHN ILIESCU, JR., and SONNIA ILIESCU 1992 FAMILY TRUST AGREEMENT, are residents of Washoe County, Nevada.

2. Third-Party Plaintiff JOHN ILIESCU, JR., an individual, is a resident of Washoe County, Nevada.

3. All of the Iliescus identified in Paragraphs 1 and 2 hereof, individually and as Trustees, are hereinafter jointly referred to as "Third-Party Plaintiffs" or the "Iliescus".

4. Certain of the individual Third-Party Defendants herein are or were employed by Third-Party Defendant Hale Lane Peek Dennison and Howard, a Nevada professional corporation, practicing law in the State of Nevada, including in Washoe County, prior to its merger and acquisition with, or other asset and liability sale to, Holland and Hart, via a Combination Agreement, or other similar arrangements.

5. Third-Party Defendant Hale Lane Peek Dennison and Howard is sometimes herein referred to as "Hale Lane" (or sometimes as the "Employer Law Firm") and it employed certain of the other individual attorneys named as Third-Party Defendants herein, during the relevant time periods, and/or said individuals were owners or partners thereof.

6. Third-Party Defendants Karen D. Dennison, R. Craig Howard, Jerry M. Snyder and Jane Doe I are or were attorneys licensed to practice law in the State of Nevada and are or were partners and/or associates of Hale Lane at all times relevant herein, during the events giving rise to the instant action. (Said Third-Party Defendants are hereinafter referred to individually as "Dennison",

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"Howard," "Snyder" and "Jane Doe I," and together with Hale Lane are sometimes jointly referred to herein as the "Lawyer Third-Party Defendants").

7. Third-Party Defendant John Schleining is an individual and a resident of Oregon, who entered into certain transactions in Washoe County Nevada at issue herein.

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

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

10. Jane Doe I is a pseudonym of Sarah E.L. Class, an employee of Hale Lane, who this Court, in a separate action (Case No. CV15-01388), has ruled may not be named by Third-Party Plaintiffs as a Defendant as to these facts and proceedings herein. Jane Doe I is named herein in order to allow Third-Party Plaintiffs to someday amend and name the actually intended party herein, Sarah Class, in the event of any subsequent rulings, appellate or otherwise, which would allow for such an amendment. Third-Party Defendant Hale Lane is in any event liable for said attorney's, Jane Doe I's, actions.

11. Third-Party Defendants, John Does II through XX, are persons or entities who participated in the acts alleged herein, or received the proceeds of the acts alleged herein, whose names or identities are not yet known to Third-Party Plaintiffs, or may have been misidentified herein. Third-Party Plaintiffs reserve the right to amend this Complaint after the identities and nature of the involvement of Third-Party Defendants John Does II through XX become known.

12. Third-Party Plaintiffs are informed and believe, and based thereon allege, that at all times relevant herein, all Third-Party Defendants, including Does I through XX (collectively "Third-Party Defendants"), were and are the agent, employee, partner, and/or supervisor of certain of the remaining Third-Party Defendants, and were, in performing the acts and omissions complained of herein, acting within the scope of such agency, employment, or partnership authority, and are each jointly and severally liable for all acts, omissions, and misfeasance described herein.

GENERAL ALLEGATIONS

13. Third-Party Plaintiffs are or were the owners, pursuant to legal title or in recognition of community property principles, of the real property assigned Washoe County Assessors Parcel

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Numbers 011-112-03, 011-112-06, 011-112-07, and 011-112-12, also commonly known as 219 Court Street, Reno, Nevada, and 223 Court Street, Reno, Nevada (all collectively, the "Property").

14. On or about July 14, 2005, Richard K. Johnson of the Metzker Johnson Group, real estate brokers for the Iliescus (hereinafter referred to as Johnson) was contacted by Third-Party Defendant Consolidated Pacific Development, Inc. (sometimes hereinafter "CPD"), and its President Sam Caniglia, with an offer to purchase the Property ("Offer"), for $7,500,000.00.

15. On or about July 21, 2005, Johnson prepared a "Land Purchase Agreement" that was subsequently executed by Mr. Caniglia for CPD on July 25, 2005.

16. On or about July 29, 2005, Johnson prepared a revised "Land Purchase Agreement" ("Purchase Agreement") that was submitted to and executed by the Iliescus on or about August 3, 2005.

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

18. At some point subsequent to August 10, 2005, without the knowledge and/or consent of the Iliescus, CPD had unilaterally purported to assign and transfer its interests in the Purchase Agreement to DeCal Oregon Inc.'s predecessor entity, DeCal Custom Homes and Construction or a related entity thereof ("DeCal"), and DeCal subsequently transferred or assigned its interests in the Land Purchase Agreement to BSC Financial, LLC.

19. On or before September 22, 2005, the Iliescus retained Hale Lane and the other Lawyer Third-Party Defendants to review, fine tune, clarify and, in all respects, advise the Iliescus and protect the Iliescus' best interests relative to the Purchase Agreement. Third-Party Defendant Dennison and the other Lawyer Third-Party Defendants as well as the Employer Law Firm remained counsel for the Iliescus throughout the subsequent months and events described herein.

20. After Hale Lane's retention, an Addendum No. 3 to the Purchase Agreement was prepared by Third-Party Defendant Dennison of Third-Party Defendant Hale Lane on behalf of the Iliescus.

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21. Addendum No. 3 was executed by the Iliescus and CPD on or about October 8, 2005, and provided that, in certain circumstances, CPD could assign its interests in the Purchase Agreement to another entity.

22. The assignments which had already occurred, as referred to above, however, were not addressed, disclosed or contained in Addendum No. 3. Hale Lane and Dennison never informed the Iliescus of any of the prior purported assignments or even of the existence of BSC Financial, LLC (sometimes hereinafter "BSC").

23. In preparing Addendum No. 3, Dennison and Hale Lane failed to meet their duty of care, failed to protect the best interests of the Iliescus, failed to properly advise them as to potential risks of the transaction and failed to address those risks.

24. For example, Addendum No. 3 specifically indicated at ¶7 that the purchaser would be going forward, prior to closing, with attempts to obtain zoning approvals and other entitlements for a planned development at the Property, which would mean that offsite architectural and design work would be commencing with respect to the Property, which, under Nevada law (unbeknownst to the Iliescus), could allow the providers of offsite architectural and design services to lien the Property. However, Dennison and Hale Lane did not advise or inform the Iliescus of this fact or warn the Iliescus regarding how to protect themselves from the same, such as by filing a notice of non-responsibility.

25. Nor did Addendum No. 3 include sufficient provisions to protect the Iliescus against this threat, even though Addendum No. 3 would have been the perfect vehicle through which Dennison and Hale Lane could have protected the Iliescus, by including such protections therein, including for example by requiring a bond to be posted by the buyer, in favor of the architect, to be utilized to bond around any future architectural lien, if any should arise; and/or requiring a construction control account to be established and pre-funded by the buyer; and/or requiring regular unconditional progress payment lien releases to be obtained from the architect as an ongoing condition to the seller's obligations under the Agreement; and/or by requiring that buyer could not retain an architect or design professional or execute any agreement with such professionals before the form, terms, and effective date thereof had been agreed upon by sellers; and or by requiring, in Paragraph 1 of the Addendum, dealing with conditions to future escrow closing extensions, that such extensions would be conditioned on

unconditional progress payment lien releases from any architect or other design professionals providing offsite work relating to the Property, or by providing other similar provisions to provide real and practical benefits and protections to the Iliescus.

26. On or before November of 2005, certain of the Lawyer Third-Party Defendants including the Hale Lane firm, began representing the purchasers of the Iliescu Property, thereby placing themselves in the highly unusual and potentially troubling position of representing opposite sides to the same transaction: More specifically, the Lawyer Third-Party Defendants of the Third-Party Defendant Hale Lane firm undertook to represent the purchasers or their assigns or principals Calvin Baty and/or CPD and/or DeCal and/or BSC and/or Caniglia in relation to negotiations with the project architect, and in relation to obtaining the necessary entitlements on the Property as contemplated by the Purchase Agreement, even though Third-Party Defendant Hale Lane was concurrently representing the Iliescus. A major component of the entitlement was the work and drawings of an architectural firm.

27. On or about November 5, 2005, unbeknownst to the Iliescus, architect Mark Steppan of the foreign architectural firm Fisher Friedman Associates ("FFA"), entered into an hourly fee contract with BSC Financial, LLC or one of its affiliates in relation to the Property. Steppan would later claim that this Agreement had been superseded by a subsequent AIA Agreement executed on April 21, 2006, but with a claimed retroactive effective date of October 31, 2005. Upon information and belief, early drafts of this AIA agreement and/or other architectural agreements with Steppan/FFA were being reviewed on behalf of the purchasers/purchaser persons and entities (John Schleining, Calvin Baty, CPD, DeCal, and/or BSC), by the lawyers of the Third-Party Defendant Hale Lane, including Third-Party Defendants Jane Doe I and Howard, in November of 2005, at the same time that Hale Lane and Defendant Dennison were representing the Iliescus, such that the Lawyer Third-Party Defendants had an even further and greater duty to the Iliescus to warn the Iliescus of any provisions therein which might adversely affect the Iliescus, which duty was breached by the Lawyer Third-Party Defendants and which information was concealed from the Iliescus by the Lawyer Third-Party Defendants.

28. Hale Lane had accepted November 2005 employment as counsel for the buyer, with

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Hale Lane attorney R. Craig Howard accepting the assignment from Sam Caniglia of the buyer, and passing it on to Hale Lane attorney Sarah Class/Jane Doe I. Hale Lane thus placed itself in the highly unusual and potentially troubling role of concurrently representing both the buyer and also the seller on this multi-million dollar land acquisition and development transaction.

29. Upon information and belief, at some point in time prior to December 14, 2005, Hale Lane lawyers, R. Craig Howard and Doug Flowers, learned that the firm's lawyers, Sarah Class and Karen Dennison, were working for both the buyer and the seller, respectively, on the same property transaction. Four Hale Lane lawyers (Howard, Flowers, Class, and Dennison) discussed these facts with each other. Nevertheless, Hale Lane attorney Dennison never informed the Iliescus of the architect's retention or of his identity.

30. Hale Lane lawyers Sarah Class and Karen Dennison decided to communicate with the Iliescus about these matters via a letter written in December 2005. This letter was **not**, however, written to protect the Iliescus, but solely to protect Hale Lane. This letter did not advise the Iliescus that an architect was being retained by the buyer, who would potentially thereby obtain lien rights against the Iliescus' property (which knowledge by Hale Lane would subsequently be argued to be imputable to the Iliescus).

31. On or about December 14 or December 15, 2005, Third-Party Defendant Hale Lane and Third-Party Defendant Jane Doe I faxed the Iliescus a December 14, 2005, Waiver of Conflict letter, signed by Third-Party Defendant Dennison, which indicated that a prospective conflict might arise between the Iliescus on the one hand, and Third-Party Defendant Hale Lane's other clients, the purchaser entities, on the other hand, in the future. This was false as such a conflict had in fact already arisen and was also intrinsic and inherent between the seller of the Property and the purchaser of the Property.

32. Moreover, upon information and belief, Defendant Dennison knew on or before December 14, 2005, that other attorneys at her Hale Lane firm, including Jane Doe I, were assisting in negotiating an architectural contract between the would-be buyer of the Iliescus' Property and the architect(s), which fact Third-Party Defendant Dennison failed to disclose to the Iliescus in her December 14, 2005 letter, even though it demonstrated that a conflict already existed, and even though

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such a contract put the Iliescus' Property in danger of mechanic's liens, and even though the Lawyer Third-Party Defendants' knowledge of the architectural contract would later be argued to be imputable to the Iliescus, in a manner which prejudiced the Iliescus, a risk which this letter failed to disclose.

33. The December 14, 2005 conflict waiver letter did not meet the standards required under Nevada's Rules of Professional Conduct to ensure that the consent provided to the Lawyer Third-Party Defendants thereunder by the Iliescus was informed consent: the letter contained self-contradicting legal advice; the letter did not disclose the work and legal services which the Lawyer Third-Party Defendants had already performed for the would-be purchasers of the Iliescus' Property or the risks to the Iliescus created by this representation (a material omission); the letter also did not advise the Iliescus to seek their own independent counsel to assist in reviewing its terms.

34. The Iliescus contend and allege that this December 14, 2005 letter was inadequate as a matter of law, and contained inconsistent and false information, bad advice and bad counsel, and Third-Party Plaintiffs allege the letter was itself an act of malpractice. For example, the letter did not advise that Hale Lane had already begun representing the purchaser before the letter was sent, did not inform the Iliescus that Hale Lane had thereby become aware of the nature of architectural services being provided at the project, the contractual rates potentially applicable to such work, and of the identity of the architect allegedly providing the same, who would later assert a multi-million dollar mechanic's lien against the Iliescus' property for FFA's architectural work. The letter did not inform the Iliescus of the identity of FFA or Steppan, did not counsel the Iliescus to record a Notice of Non-Responsibility to avoid a lien for the architect's services, nor did the letter advise the Iliescus to contact the buyer and request that no binding architectural contracts be entered into, before closing of the sale, on any onerous flat fee terms.

35. Nevada Rule of Professional Conduct 1.8(h)(1) mandates that: "A lawyer shall not: Make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented." The letter did not however advise the Iliescus to obtain separate counsel before agreeing to the same. Moreover, this first conflict waiver letter did not provide sufficient information to Dr. and Mrs. Iliescu to provide for informed consent, as required by Nevada Rule of Professional Conduct 1.7(b)(4), as part of the waiver of a concurrent conflict of interest. The

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December 14, 2005 letter did not, for example, provide any of the information contemplated by the ABA in its comment to Model Rules of Professional Conduct (upon which Nevada's Rules of Professional Conduct are based) Model Rule 1.0(E), in which comment "informed consent" is discussed, and which comment requires that, in order to provide a client with informed consent, the client should receive a communication which ensures "that the client . . . possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's options or alternatives." The comment also discusses advising a client to seek separate counsel.

36. The letter was only four paragraphs long. It did not explain the advantages or disadvantages or the risks of allowing Hale Lane to represent the seller at the same time that the buyer was being represented by that same firm, or explain that information learned by the firm in that process might later be argued as imputed knowledge of the Iliescus. It did not advise the Iliescus of other options and alternatives, to allowing Hale Lane's conflicting representation. It did not advise Dr. and Mrs. Iliescu that they should seek the advice of independent counsel before signing the consent being requested. The letter also did not explain the unique nature of the conflict being asked to be waived, which was a concurrent and presently existing conflict between the seller and the buyer of real property, under a multi-million dollar contract which had not yet closed, such that the buyer and the seller had currently existing inherently contrary interests.

37. Hale Lane's December 14, 2005 letter to the Iliescus did not provide "a disclosure of the facts and circumstances giving rise to the situation." For example, the letter did not explain that the representation of the buyer by Hale Lane had already begun, did not disclose what Hale Lane had already learned in that representation (that a potential lien claimant was being retained to perform architectural work for the project) and the need for the Iliescus to do something to protect themselves from a lien from such retained party.

38. The Iliescus executed the letter based on the Lawyer Third-Party Defendants' bad advice and bad counsel.

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39. The terms of the architectural contract which the Lawyer Third-Party Defendants assisted the purchaser to negotiate were highly disfavorable to the best interests of the Lawyer Third-Party Defendants' clients, including the purchaser clients and the Iliescus, in that they were later relied on by the architect to later assert a lien against the Iliescus' Property far in excess of the reasonable hourly value of the architectural work, based on a percentage of construction costs on a multi-million dollar development on which no construction ever commenced.

40. The Lawyer Third-Party Defendants never discussed with or advised the Iliescus at any time to record a Notice of Non-Responsibility with the Washoe County Recorder to ensure the Property would not be encumbered by mechanics or architect's liens recorded by individuals hired by CPD or BSC and also never advised as to other steps which might be taken to protect against this possibility, even while the Lawyer Third-Party Defendants were putting themselves into a position to obtain knowledge and information which would later be argued to be imputable to the Iliescus, which risk the Lawyer Third-Party Defendants never disclosed to the Iliescus, notwithstanding that the Lawyer Third-Party Defendants failed to share this information with the Iliescus, as certain of the Lawyer Third-Party Defendants have admitted in sworn testimony.

41. Despite being aware of the purported assignment to DeCal and to BSC and being aware of the architectural agreement, and the work being done in connection with the entitlement process, the Lawyer Third-Party Defendants never advised or discussed with their clients, the Iliescus: the assignment; whether DeCal or BSC were appropriate assignees and purchasers of the Property, which had the means and financial viability to close the sale; whether or how the purported assignments affected the Iliescus' interests under the Purchase Agreement; any architectural services contracts with any architect; or the risk of liens to the Property by the architect or by other designers; or any strategies for avoiding any adverse consequences of all of the facts then known to the Lawyer Third-Party Defendants.

42. As of at least November, 2005, or prior thereto, and at all times thereafter, the relevant potential property purchasers, including one or more of BSC, CPD, DeCal, Calvin Baty and/or John Schleining, and/or Sam Caniglia (and/or their related entities or persons) were represented in connection with the Property and the project referred to in this litigation by the Lawyer Third-Party

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Defendants, at the same time that the Lawyer Third-Party Defendants were concurrently representing the Iliescus, as sellers, which created conflicts of interest which were so intrinsic as to not be waivable, or which gave the Lawyer Third-Party Defendants access to information which the Lawyer Third-Party Defendants had a duty to share with the Iliescus in order to protect the Iliescus' best interests.

43. On or about September 18, 2006, the Lawyer Third-Party Defendants, acting on behalf of the Iliescus, drew up an Addendum No. 4, with respect to extending the closing date for the sale of the Property, and advised the Iliescus to execute the same, which advice was not in the Iliescus' best interests.

44. The Lawyer Third-Party Defendants failed to take the opportunity represented by this Addendum No. 4 and the purchasers' requested extension giving rise to the same, to condition the extension on an unconditional progress payment release as to any architectural or other liens for offsite architectural or design work, or to condition the same on an agreement that no flat fee architectural agreement calling for rates on a percentage-of-construction-costs basis could be entered into or rendered effective until after closing, or to condition the extension on any other conditions which might have protected the Iliescus from the risks which the Lawyer Third-Party Defendants knew, or should have known, the Iliescus were then facing, even though the Lawyer Third-Party Defendants had assisted in drafting or otherwise negotiating the very architectural contract documents which gave rise to those risks.

45. Hale Lane did not warn the Iliescus to hold off on agreeing to this extension until after the potential mechanic's lien threat had been dealt with. Instead, prior to September 18, 2006, Hale Lane and Karen Dennison prepared Addendum No. 4 on behalf of the Iliescus, which allowed for this extension, and advised the Iliescus to sign it, which was bad advice. By the time this Addendum No. 4 was prepared in late 2006, Hale Lane had long since been exposed to information regarding the identity of the project architect, and certain of the terms of its retention. Hale Lane, nevertheless, did not advise the Iliescus to demand a release of any such architectural lien as a condition to signing the 4th Addendum. Thus, by the time the 4th Addendum was signed, even further and stronger duties had arisen on the part of Hale Lane and Dennison to advise the Iliescus of the relevant facts and their implications, and to use the opportunity afforded by the buyers' request for this extension, to protect

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the Iliescus. Dennison and Hale Lane, however, despite the information previously learned in December 2005, did not advise the Iliescus to take advantage of the extension request to protect themselves from any alleged mechanic's lien, by negotiating for a release of any such lien as a condition to signing the 4th Addendum.

46. When the Addendum No.4 to the Purchase Agreement was prepared by the Lawyer Third-Party Defendants on or about September 18, 2006, and executed by the Iliescus and CPD on or about September 19, 2006, said Addendum contained no disclosure of or reference to DeCal or BSC, nor did the Lawyer Third-Party Defendants disclose to the Iliescus any assignments to said entities which had occurred theretofore.

47. Nor did the Lawyer Third-Party Defendants inform the Iliescus, at the time of the 4th Addendum's execution, of the identity, or of the work then being performed by, any architect, for the purchasers or their assignees, or of the dangers such work represented to the Iliescus, as to possible liens against their Property, which dangers should have been made known to the Iliescus and addressed in Addendum No. 4, had their counsel properly represented the Iliescus. Nor did the Lawyer Third-Party Defendants take the opportunity to then advise the Iliescus of the information the Lawyer Third-Party Defendants had obtained in November and December of 2005, which had led to the Lawyer Third-Party Defendants' December 14, 2005 letter to the Iliescus, which had likewise failed to disclose relevant information to the Iliescus.

48. On November 7, 2006, Mark Steppan, AIA recorded a mechanic's lien against the Iliescus' Property in the sum of $1,783,548.00, which would be amended and which has ultimately resulted in a Judgment on the lien in excess of $4.5 million dollars.

49. Upon service of this notice on the Iliescus, the Iliescus first became aware of the possibility of any such lien. The Lawyer Third-Party Defendants had never informed the Iliescus that architectural work was being performed by third-parties retained by the purchasers, that there was a dispute with any project architect over non-payment for architectural services, or of any risk of a lien being recorded under Nevada law, for such offsite design work. Nor had any of the Lawyer Third-Party Defendants lifted a finger to advise or adequately protect their clients, the Iliescus, against this possibility, despite adequate opportunities to do so during the drafting of Addendums No. 3 and No.

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4.

50. On or about November 28, 2006, with the assistance of Employer Law Firm, the Wingfield Towers project (Case No. LDC06-00321) was approved by the Reno City Council, as evidenced by a Clerk's Letter of Approval issued November 30, 2006, which approval was however subject to so many onerous and extensive and expensive conditions that, as a practical matter, the so-called approval prevented financing from ever being obtained, indicating that the Lawyer Third-Party Defendants' representation of the buyer entities before the Reno City Council was not effective.

51. Notwithstanding said conditions, this approval was later argued to have negative consequences for the Iliescus, as supporting a lien for a certain amount against their Property, which possibility was never made known to the Iliescus by the Lawyer Third-Party Defendants including in the conflict waiver letter, or otherwise.

52. The Mechanic's Lien recorded by Mark Steppan on November 7, 2006 made reference, at its Paragraph 2, to BSC Financial, LLC, as the entity that had allegedly employed Mark Steppan, AIA to furnish the work and services in connection with the Iliescus' Property. Prior to said date, the Iliescus had no knowledge of the existence of or involvement of BSC Financial, LLC, or of the identity of Mark Steppan, as an individual who would claim to have provided and/or be entitled to lien for architectural services relative to the Property.

53. The Lawyer Third-Party Defendants thereafter continued to represent the Iliescus in regard to attempting a closing of the Land Purchase Agreement. During said time, the Lawyer Third-Party Defendants did not advise the Iliescus of the nature and extent of the problems that existed relative to the transaction, the Purchase Agreements, the Mechanic's Lien filed by Mark Steppan the inherent conflicts that had long existed and now continued to exist between the Iliescus, the inter-related buyer assignees, as referred to above, and the complications of the transaction.

54. On or about December 8, 2006, in a desperate ploy to protect themselves from a malpractice claim arising from the recordation of the Mechanic's Lien by Mark Steppan, AIA, the Lawyer Third-Party Defendants, including via Third-Party Defendant Howard, prepared an Indemnity Agreement purportedly to protect Third-Party Plaintiffs, their clients, from all claims and costs related to the Mechanic's Lien recorded by the architects on the subject real property.

55. Said Indemnity Agreement was signed by Third-Party Defendant Schleining and other indemnitors on December 8, 2006, and submitted to the Iliescus on or about December 12, 2006.

56. The Lawyer Third-Party Defendants did not however advise the Iliescus of the problems that existed as set forth in the above paragraphs, or that the Lawyer Third-Party Defendants could now be sued by the Iliescus for malpractice.

57. On or about December 26, 2006, the Lawyer Third-Party Defendants drafted a Second Conflict of Interest Waiver letter and consent agreement, and submitted it to the Iliescus and BSC Financial, LLC for signature. This letter and consent agreement was executed by the Iliescus on the basis of bad advice received from the Lawyer Third-Party Defendants to do so.

58. The Lawyer Third-Party Defendants never advised the Iliescus that the conflict of interest that existed might not be waivable, nor did they advise the Iliescus of the problems that now existed as set forth in the above paragraphs, or that the Iliescus now also had an additional potential conflict with the Lawyer Third-Party Defendants based on a potential malpractice claim against them, nor did the Lawyer Third-Party Defendants' conduct meet the requirements of Nevada law to ensure that the Iliescus' signature on this document was provided with informed consent.

59. The Lawyer Third-Party Defendants promised in this letter and agreement, as an inducement to the Iliescus' execution thereof, to resolve the mechanic's lien issue.

60. The Lawyer Third-Party Defendants thereafter breached this promise to resolve the mechanic's lien issue and failed to act adequately or in good faith to attempt to resolve said claim, and even sent a lawyer to court to argue on the Iliescus' behalf who had recently been adverse to the Iliescus, in another matter, and who appeared, from the Iliescus' perspective, during court proceedings, to still be hostile to the Iliescus.

61. In the meantime, after obtaining the Iliescus' signature on another ill-advised conflict waiver letter, the Lawyer Third-Party Defendants embarked upon a course of advising the Iliescus and preparing documents so as to allow the Purchase Agreement to close with BSC Financial, LLC.

62. This course of conduct included inadequate attempts to deal with the Mechanic's Lien of Mark Steppan, AIA, and improperly recommending to and obtaining the Iliescus' consent to the assignment of the Land Purchase Agreement to BSC Financial, LLC.

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63. This was bad advice and it was malpractice to offer this advice: Based on the existence of an agreement executed by and between the lien claimant, Mark Steppan, and BSC, such consent was not in the best legal interests of the Iliescus, given the existence of the Mechanic's Lien which relied on BSC having an interest in the Property and, therefore, a basis to retain the architect, and other problems as set forth in the above paragraphs.

64. On or about February 14, 2007, Defendant Snyder and the Employer Law Firm, on behalf of the Iliescus, filed an Application for Release of the Mark Steppan, AIA Mechanic's Lien in Case No. CY07-00341. Said Application was inadequate, and failed to raise various arguments which the Lawyer Third-Party Defendants should have known were available to the Iliescus, based on the prior knowledge of the matter which the Lawyer Third-Party Defendants had in their possession, including without limitation, arguments regarding the excessive amount of the lien. As stated above, the Lawyer Third-Party Defendants also sent an attorney (Third-Party Defendant Snyder) to court to argue this Application which the Iliescus felt to be hostile to them, based on prior adverse representation, and who the Iliescus did not realize would be their counsel on the subject matter, herein.

65. On or about May 4, 2007, Mark Steppan, AIA filed a Complaint to foreclose mechanic's lien and for damages in Case No. CV07-01021, subsequently consolidated into Case No. CY07-00341. These consolidated cases (the "Steppan Lien Litigation") are the same case in which this Amended Third-Party Complaint is now filed.

66. BSC Financial, LLC filed for Chapter 11 bankruptcy protection on April 25, 2007, and Calvin Baty filed for Bankruptcy protection on May 3, 2008.

67. The architect's lien remains a cloud on the Iliescus' title. Indeed, Steppan's herein suit for foreclosure of the architect's lien has now resulted in a Judgment being entered establishing the validity of that lien against the Iliescus' Property in an amount exceeding $4.5 million, and allowing foreclosure of this architect's lien upon the Iliescus' real Property, which has been ordered to be sold to satisfy the lien, based on a Judgment of this Court entered on February 26, 2015.

68. The Lawyer Third-Party Defendants named herein, including Hale Lane and the individually named attorneys, committed several distinct acts of malpractice in representing the

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Iliescus, which include, without limitation, the various acts of malpractice already outlined herein, above, and which also include, without limitation, the following:

(i) The failure by the Lawyer Third-Party Defendants (including in conjunction with preparing the Addendums) to ever advise the Iliescus that third-party architectural services were being performed for the purchaser in order to obtain the entitlements for the project, and that those services created the possibility that the Iliescus' Property could be liened by an architect;

(ii) The Lawyer Third-Party Defendants' failure to ever advise the Iliescus that, unlike other states, many of which only allow actual on-site works of improvement to form the basis of a lien, Nevada allows mechanic's liens for off-site architectural, engineering, and design services;

(iii) The Lawyer Third-Party Defendants' failure to ever inform the Iliescus that it would be essential for them to take steps to attempt to mitigate against this potential lien threat, such as by filing a notice of non-responsibility, or taking other protective measures;

(iv) The Lawyer Third-Party Defendants' conduct in beginning to represent the buyer even though said Third-Party Defendants already represented the sellers, on the same transaction, without, apparently, having a sufficient conflict check system in place, or without properly using such a system, to avoid commencing such conflicting representation, and the Lawyer Third-Party Defendants' acts and omissions and misfeasance during this dual representation, and subsequent wrongful attempts to cover themselves for this misconduct;

(v) The Lawyer Third-Party Defendants' failure to inform the Iliescus that they should not agree to any time extensions of the escrow date (such as those contemplated in Addendum No. 3 and granted under Addendum No. 4 both of which were drawn up by the Lawyer Third-Party Defendants) unless, as a condition of such an extension, the buyer obtained and provided to the Iliescus unconditional progress payment lien releases signed by the architect and all other design professionals indicating that they had been paid in full for all services performed to date as of the time of the execution of the escrow extension, and would not be claiming any liens for any services performed and paid for prior thereto, and the Lawyer Third-Party Defendants' failure to advise the Iliescus that, in the absence of such releases or other conditions, the Iliescus would potentially be better off allowing the purchase deal to die, before any architect's lien claim might become more fully vested;

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(vi) The Lawyer Third-Party Defendants' failure to inform the Iliescus that obtaining such unconditional progress payment lien releases and other conditions to escrow extensions, was especially important in this transaction, due to the potential, under the discussions held to date by and between the architect and the buyer, to which the Lawyer Third-Party Defendants were privy as the counsel for the buyer in negotiations with the architectural firm, that a flat fee AIA contract might come to exist which might be claimed by the architect to retroactively apply to allow increased new retroactive billings for (and an increased lien for) work already completed and paid for under hourly contracts, such that progress payment lien releases would need to be drawn up (as a condition to the escrow extensions) in such a manner as to prevent the architect from later claiming it could send new replacement invoices for astronomically higher flat-fee-percentage rates, superseding already paid invoices, which is exactly what the architect successfully later did;

(vii) The Lawyer Third-Party Defendants' failure to negotiate architectural contracts which were in the Iliescus' best interest, or to inform the Iliescus of said Defendants' own in-house law firm's knowledge as to the terms of the architectural contracts reviewed or negotiated by the Lawyer Third-Party Defendants, in the firm, which terms were adverse to the Iliescus' best interests;

(viii) The Lawyer Third-Party Defendants' failure to ever advise the Iliescus that, in order to protect themselves they needed to obtain from the buyer a copy of any and all agreements which the buyer planned to enter into with any architectural firm, design firm, or similar service provider, and be given the right to veto the same, and to insist on the right to review all invoices and payments on such invoices, in order to allow the Iliescus to become fully informed as to the nature of any potentially threatened lien (which advice, had it been given, could have informed the Iliescus of the urgent need to ensure that they must not extend the escrow until and unless they obtained appropriate agreements from the architect expressly releasing any lien rights for prior work and expressly agreeing that any flat fee AIA agreement would not be rendered effective until financing had been secured for the project and the sale had closed and the Property transferred to the buyer and the Iliescus had been paid);

(ix) The Lawyer Third-Party Defendants' providing bad advice to the Iliescus in the form of the first conflict waiver letter, which letter itself contained material omissions, further bad

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advice, was untrue (including as to the statement that only prospective conflicts might come to exist in the future), did not adequately inform the Iliescus of the risks they faced by allowing Hale Lane to represent the buyer; did not provide for informed consent, and included conflicting statements and unkept promises;

(x) The Lawyer Third-Party Defendants providing of inadequate advice in the second conflict waiver letter, and bad advice to sign the same, and, despite promising therein to resolve the lien matter, their failure to take adequate steps to do so;

(xi) The Lawyer Third-Party Defendants' failure to provide adequate representation to the Iliescus in the Steppan lien foreclosure action including their failure to file an adequate Application for the release of the lien;

(xii) Hale Lane's failure, in its December 14, 2005 letter, to fully disclose to the Iliescus what services Hale Lane had by that date provided to the buyer of their Property, and what the firm then knew based thereon (a material omission), or to address the possible implications of this knowledge, and what the Iliescus could do to protect themselves at that time; and instead writing a letter solely designed to protect Hale Lane, while not lifting a finger to protect the Iliescus, and failing to provide any timely counsel to the Iliescus in November or December of 2005;

(xiii) The Lawyer Third-Party Defendants' bad advice in recommending to and obtaining the Iliescus' consent to the assignment of the Land Purchase Agreement to BSC Financial, LLC, even though such consent was not in the best legal interests of the Iliescus, especially at the time this advice was given, after a lien claim had been asserted by a lien claimant for work done on behalf of BSC;

(xiv) The failure by Third-Party Defendant Dennison and Third-Party Defendant Hale Lane, and any other Third-Party Defendants involved therein, to properly prepare the Addendum No. 3, in a manner which protected the Iliescus from mechanic's lien claims, by, for example, (a) including language in Paragraph 1 of the Addendum (which paragraph dealt with escrow extensions) conditioning escrow extensions on unconditional progress payment lien releases being obtained from any party who had performed any work with respect to the Property through the date of the extension, including offsite design work and/or (b) requiring the buyer to immediately inform the Iliescus prior

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to executing any agreements or allowing any work to be performed which might lead to a mechanic's lien claim being asserted for offsite work, and/or (c) requiring that the Iliescus be allowed to review all contracts to be executed between the buyer and any such third-parties performing any such work to verify that the terms of such contracts were fair and adequate to seller before they could be signed, and or (d) ensuring, as part of the Addendum No. 3, that a construction control, surety bond, or other procedures were in place to protect the Iliescus from a possible lien claim for design work performed and not paid for before financing was obtained;

(xv) The Lawyer Third-Party Defendants' bad advice in telling the Iliescus to execute Addendum No. 4 which would allow more time for the architectural service provider(s) to complete work to a stage that allowed alleged lien rights as to a particular flat fee stage of work, to vest, on the basis of the events occurring thereafter, and which was also otherwise inadequate, and did not contain terms protecting the Iliescus;

(xvi) The Lawyer Third-Party Defendants' failure to assist the Iliescus to take full advantage of the possibilities created by the buyer's request for Addendum No. 4 (which allowed the buyer an extension to close escrow) as demonstrated by their failure to prepare that Addendum in such a manner as to ensure that, as a condition to that escrow extension, any potential lien claims which had accrued prior thereto had been fully and unconditionally released and paid off or disclaimed prior to the escrow being extended as a condition of such extension;

(xvii) The Lawyer Third-Party Defendants' activities in assisting the buyer in negotiating contracts with an architect which were directly contrary to the best interests of the Iliescus, including an AIA contract for a flat fee rate on the basis of a percentage of the anticipated costs for the entire project, which flat fee contract was subsequently utilized and accepted by this District Court to cause the lien to be extraordinarily high for a project on which not a single shovel of on-site dirt was turned, such that the Defendants should have insisted, in order to protect its seller clients, the Iliescus (as well as Defendants' buyer client), that said AIA contract would not supersede any hourly contracts pursuant to which any earlier work was performed and paid for, and would not become effective, pursuant to the terms thereof, until and unless certain conditions precedent had been met, such as financing being obtained and the sale therefore closing;

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(xviii) The Lawyer Third-Party Defendants' conduct in representing a purchaser at the same time they represented a seller and thus allowing themselves to learn information which was later argued to be imputable to the Iliescus, against the Iliescus' interests, without ever sharing said allegedly imputable information with the Iliescus or advising them of this risk of the dual representation;

(xix) The Lawyer Third-Party Defendants' preparation of an ineffective indemnity agreement to supposedly protect the Iliescus;

(xx) The Lawyer Third-Party Defendants' failure to advise the Iliescus to get their own counsel to advise them of their potential rights before both conflict waiver letters were provided and once the lien was asserted;

(xxi) The Lawyer Third-Party Defendants' promising, in the second conflict waiver letter, that they or their firm would resolve the architect's lien and resolve the dispute with the architect, but then failing to adequately perform or complete this promised task;

(xxii) The Lawyer Third-Party Defendants inadequately representing the Iliescus in the Steppan lien foreclosure litigation; and

(xxiii) All other acts of malpractice described in, or arising out of the events described in this Pleading, and in the other papers and pleadings and filings before any Washoe County district court in which litigation arising from these matters has occurred.

FIRST CLAIM FOR RELIEF

(Professional Negligence and Legal Malpractice Against the Lawyer Third-Party Defendants)

69. The Iliescus reallege and incorporate by reference the above and foregoing Paragraphs of this Amended Third-Party Complaint, as if fully set forth at length herein.

70. The Lawyer Third-Party Defendants, as licensed attorneys and counselors at law, and as the Law Firm through which the individual lawyers practiced, represented the Iliescus as aforestated, and had an attorney-client relationship with the Iliescus, and therefore owed the Iliescus a duty to have a degree of learning and skill ordinarily possessed by reputable licensed attorneys engaged in the type of transactions and litigation addressed herein, and owed the Iliescus a duty to apply that learning and skill on the Iliescus' behalf and to properly advise and counsel and protect the

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Iliescus, and owed the Iliescus a duty to use reasonable diligence and their best judgment in the exercise of skill and the application of learning held by reputable licensed attorneys in Northern Nevada engaged in the type of business and transactions described herein.

71. Third-Party Defendants Hale Lane, Dennison, Howard, Snyder, and Jane Doe I breached the duties, as enumerated above, and failed to perform these duties, as addressed herein.

72. Third-Party Defendants Hale Lane, Dennison, Howard, Snyder, and Jane Doe I owed a duty to the Iliescus to exercise reasonable care in how they handled the sale transaction, the contracts between the buyer and the architect, the Purchase Agreement Addendums, the applications for entitlements and approvals from Reno and Washoe County officials, the litigation, and their advice to the Iliescus regarding the Property, and breached that duty, including by way of the breaches and omissions set forth above.

73. Third-Party Defendants Hale Lane, Dennison, Howard, Snyder, and Jane Doe I were professionally negligent and committed legal malpractice because, among other things, they failed to advise the Iliescus of the possibility and risk of a lien being recorded against their Property, for offsite architectural work; failed to counsel the Iliescus regarding methods to overcome this risk, including, without limitation, by filing a notice of non-responsibility; failed to take steps on the Iliescus' behalf to overcome this risk; failed to include adequate provisions within Addendum No. 3 or Addendum No. 4 to protect against this risk; failed to take adequate steps to resolve Steppan's architectural lien after promising to do so; failed to properly advise the Iliescus of the potential adverse consequences of their conflict of interest in representing both the Iliescus and the buyer in the transaction; gave bad advice and improper counsel to the Iliescus including with respect to advising them to execute Addendum No. 4, advising them to execute a consent to the assignments of the purchase agreement, advising them to execute the two conflict letters, etc.; failed to provide adequate representation on behalf of the Iliescus in the lien foreclosure litigation; continued to represent the Iliescus in the face of non-waivable conflicts of interest, and committed many other distinct acts of negligence and professional malpractice, including as described above.

74. As a proximate result of the foregoing facts and the breaches of duties by the Lawyer Third-Party Defendants, Third-Party Plaintiffs have suffered damages and losses in excess of

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$10,000.00. The professional negligence and legal malpractice of Hale Lane, and of Dennison, Howard, Snyder, and Jane Doe I, have proximately caused millions of dollars in damage and loss to the Iliescus, have caused them to incur attorneys fees as special damages attributable to these Defendants, and resulted in the Mechanic's Lien and potential loss of the Property through foreclosure thereof, and all losses resulting from the same.

75. As a proximate and foreseeable result of the Lawyer Third-Party Defendants' acts and/or omissions, Third-Party Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000.00), and are entitled to an award as and for their damages incurred herein, including the attorneys' fees incurred in defending the Steppan lien claim, the losses incurred or to be incurred with respect to the $4.5 million+ Steppan mechanic's lien foreclosure suit judgment, and other direct, indirect, and consequential damages and special damages incurred herein.

76. Third-Party Plaintiffs have been required to retain the services of attorneys to prosecute this action and to defend against the Steppan lien foreclosure action, and, therefore, Third-Party Plaintiffs are entitled to recover reasonable attorney's fees and costs incurred in these proceedings, including as incurred in the Steppan Lien Litigation portion of these proceedings, in accordance with the law, including, without limitation, as special damages.

SECOND CLAIM FOR RELIEF

(Breach of Contract/Express or Implied Contractual Indemnity Against the Lawyer Third-Party Defendants)

77. The Iliescus reallege and incorporate by reference the above and foregoing Paragraphs of this Amended Third-Party Complaint, as if fully set forth at length herein.

78. The Lawyer Third-Party Defendants promised, in writing, in their second conflict waiver request letter, to resolve the Steppan mechanic's lien, which promise was detrimentally relied on by the Iliescus and induced action as well as inaction on their part.

79. The Lawyer Third-Party Defendants breached this promise, and failed to take adequate steps to attempt to resolve the mechanic's lien.

80. The Lawyer Third-Party Defendants also agreed to adequately represent the Iliescus in legal proceedings to set aside the Steppan lien, which efforts failed and were inadequate in breach of these promises.

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81. The Third-Party Defendants also undertook and promised to represent the buyer entities in regard to their attempts to obtain entitlements for the Property, and the Iliescus were beneficiaries of this representation, and the Lawyer Defendants breached their promises to protect and advance the buyers' interests in its attempts to obtain entitlements and to enter into reasonable and appropriate contracts with architects.

82. Taken together, and in the context of the surrounding circumstances, the Lawyer Third-Party Defendants' promises and assurances rose to the level of and created contractual obligations on the part of Lawyer Third-Party Defendants, to indemnify, protect against, or otherwise become responsible to the Third-Party Plaintiffs, with respect to any and all losses they might incur, as a result of any breach by the Lawyer Third-Party Defendants of their promise to Third-Party Plaintiffs.

83. The Lawyer Third-Party Defendants have breached and failed to meet their contractual obligations to the Third-Party Plaintiffs.

84. As a result of the Lawyer Third-Party Defendants' acts and/or omissions, Third-Party Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000.00), and are entitled to an award as and for their damages incurred herein.

85. Third-Party Plaintiffs have been required to retain the services of attorneys to prosecute this action and to defend against the Steppan lien foreclosure action, and, therefore, Third-Party Plaintiffs are entitled to recover reasonable attorney's fees and costs incurred in these proceedings, including as incurred in the Steppan Lien Litigation portion of these proceedings, in accordance with the law, including, without limitation, as special damages.

THIRD CLAIM FOR RELIEF

(Breach of Contract Against CPD and DeCal Reconfirmed)

86. The Iliescus have acknowledged, confirmed, and restated above, without amendment, their previously filed third-party claims and Third Claim for Relief against CPD and DeCal. Based thereon no new Third Claim for Relief is pled herein, but the original Third Claim for Relief's ongoing existence is confirmed.

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FOURTH CLAIM FOR RELIEF

(Specific Performance of Contractual Obligations Against CPD and DeCal Reconfirmed)

87. The Iliescus have acknowledged, confirmed, and restated above, without amendment, their previously filed third-party claims and Fourth Claim for Relief against CPD and DeCal. Based thereon no new Fourth Claim for Relief is pled herein, but the original Fourth Claim for Relief's ongoing existence is confirmed.

FIFTH CLAIM FOR RELIEF

(Equitable Indemnity and Contribution Against the Lawyer Third-Party Defendants)

88. The Iliescus reallege and incorporate by reference the above and foregoing Paragraphs of this Amended Third-Party Complaint, as if fully set forth at length herein.

89. As a result of the foregoing, Third-Party Plaintiffs have suffered losses and damages as a direct result of the acts and omissions of the other Lawyer Third-Party Defendants.

90. Based thereon, Third-Party Plaintiffs are equitably entitled to be indemnified from their losses by the Lawyer Third-Party Defendants, and said Third-Party Defendants are responsible to assist and contribute to any required payoff of the Steppan lien, and the Judgment in excess of $4.5 million entered thereupon, resulting from the Lawyer Third-Party Defendants' conduct.

91. As a result of Third-Party Defendants' acts and/or omissions, Third-Party Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars ($10,000.00), and are entitled to an award as and for their damages incurred herein.

92. Third-Party Plaintiffs have been required to retain the services of attorneys to prosecute this action and to defend against the Steppan lien foreclosure action, and, therefore, Third-Party Plaintiffs are entitled to recover reasonable attorney's fees and costs incurred in these proceedings, including as incurred in the Steppan Lien Litigation portion of these proceedings, in accordance with the law, including, without limitation, as special damages.

SIXTH CLAIM FOR RELIEF

(Declaratory Relief-Against the Indemnitor Schleining)

93. The Iliescus reallege and incorporate by reference the above and foregoing Paragraphs of this Amended Third-Party Complaint, as if fully set forth at length herein.

94. A dispute and actual controversy has arisen and now exists between the Iliescus and Third-Party Defendants regarding the rights, duties, and obligations of the parties.

95. Specifically, the Iliescus are informed and believe, and based thereon allege, that Third-Party Defendant Schleining, as one of the Indemnitors, both pursuant to the December 2006 Indemnity Agreement, any other written indemnity agreement, and an implied indemnity, owed the Iliescus a duty to defend the Steppan Lien Litigation and Steppan's lien foreclosure action, and to make the Iliescus whole for any and all costs, damages, claims, losses judgments, losses of property due to a lien foreclosure, or any other loss or damage suffered as a result of the architect's lien and the BSC architectural contracts or agreements with Steppan, including as to any losses suffered due to any bankruptcy filing by any party related to these transactions.

96. The Iliescus are informed and believe, and based thereon allege, that Third-Party Defendant Schleining disputes the Iliescus' interpretation and assertion of rights.

97. In view of the actual conflict and controversy between the parties, the Iliescus desire and are entitled to a judicial determination and Order of Declaratory Relief of the respective rights, duties, and obligations of the Iliescus and Third-Party Defendant John Schleining, as one of the Indemnitors.

98. Third-Party Plaintiffs have been required to retain the services of attorneys to prosecute this action and to defend against the Steppan lien foreclosure action, and, therefore, Third-Party Plaintiffs are entitled to recover reasonable attorney's fees and costs incurred in these proceedings, including as incurred in the Steppan Lien Litigation portion of these proceedings, in accordance with the law, including, without limitation, as special damages.

SEVENTH CLAIM FOR RELIEF

(Express and Equitable Indemnification & Specific Performance - Against the Indemnitor Schleining)

99. The Iliescus reallege and incorporate by reference the above and foregoing Paragraphs of this Amended Third-Party Complaint, as if fully set forth at length herein.

100. To the extent the Iliescus' Property has been held subject to a lien in favor of architect Mark A. Steppan, and to the extent the Iliescus have been or are hereafter held liable to architect Mark Steppan or any other party on the architect's lien, and to the extent of the Judgment entered on that

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