

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondent.

Electronically Filed
Nov 21 2018 12:57 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 76146

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

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

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

G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

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Counsel for Appellants

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		12 Email memo from Sarah Class to Calvin Baty, dated 11/29/05		JA1270
		13 Steppan Response to Owner Issues on AIA Contract, dated 12/20/05		JA1271-1273
		14 Architectural Design Services Agreement, dated 11/15/05		JA1274-1275
		15 Design Services Continuation Letter, dated 12/14/05		JA1276
		16 Design Services Continuation Letter, dated 2/7/06		JA1277
		17 Design Services Continuation Letter, dated 3/24/06		JA1278
		67 Proposal from Consolidated Pacific Development to Richard Johnson with handwriting, dated 7/14/05		JA1279-1280
		68 Land Purchase Agreement Signed by Seller, dated 7/25/05		JA1281-1302
		69 Addendum No. 1 to Land Purchase Agreement, dated 8/1/05		JA1303-1306
		70 Addendum No. 2 to Land Purchase Agreement, dated 8/2/05	VII	JA1307-01308
		71 Addendum No. 3 to Land Purchase Agreement, dated 10/9/05		JA1309-1324
		72 Addendum No. 4 to Land Purchase Agreement, dated 9/18/06		JA1325-1326

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

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

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 21st day of November, 2018, the foregoing **JOINT APPENDIX TO APPELLANT'S OPENING BRIEF, VOLUME X**, 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:

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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 RELATED CLAIMS

CONSOLIDATED

Case No. CV07-00341

Dept. No. 10

**THIRD PARTY DEFENDANT HALE LANE'S
MOTION FOR SUMMARY JUDGMENT OF
THIRD-PARTY CLAIMS**

Third Party Defendant, HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION ("Hale Lane"), by and through its undersigned attorneys, Lemons, Grundy & Eisenberg, hereby moves the Court for summary judgment on the third-party claims asserted against it by JOHN ILIESCU, JR. and SONNIA ILIESCU, individually and as trustees of the ILIESCU 1992 FAMILY TRUST (collectively, "Iliescu"). This motion is based on the following Memorandum of Points and Authorities, the attached exhibits, and upon such other matters as the Court may consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As this Court is aware, this case involved a legally deficient and invalid mechanic's lien recorded against Iliescu's real property. After performing offsite architectural services,

1 plaintiff Mark Steppan ("Steppan") recorded the lien without having first served a pre-lien
2 notice, as required by NRS 108.245.

3 The filing that initiated this action was Hale Lane's application, filed on Iliescu's behalf,
4 seeking the release or expungement of Steppan's lien. In that application, Hale Lane argued
5 that Steppan's lien was invalid for the very reason that would ultimately form the basis of the
6 Nevada Supreme Court's Opinion issued over 10 years later, on May 25, 2017—Steppan's
7 failure to provide Iliescu with a pre-lien notice.

8 After Hale Lane filed the application to release Steppan's lien, Steppan filed a separate
9 action to foreclose his lien, and the two actions were consolidated into this case. Iliescu later
10 retained separate counsel and filed a Third-Party Complaint against Hale Lane for legal
11 malpractice, alleging that professional negligence on Hale Lane's part allowed Steppan to
12 record a mechanic's lien against Iliescu's property. Based on the stipulation of the parties,
13 Iliescu's third-party claims against Hale Lane have remained stayed pending resolution of
14 Steppan's lien.¹

15 The Nevada Supreme Court's May 25, 2017 Opinion finally resolves Steppan's lien in
16 Iliescu's favor, holding that Steppan's lien is, and always has been, invalid. For that reason, as
17 discussed in greater detail below, the breach and causation elements of Iliescu's legal
18 malpractice claim against Hale Lane are lacking as a matter of law.

19 Iliescu has now filed a motion seeking to recover his attorney's fees, costs and interest
20 from Steppan. It is anticipated, however, that Iliescu may continue to argue that his litigation
21 expenses incurred in his dispute against Steppan can be construed as damages caused by an
22 act or omission on the part of Hale Lane—i.e., that Hale Lane should have anticipated or
23 foreseen that Steppan would attempt to assert an invalid lien, and should have acted on
24 Iliescu's behalf to avoid such a circumstance. As explained below, however, Hale Lane is not,
25 as a matter of law, held to an untenable legal standard of anticipating that Steppan would err
26 in asserting an invalid lien.

27
28 ¹ The parties' stipulation allows Hale Lane to file dispositive motions, such as the current motion, during the
pendency of the stipulated stay.

1 If any of Iliescu's litigation expenses are recoverable, they are recoverable only against
2 Steppan, by virtue of Iliescu's current motion for fees, costs and interest. Such expenses were
3 caused by Steppan's legally inappropriate attempt to assert an invalid lien. Because, as a
4 matter of law, lawyers are not held to a standard of having to anticipate erroneous legal
5 claims, Hale Lane cannot be said to have breached such a non-existent standard of care.
6 Furthermore, the causation element of Iliescu's malpractice claim is lacking.

7 For each of these reasons, Hale Lane is entitled to summary judgment of Iliescu's third-
8 party claims for legal malpractice.

9 **II. STATEMENT OF UNDISPUTED FACTS**

10 **HALE LANE'S INVOLVEMENT IN THE UNDERLYING TRANSACTION:**

11 In August of 2005, Iliescu entered into an agreement to sell one of his pieces of real
12 property in downtown Reno to a group of developers for a high-rise condominium project.
13 Iliescu, through his broker, was first contacted about the project in July of 2005 by
14 Consolidated Pacific Development Inc. (the "developer"). A deal was reached, and Iliescu's
15 broker prepared a rudimentary Land Purchase Agreement. (Land Purchase Agreement and
16 Addendum No. 1, attached hereto as **Exhibit 1.**) The Land Purchase Agreement provided that
17 the developer would buy the property from Iliescu for \$7.5 million with a \$500,000 non-
18 refundable cash deposit and, upon completion, Iliescu was also to receive a 3,750 square-foot
19 penthouse with four parking spaces. (Exhibit 1). The sale was contingent upon the developers
20 obtaining the necessary entitlements for the development from the City of Reno. (Exhibit 1,
21 p. 14).

22 Upon executing the Land Purchase Agreement, the parties realized that the form
23 contract prepared by Iliescu's broker was inadequate for the magnitude of the transaction.
24 The parties agreed that legal counsel should be hired to "fine tune" the agreement and better
25 reflect the parties' intentions. (Iliescu's Third-Party Complaint, ¶ 16; *see also* Addendum No. 2
26 attached hereto as **Exhibit 2.**) For that reason, Iliescu's broker brought the Land Purchase
27 Agreement to attorney Karen Dennison at Hale Lane.

28 Ms. Dennison prepared Addendum No. 3 to the Agreement, which clarified the parties'

1 agreement in several respects. (Addendum No. 3, attached hereto as **Exhibit 3**). It was
2 executed by the parties on October 8, 2005. Addendum No. 3 explained that obtaining the
3 necessary entitlements from the City was a "condition precedent," and it mandated that the
4 developer "use its best efforts and reasonable diligence to satisfy all Conditions Precedent."
5 (Exhibit 3, ¶ 7). The Addendum also memorialized Iliescu's ability to select the penthouse
6 property of his choice with a value of \$2.2 million. (Exhibit 3, ¶ 8).

7 Once the Purchase Agreement was finalized and executed, the developer sought out
8 an architect to help obtain the entitlements. (Iliescu's Third-Party Complaint, ¶ 21). Steppan
9 and his firm, Fisher Friedman, were retained by the developer to design the project, prepare
10 the architectural drawings, and present the plans to the City Council. Steppan, along with the
11 engineering firm of Wood Rogers, then submitted an application to the City Council. Iliescu
12 signed a conflict waiver so that Hale Lane could assist the developer in obtaining the
13 entitlements. (Conflict Waiver, attached hereto as **Exhibit 4**). With Hale Lane's assistance,
14 approximately a year later the parties were ultimately successful in obtaining the entitlements
15 and getting the project approved. (Letter of Approval, attached hereto as **Exhibit 5**).

16 **HALE LANE'S INVOLVEMENT IN THE LIEN LITIGATION:**

17 On November 7, 2006, around the same time the entitlements were obtained, Steppan
18 recorded a \$1.8 million mechanics lien on Iliescu's property. (Mechanics Lien, attached hereto
19 as **Exhibit 6**). After the lien was recorded, attorney Craig Howard at Hale Lane was
20 approached by both the developer and Iliescu and was asked to help resolve the lien issue.
21 (Iliescu's Third-Party Complaint, ¶ 30). The parties then executed a second Conflict Waiver.
22 (Second Conflict Waiver, attached hereto as **Exhibit 7**).² Mr. Howard then brokered an
23 Indemnity Agreement between the parties, whereby the developer and its principals,
24 including co-third-party defendant, Schleining, would indemnify Iliescu for any harm resulting
25 from the lien. (Indemnity Agreement, attached hereto as **Exhibit 8**). In addition to complete
26 indemnification, the agreement also provided that the developer would attempt to discharge

27
28 ² Although the attached Conflict Waiver does not contain Iliescu's signature, Iliescu acknowledged in ¶ 32 of his
Verified Complaint that he executed the Conflict Waiver.

1 the lien on Iliescu's behalf at no expense to Iliescu. (Exhibit 8, p. 2).

2 Attorney Jerry Snyder at Hale Lane then filed an application on Iliescu's behalf for the
3 release of Steppan's lien. (Application for Release of Mechanic's Lien, filed February 14, 2007,
4 attached hereto as **Exhibit 9**). In that Application, Hale Lane argued that Steppan's lien was
5 legally deficient and invalid and should be released or expunged because Steppan had failed
6 to serve Iliescu with the required pre-lien notice (the exact basis on which the Nevada
7 Supreme Court would later overturn Steppan's judgment for foreclosure of his mechanic's
8 lien). After Hale Lane filed the Application on Iliescu's behalf, Steppan filed a complaint
9 against Iliescu to foreclose the lien, and the two actions were consolidated into the present
10 case. Iliescu later asserted a third-party complaint for, among other things, legal malpractice
11 against Hale Lane.

12 **THIS LITIGATION AND THE SUBSEQUENT APPEAL:**

13 This case, as it pertained to Steppan's lien, was litigated for approximately 8 years, and
14 it was on appeal for an additional two years. During that time, Iliescu's third-party claims
15 against Hale Lane were stayed by stipulation pending the resolution of Steppan's lien.
16 (Second Stipulation to Stay Proceedings, attached hereto as **Exhibit 10**). This Court entered
17 judgment in favor of Steppan on February 26, 2015, and Iliescu appealed.

18 Before his appeal was decided, Iliescu sought to amend his third-party claims against
19 Hale Lane. (Iliescu's Motion to Amend, filed on September 16, 2016). That motion was
20 denied because the stipulated stay remained in place at the time the motion was filed. (Order
21 entered December 19, 2016). In Iliescu's motion, he sought to expand upon the third-party
22 claims already set forth in his existing Third-Party Complaint. Specifically, Iliescu argued that
23 in drafting Addendum No. 3 to the agreement between Iliescu and the developer, Hale Lane
24 had "the perfect opportunity" to protect Iliescu against mechanic's liens, such as Steppan's.
25 (Iliescu's Motion to Amend, pp. 3-4). Iliescu contended that Hale Lane "could have" included
26 certain provisions in Addendum No. 3 that may have prevented or limited contractors'
27 prospective assertion of mechanic's liens. (Iliescu's Motion to Amend, pp. 3-4).

28 On May 25, 2017, the Nevada Supreme Court issued its Opinion in Iliescu's appeal. It

1 held that Steppan's lien was invalid because Steppan had not substantially complied with the
2 mechanic's lien statutes. Specifically, Steppan had failed to provide Iliescu with a pre-lien
3 notice, as required by NRS 108.245. The Court further clarified that the actual notice
4 exception to the pre-lien notice requirement, upon which Steppan had relied, does not apply
5 to off-site (i.e., architectural) work.

6 **III. ARGUMENT**

7 **A. STANDARD FOR GRANTING SUMMARY JUDGMENT**

8 Summary judgment is appropriate when the pleadings, written discovery, depositions,
9 and affidavits, if any, demonstrate that no genuine issue of material fact remains for trial.
10 NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026 (2005). If the
11 nonmoving party bears the burden of persuasion at trial, the moving party has the burden of
12 producing evidence that negates an essential element of the nonmoving party's claim, or
13 pointing out that there is an absence of evidence to support the nonmoving party's case.
14 *Cuzze v. University and Community College System of Nevada*, 123 Nev. 598, 602-03, 172 P.3d
15 131 (2007). Once the moving party meets its burden, the nonmoving party must set forth
16 facts demonstrating the existence of a genuine issue of material fact. In order to defeat
17 summary judgment, "the nonmoving party must transcend the pleadings and, by affidavit or
18 other admissible evidence, introduce specific facts that show a genuine issue of material fact."
19 *Cuzze*, 123 Nev. at 602-03 (citations omitted).

20 A genuine issue of material fact is one where the evidence is such that a reasonable
21 jury could return a verdict for the nonmoving party. *Riley v. OPP IX, L.P.*, 112 Nev. 826, 831,
22 919 P.2d 1071 (1996). Although the pleadings and proof must be construed in the light most
23 favorable to the non-moving party, the non-moving party is required to "do more than simply
24 show that there is some metaphysical doubt" as to the operative facts to avoid summary
25 judgment. *Wood*, 121 Nev. at 732, citing *Matsushita Elect. Indus. Co. v. Zenith Radio*, 475 U.S.
26 574, 586 (1986). Summary judgment must be entered against the non-moving party unless
27 that party sets forth specific facts demonstrating a genuine issue for trial. *Wood*, 121 Nev. at
28 732.

1 A court may properly grant summary judgment if any of the essential elements of a
2 claim are missing. *See, e.g., Kusmirek v. MGM Grand Hotel, Inc.*, 73 F.Supp.2d 1222 (D. Nev.
3 1999) (summary judgment granted where plaintiff failed to satisfy elements of duty and
4 proximate cause). In order to establish entitlement to judgment as a matter of law, a moving
5 defendant must show that one of the elements of the plaintiff's prima facie case is "clearly
6 lacking as a matter of law." *Scialabba v. Brandise Construction Co.*, 112 Nev. 965, 968, 921
7 P.2d 928 (1996).

8 **B. THE BREACH ELEMENT OF ILIESCU'S MALPRACTICE CLAIM IS LACKING**

9 Iliescu's current Third-Party Complaint asserts two claims for relief against Hale Lane:
10 (1) Professional Malpractice; and (2) Negligence.³ (Iliescu's Third-Party Complaint, at ¶¶ 55
11 through 61.) Even if Iliescu was now permitted to amend his Third-Party Complaint, his
12 prospectively amended claims suffer from the same fatal legal deficiencies as his current
13 claims. Iliescu's claims against Hale Lane, even as prospectively amended, are rooted in the
14 misguided notion that Hale Lane could have, and should have, drafted Addendum No. 3 in
15 such a way as to protect Iliescu against Steppan's subsequent assertion of his invalid lien.

16 In order for Iliescu to establish a prima facie case of legal malpractice, he must show:
17 (1) the existence of an attorney/client relationship which created a duty of care; (2) a breach
18 of that duty; (3) that Hale Lane's negligence is the proximate cause of his damages; and, (4)
19 the existence of actual loss or damage resulting from the negligence. *Mainor v. Nault*, 120
20 Nev. 750, 101 P.3d 308 (2004).

21 Iliescu's claims against Hale Lane fail because attorneys are not, as a matter of law,
22 held to a standard in which they must anticipate and avoid the risk of unfounded legal claims.
23 As lawyers are not held to such a standard, Hale Lane cannot be said to have breached such a
24 standard. Accordingly, the essential element of breach is clearly lacking as a matter of law,
25 and Hale Lane is entitled to summary judgment. *See Kusmirek*, 73 F.Supp.2d at 1226-1227;
26 and *Scialabba*, 112 Nev. at 968.

27
28 ³ Both of Iliescu's claims are based on the same allegations and require the same legal analysis. *Morgano v. Smith*, 110 Nev. 1025, 1028 n. 2, 879 P.2d 735, 737 (1994).

1 In Nevada, a lawyer owes to his or her client a duty to “use such skill, prudence, and
2 diligence as lawyers of ordinary skill and capacity possess in exercising and performing the
3 tasks they undertake.” *Day v. Zubei*, 112 Nev. 972, 976, 922 P.2d 536, 538 (1996). Breach of
4 duty is usually a question to be decided by the fact finder. But, the Restatement (Third) of the
5 Law Governing Lawyers § 52 (2000), comment b notes that “[i]n appropriate circumstances, a
6 tribunal passing on a motion for summary judgment ... may determine whether a lawyer has
7 satisfied the duty.”

8 Ronald E. Mallen, perhaps this country’s preeminent authority on legal malpractice
9 actions, has recognized the untenable, and indeed dangerous, standard to which Iliescu seeks
10 to hold Hale Lane by virtue of this legal malpractice action:

11 Invariably [in litigated cases] one party’s legal position will be found to be
12 incorrect. Hindsight frequently will show, however, that the other party’s
13 lawyer could have drafted, advised or acted differently to reduce the risk of an
14 unfounded claim. On a causation analysis approach, each successful litigant
15 could sue his or her lawyer for the cost of litigation. With the benefit of
16 hindsight, an expert witness might be willing to opine that the lawyer was
17 negligent. With the benefit of hindsight, the expert can testify to how the risk
of litigation could have been avoided or minimized. Thus, in every underlying
lawsuit there exists the potential that one party’s lawyer will be liable for an
unfounded prosecution or for failing to avoid an unfounded prosecution.

18 The burden of such liability on the profession would be immense. Complex
19 documents and complicated transactions often carry a risk of litigation.
20 Lawyers would seek to use disclaimers or decline representation if there was a
21 serious risk of litigation. A response to that concern is that only negligent
22 lawyers would be liable. That argument is unpersuasive for two reasons. First,
23 the danger is the threat of liability and the reality of legal malpractice litigation
24 that must be defended at substantial cost. Second, the lawyer’s liability will be
measured by another lawyer, opining with the benefit of hindsight about the
particular paragraph, clause or word that could have been clarified, rewritten
or eliminated to make a correct document more litigation-proof. Even the
most careful lawyers would have difficulty defending the wisdom of hindsight.

25 1 RONALD E. MALLEN, LEGAL MALPRACTICE § 8:23, pp. 1037-38 (2016 Ed.).

26 This same principle was recognized by the California Court of Appeal in *Ventura County*
27 *Humane Society for the Prevention of Cruelty to Children and Animals, Inc. v. Holloway*, 40
28 Cal.App.3d 897, 115 Cal.Rptr. 464 (1974). In that case, the residuary clause of a will contained

1 an ambiguous bequest to the “Society for the Prevention of Cruelty to Animals (Local or
2 National).” 40 Cal.App.3d at 901, 115 Cal.Rptr. 466. Several humane societies filed probate
3 claims seeking all or a portion of the bequest. *Id.* The probate court directed the executors of
4 the will to select one or more of the charitable organizations to share in the bequest. *Id.*
5 After reaching a settlement on appeal, several of the humane societies formed a class and
6 sued the attorney who drafted the will for legal malpractice, alleging that drafting the will in
7 ambiguous terms caused them to incur damages in the form of extensive legal fees to
8 determine their respective interests in the estate. *Id.*, 115 Cal.Rptr. at 466-67.

9 In its discussion of the standard imposed on attorneys, the California Appellate Court
10 recognized the insurmountable burden on the profession that would ensue if attorneys were
11 obligated to anticipate erroneous legal claims or arguments a party might assert:

12 Once recognized, such a duty would apply by parity of reasoning not only to
13 wills, but also to contracts, conveyances and other legal instruments. The duty
14 thus created would amount to a requirement to draft litigation-proof legal
15 documents. This unlimited liability, as the learned trial judge aptly observed,
16 would result in a speculative and almost intolerable burden on the legal
17 profession indeed.

18 *Holloway*, 40 Cal.App.3d at 905, 115 Cal.Rptr. 469.

19 Mallen continues by further explaining that lawyers are not required to anticipate that
20 an individual, such as Steppan in this case, may bring an erroneous claim:

21 The ultimate issue is whether a lawyer should be obligated to anticipate that
22 another will err in bringing incorrect claims. Logic and public policy dictate
23 that such an exposure should not be imposed on the profession since it would
24 redound detrimentally to clients as well. Unless the retention expressly
25 includes avoiding the risk of litigation, lawyers should not be burdened with
26 having to anticipate an error by another.

27 1 RONALD E. MALLEN, LEGAL MALPRACTICE § 8:23, pp. 1038-39 (2016 Ed.).

28 It is undisputed that Steppan never provided Iliescu with a pre-lien notice, as required
by NRS 108.245. Thus, as the Nevada Supreme Court recently held, Steppan was not legally
able to assert a valid mechanic’s lien on Iliescu’s property. Hale Lane argued this very point to
this Court at the inception of this case. (Exhibit 9). Steppan’s error in asserting an invalid lien
is the proximate cause of Iliescu’s litigation expenses—not any error or omission on Hale

1 Lane's part. Stated differently, because Steppan had not served Iliescu with the necessary
2 pre-lien notice, Hale Lane should not be charged with somehow anticipating that Steppan
3 would nevertheless attempt to assert an invalid mechanic's lien.

4 As Mallen points out, with the benefit of hindsight, Iliescu may now argue that Hale
5 Lane may have been able to draft Addendum No. 3 in such a way as to minimize or avoid the
6 risk of Steppan's erroneous claim. Indeed, if this legal malpractice action is permitted to
7 continue, Iliescu will undoubtedly hire an expert to testify, again with the benefit of hindsight,
8 that an attorney at Hale Lane should have anticipated a legally unfounded lien claim. By that
9 same logic, with the benefit of hindsight, any lawyer may have been able to put together
10 ironclad, litigation-proof transactional documents for Iliescu's property sale to the developer.
11 As a matter of law, however, lawyers are not held to a standard in which they are obligated to
12 anticipate that someone may bring a legally erroneous claim arising out of a transaction the
13 lawyer helped to facilitate.

14 On the other hand, if Steppan had in fact served Iliescu with a pre-lien notice (and
15 assuming Iliescu had passed that information along to Hale Lane), it is at least arguable that
16 Hale Lane should have anticipated that Steppan could later record a valid mechanic's lien on
17 Iliescu's property. In that scenario, Hale Lane could have taken the appropriate steps to
18 protect Iliescu against a prospective mechanic's lien. That is certainly not the case here. As a
19 matter of law, Hale Lane is not obligated to have anticipated that Steppan would assert a
20 legally unfounded lien on Iliescu's property.

21 Because lawyers are not held to such an untenable standard, it necessarily follows that
22 Hale Lane cannot be said to have breached such a standard. Accordingly, as a matter of law,
23 Iliescu cannot make the required showing of the breach element of his legal malpractice
24 claim. "Where an essential element of a claim for relief is absent, the facts, disputed or
25 otherwise, as to other elements are rendered immaterial and summary judgment is proper."
26 *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992). Hale Lane is
27 therefore entitled to judgment as a matter of law.

28 ///

1 C. THE CAUSATION ELEMENT OF ILIESCU'S MALPRACTICE CLAIM IS LACKING

2 The Nevada Supreme Court's decision on Iliescu's appeal indicates that the very first
3 filing in this case, Hale Lane's application to release Steppan's lien (filed on Iliescu's behalf),
4 should have been granted. Thus, as a matter of law, Hale Lane's alleged breach of the
5 standard of care cannot be construed as the proximate cause of Iliescu's claimed damages.
6 The Nevada Supreme Court has recognized that alleged legal malpractice damages in the form
7 of litigation expenses may, in certain circumstances, be more appropriately characterized as
8 having been proximately caused by judicial error rather than professional negligence on the
9 part of the attorney.

10 For example, in *Semenza v. Nevada Medical Liability Ins. Co.*, 104 Nev. 666, 765 P.2d
11 184 (1988), an attorney was sued for legal malpractice for negligently conducting discovery
12 and negligently preparing for trial in an underlying medical malpractice case. 104 Nev. at 667,
13 765 P.2d at 185. Specifically, it was alleged that the attorney mistakenly allowed a damaging
14 hospital memorandum into evidence. *Id.* Based largely on the admission of that
15 memorandum, a jury awarded the medical malpractice plaintiff a substantial verdict. *Id.* The
16 doctor's liability insurer then sued the doctor's defense lawyer for legal malpractice. *Id.* The
17 underlying medical malpractice verdict was later reversed because the admission of the
18 memorandum "constituted prejudicial error of a magnitude that demands reversal and a new
19 trial." *Id.* (quoting *Mishler v. McNally*, 102 Nev. 625, 629, 730 P.2d 432 (1986)).

20 Based on the Supreme Court's reversal of the medical malpractice verdict, the
21 attorney argued that the trial court erred in finding him guilty of legal malpractice. *Id.* The
22 Supreme Court agreed. *Id.* It analyzed the legal malpractice action under accrual principles,
23 holding that the legal malpractice cause of action did not accrue unless and until "the
24 underlying case has been *affirmed* on appeal." *Id.* at 668, 765 P.2d at 185-86 (emphasis
25 added). In its analysis, the Supreme Court recognized that "[a]pparent damage may vanish
26 with successful prosecution of an appeal and ultimate vindication of an attorney's conduct by
27 an appellate court." *Id.* (quoting *Amfac Distribution Corp. v. Miller*, 138 Ariz. 155, 673 P.2d
28 795, 796 (Ariz. App. 1983)).

1 Likewise, in *Hewitt v. Allen*, 118 Nev. 216, 43 P.3d 345 (2002), the Nevada Supreme
2 Court recognized that a legal malpractice plaintiff's claimed damages may have been caused
3 by judicial error, rather than an attorney's negligence. In *Hewitt*, the plaintiff was injured in a
4 car accident for which she attempted to sue several State of Utah governmental entities. 118
5 Nev. at 218, 43 P.3d at 346. In filing suit, the plaintiff's lawyer failed to comply with a Utah
6 statute requiring that notice of her claim be served on the Utah Department of Public Safety,
7 and the plaintiff's claims against the governmental entities were therefore dismissed. *Id.* at
8 218-19, 43 P.3d at 346. The plaintiff appealed the dismissals, but later voluntarily dismissed
9 her appeal when her legal counsel advised her that the appeal was futile. *Id.* at 219, 43 P.3d
10 at 346-47. The plaintiff then sued her attorney for malpractice. *Id.* The question at issue in
11 *Hewitt* was whether the plaintiff had abandoned her legal malpractice claim by voluntarily
12 dismissing an appeal that may have vindicated the attorney's conduct. *Id.* at 220, 43 P.3d at
13 347.

14 Like in *Semenza*, the Supreme Court analyzed the issue by first discussing when a legal
15 malpractice claim can be said to have accrued. *Id.* at 220-22, 43 P.3d at 347-48. Recognizing
16 the fact that a client need not appeal an adverse ruling to preserve a legal malpractice claim,
17 the Court analogized the client's voluntary dismissal of her appeal to a decision not to appeal
18 in the first place. *Id.* at 222, 43 P.3d at 348-49. It thus concluded that voluntarily dismissing a
19 futile appeal does not amount to abandonment of a legal malpractice claim. *Id.* In reaching
20 its conclusion, the *Hewitt* Court observed as follows:

21 In cases where no appeal from an adverse ruling was filed, the defendants in
22 the legal malpractice action are able to assert, as an affirmative defense, that
23 the proximate cause of the damages was not the attorney's negligence, but
24 judicial error that could have been corrected on appeal. This issue is
25 commonly raised under theories of abandonment or failure to mitigate
26 damages, but can also be asserted as part of a claim that the malpractice
27 action is premature. Moreover, because the issue is raised in the context of an
28 affirmative defense, the attorney defendant has the burden of proof to
establish that an appeal would have been successful. Finally, whether an
appeal is likely to succeed is a question of law to be decided by the trial court.

Hewitt, 118 Nev. at 222, 43 P.3d at 348-49.

1 In this case, the burden of proof and the question of law described in *Hewitt* are
2 foregone conclusions, as the Supreme Court has already provided the answer for us. On
3 May 25, 2017, the Supreme Court concluded that Steppan's lien is, and always has been,
4 invalid. The Court based its decision on Steppan's failure to provide Iliescu a pre-lien notice,
5 as required by NRS 108.245. This is the very same argument made in Hale Lane's Application
6 for Release of Mechanic's Lien, filed over 10 years ago, on February 14, 2007. (Exhibit 9).
7 Thus, according to the Supreme Court, Hale Lane's application filed on Iliescu's behalf should
8 have been granted.

9 In *Crestwood Cove Apartments Business Trust v. Turner*, 164 P.3d 1247 (Utah 2007),
10 the Supreme Court of Utah considered the proximate cause issue in a legal malpractice case
11 where the trial court had erred in issuing a ruling that harmed the client. It stated as follows:

12 Accordingly, summary judgment is appropriate where there is no doubt that
13 judicial error, rather than attorney malpractice, caused a client's losses. As
14 previously discussed, some jurisdictions, often through the guise of an
15 abandonment doctrine, have concluded that a plaintiff cannot establish a claim
16 for legal malpractice where judicial error was the proximate cause of the
17 adverse result. We agree. Where an attorney has raised and preserved all
18 relevant legal considerations in an appropriate procedural manner and a court
19 nevertheless commits judicial error, the attorney's actions cannot be
20 considered the proximate cause of the client's loss. Although a client may
21 believe that an attorney has not litigated a case in the most effective manner
22 possible, such beliefs are irrelevant where the attorney has presented the
23 necessary arguments and the judge, albeit in error, rejects them. Were it
24 otherwise, an attorney would be subject to liability every time a judge
25 erroneously ruled against the attorney's client. In effect, an attorney would
26 become a guarantor of correct judicial decisionmaking—a result we cannot
27 accept.

28 *Crestwood Cove*, 164 P.3d at 1255-56 (internal citations omitted); *see also Pa. Ins. Guar. Ass'n*
v. Sikes, 590 So.2d 1051, 1052 (Fla. App. 1991) ("A reversal of a trial court's order that denies
an attorney the opportunity to cure a nonprejudicial defect and enters judgment for the
opposing side because of the alleged defect, determines, essentially, that there was judicial
error rather than legal malpractice"); *Cedeno v. Gumbiner*, 347 Ill.App.3d 169, 806 N.E.2d
1188, 1194 (2004) (finding that where the court's "misapplication of the law served as an
intervening cause, it cannot be said that plaintiff's damages proximately resulted from" the

1 attorney's actions, and summary judgment was therefore appropriate.).

2 In this case, 10 years ago, Hale Lane asserted the same argument that formed the basis
3 of the Nevada Supreme Court's recent decision in Iliescu's favor. Hale Lane's Application for
4 release of Steppan's lien should have been granted. Accordingly, the proximate cause of
5 Iliescu's claimed damages is not any alleged negligence on Hale Lane's part, but judicial error
6 that has now been corrected on appeal. Because the proximate cause element of Iliescu's
7 legal malpractice claim is lacking as a matter of law, Hale Lane is entitled to summary
8 judgment in its favor.


9 **IV. CONCLUSION**

10 For the foregoing reasons, Hale Lane respectfully requests that summary judgment of
11 Iliescu's third-party legal malpractice claims be entered in Hale Lane's favor.

12 *The undersigned does hereby affirm that the preceding document does not contain*
13 *the social security number of any person.*

14 DATED: November 16, 2017.

15 Lemons, Grundy & Eisenberg
16 6005 Plumas Street, Third Floor
17 Reno, Nevada 89519
18 (775) 786-6868

19 By: 
20 Todd R. Alexander, Esq.
21 Attorneys for Third Party Defendant
22 Hale Lane Peek Dennison and Howard
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law office of Lemons, Grundy & Eisenberg and that on November 17, 2017, I e-filed a true and correct copy of the foregoing **THIRD PARTY DEFENDANT HALE LANE'S MOTION FOR SUMMARY JUDGMENT OF THIRD-PARTY CLAIMS**, with the Clerk of the Court through the Court's eFlex electronic filing system and notice will be sent electronically by the Court to the following:

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Suite 202
Reno, Nevada 89502
Attorney for John Iliescu, Jr. and Sonnia Iliescu, et al.

G. Mark Albright, Esq.
D. Chris Albright, Esq.
Albright, Stoddard, Warnick & Albright
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Attorney for John Iliescu, Jr. and Sonnia Iliescu, et al.

Michael D. Hoy, Esq.
Hoy Chrissinger Kimmel, P.C.
50 West Liberty Street, Suite 840
Reno, Nevada 89501
Attorney for Mark Steppan

Gregory F. Wilson, Esq.
Gregory F. Wilson & Associates, PC
1495 Ridgeview Drive, Suite 120
Reno, Nevada 89519
Attorney for John Schleining



Susan G. Davis

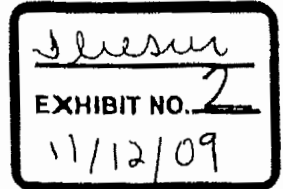
INDEX OF EXHIBITS

<i>Exhibit No.</i>	<i>Description</i>	<i>Length of Exhibit</i>
1	Land Purchase Agreement and Addendum No. 1	51 pages
2	Addendum No. 2	3 pages
3	Addendum No. 3	16 pages
4	Conflict Waiver	4 pages
5	Letter of Approval	8 pages
6	Mechanic's Lien	6 pages
7	Second Conflict Waiver	3 pages
8	Indemnity Agreement	2 pages
9	Application for Release of Mechanic's Lien	6 pages
10	Second Stipulation to Stay Proceedings	3 pages

EXHIBIT 1

EXHIBIT 1

Consolidated Pacific Development Inc.
932 Parker Street, Berkeley, CA 94710
(510) 548-6093 (FAX) 548-6164



TELECOPIER COVER SHEET

Please deliver enclosed pages to:

NAME: DICK JOHNSON
COMPANY: METZGER JOHNSON GROUP
FAX No.: 775 823 8848 Phone No.: 775 823-8817

FROM: SAM CAVALLA
MESSAGE/COMMENTS:

Dick
HERE IS THE EXECUTED COPY
FOR JOHNS LAND

No. of Pages 23
(including this sheet)

Date 7/25/05

ADDRESS Theresa Land at Court St and Island Street

METZKER JOHNSON GROUP
 COMMERCIAL * RESIDENTIAL * INVESTMENT * REALTY
 6490 S. McCarrao Blvd., RENO, NEVADA 89509 PHONE: (775) 823-8877 FAX: (775) 823-8848

LAND PURCHASE AGREEMENT

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

RECEIVED from CONSOLIDATED PACIFIC DEVELOPMENT INC., a Nevada Corporation and/or assignees (hereinafter designated as "BUYER"), the sum of \$25,000.00 (Twenty Five Thousand and no/100 Dollars) evidenced by ☐ Cash, ☒ Check, ☐ Other, n/a on account of the PURCHASE PRICE of \$6,800,000.00 (Six Million Eight Hundred Thousand and no/100 Dollars) for that certain land, improvements, and personal property, if any, (hereinafter collectively referred to as the "Property") situated in the City of Reno, County of Washoe, State of Nevada, and more particularly described as follows: (the "Property") 219 Court Street (APN 011-112-12 John Jr and Sonnia Niescu Trust Seller), 0 Court Street (APN 011-112-07 John Jr and Sonnia Niescu Trust Seller), and 223 Court Street (APN 011-112-06 John Niescu Seller) (APN 011-112-03 John Jr and Sonnia Niescu Trust Seller) 260 Island Ave (APN 011-112-02 John Jr and Sonnia Niescu Trust Seller) consisting of approximately 64,641 square feet of land, water rights defined in Paragraph 39(F) below, and that certain vacant building of approximately square feet, upon the following TERMS and CONDITIONS:

1. FINANCE TERMS:

1.1 DEPOSIT: \$25,000.00

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

1.2 ADDITIONAL CASH DEPOSIT: \$475,000.00

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

- ☒ an additional \$ 75,000.00 within 30 days from acceptance,
- ☒ an additional \$ 100,000.00 within 90 days from acceptance,
- ☒ an additional \$ 100,000.00 within 150 days from acceptance,
- ☒ an additional \$ 100,000.00 within 210 days from acceptance,
- ☒ an additional \$ 100,000.00 within 270 days from acceptance,
- ☒ if, through no fault of the Buyer, additional time is required for

governmental approvals of the project, Seller agrees to extend the close of escrow, as needed to obtain approvals. Buyer to pay an additional

1

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

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ADDRESS Thieson Land at Court St. and Island Street

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

1.3 BALANCE OF CASH PAYMENT: \$6,300,000.00

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

1.4 EXISTING FINANCING: \$ n/a

Per Terms and Conditions as specified below.

1.5 OWNER FINANCING: \$ n/a

Per Terms and Conditions as specified below

1.6 NEW LOAN: \$ n/a

Contingent upon the Terms and Conditions as specified below

1.7 TOTAL PURCHASE PRICE: \$6,800,000.00

(Not including closing costs)

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

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

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

2. SUBORDINATION AND PARTIAL RECONVEYANCE:

2.1 SUBORDINATION CLAUSE: N/A

2.2 PARTIAL RECONVEYANCE:

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

DEFINITIONS

2

Buyer [Signature]

MEITZER JOHNSON GROUP

Seller /

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ADDRESSES: Residential at Court Street and Island Street

(Unless stated otherwise in this document)

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

3. ADDENDUM:

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

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

4. CLOSING AND ESCROW:

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

3

Buyer [Signature]

METZKER JOHNSON GROUP

Seller /

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ADDRESS: Eliescu Land at Capitol St and Island Street

at close of escrow. Title shall be conveyed to Buyer by properly executed and duly recorded Grant Deed.

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

5. EVIDENCE OF TITLE:

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

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

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

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

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

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

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

6. BONDS:

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

7. EXPIRATION:

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

8. PROVISIONS AS FURTHER DEFINED:

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

BUYER

BUYER

4

Buyer

Alles

METZKER JOHNSON GROUP

Seller /

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ADDRESS: Theresa Land at Court St and Island Street

INCLUDED: WAIVED:

☒ N/A 8-A. SOIL TESTS:Soil Tests, within 30 days of acceptance, paid by ☒ Buyer ☐ Seller.

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

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

BUYER INCLUDED: BUYER WAIVED:

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

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

BUYER INCLUDED: BUYER WAIVED:

☒ N/A 8-C. FLOOD HAZARD ZONE:

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

BUYER INCLUDED: BUYER WAIVED:

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

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

BUYER BUYER

5

Buyer [Signature]

METZKER JOHNSON GROUP

Seller [Signature]

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ADDRESS: 11500 Land at Court St and Island Street

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

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

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

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

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

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

____ Buyer may elect to do a 1031 Tax Deferred Exchange

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

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

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

6

Buyer [Signature]

METZKER JOHNSON GROUP

Seller [Signature]

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ADDRESS: Iliescu Land at Sunset Island Street

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

BUYER INCLUDED: BUYER WAIVED:

☒ N/A ☐ N/A 6.21 ADDITIONAL INSPECTIONS:

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

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

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

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

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

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

9. CHANGES DURING TRANSACTION:

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

10. PRORATIONS:

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

7

Buyer



METZKER JOHNSON GROUP

Seller /

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ADDRESS: Hieson Land at Coast Street Island Street

made promptly in cash upon receipt of a copy of any such supplemental bill of the amount necessary to accomplish such pro-rata. Seller shall pay and discharge in full, at or before the Closing, the unpaid balance of any special assessment bonds.

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

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

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

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

12. ENCUMBRANCES:

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

13. NOTICES:

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

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

14. DEFAULT:

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

15. PHYSICAL POSSESSION:

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

8

Buyer



METZKER JOHNSON GROUP

Seller /

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ADDRESS: Iliescu Land at Court Street Island Street

16. TIME:

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

17. HAZARDOUS MATERIALS:

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

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

18. AGENT(S) DISCLAIMER:

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

19. CORRESPONDENCE:

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

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

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

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

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Buyer

METZKER JOHNSON GROUP

Seller /

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ADDRESS: Iliescu Land at Court St and Island Street

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

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

20. SEVERABILITY:

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

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

21. GOVERNING LAW:

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

22. NO ONE DEEMED DRAFTER:

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

23. COUNTERPARTS:

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

24. EFFECTIVE DATE OF THIS AGREEMENT:

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

25. AUTHORITY OF INDIVIDUALS SIGNING ON BEHALF OF ENTITY:

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

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Buyer

METZKER JOHNSON GROUP

Seller

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ADDRESS: 11000 Land at Cloud Island Island Street

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

26. EXHIBITS AND ADDENDUM:

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

27. BUSINESS DAYS:

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

28. LAND USE RESTRICTIONS:

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

29. VERIFICATION OF INFORMATION:

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

30. ATTORNEYS FEES:

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

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Buyer [Signature]

METZKER JOHNSON GROUP

Seller /

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ADDRESS: Nihoa Island at Courtland Island Street

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

31. ACCESS TO PROPERTY:

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

32. PREPAYMENT:

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

33. DUE ON SALE CLAUSE:

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

34. REAL ESTATE BROKERS AND FEES:

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

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

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

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Buyer AMK

METZKER JOHNSON GROUP

Seller /

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ADDRESS: Mission Land at Coast St and Island Street

reason of any dealings or act of the indemnifying Party.

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

36. IMPACT FEES:

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

37. DEFERRED AGRICULTURAL TAX:

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

38. EXISTING CONDITION:

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

39. ADDITIONAL TERMS AND CONDITIONS:

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

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Buyer [Signature] **MEITZER JOHNSON GROUP** Seller 1

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ADDRESS Huron Land at Corner St and Island Street

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

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

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

claim no. _____

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

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

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

- G. The purchase price is based upon \$0.00 ☐ per acre, ☐ per square foot and ☒ will not, ☐ will be adjusted in accordance with the area set forth in the survey.

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

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ADDRESS Theresa Land at Court St and Island Street

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

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

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

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

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

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

41. **ARBITRATION OF DISPUTES:**

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

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Buyer

[Signature]

METZKER JOHNSON GROUP

Seller 1

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ADDRESS: Hawaii Land at Coconut Island Street

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

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

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

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

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

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

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

42. LIQUIDATED DAMAGES:

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

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Buyer ALL METZKER JOHNSON GROUP Seller

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ADDRESS: 115001 Land at Coast Street Island Street

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

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

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

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

43. HOLD HARMLESS:

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

44. CODE OF ETHICS:

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

45. CONSULT YOUR ADVISORS:

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

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

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

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

17

Buyer [Signature]

METZKER JOHNSON GROUP

Seller _____

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ADDRESS: Biscuit Land at Corner Stand Island Street

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

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

SELLING OFFICE: NONE

REPRESENTED BY: NONE

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

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

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

Buyer's Broker: NONE Dated: _____

By: None

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

ACCEPTANCE

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

COMMISSION:

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

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

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

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ADDRESS: Hansen Land at Cloud Street Island Street

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

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

(Foreign Investment and Real Property Tax Act).

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

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

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

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

SELLING OFFICE: Metzker Johnson Group

REPRESENTED BY: Richard K. Johnson

Is the licensee acting for (check one):

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

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

is hereby incorporated as an addendum to this agreement.

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

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

Sellers Broker Metzker Johnson Group

Dated: _____

By (agent) Richard K. Johnson

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Buyer

[Signature]

METZKER JOHNSON GROUP

Seller /

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ADDRESS: Niescu Land at Court St and Island Street

SELLER'S ACCEPTANCE, COUNTER OFFER OR REJECTION OF AGREEMENT.

Seller **MUST** check one of the following options and date, time and sign this agreement.

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

OR

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

OR

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

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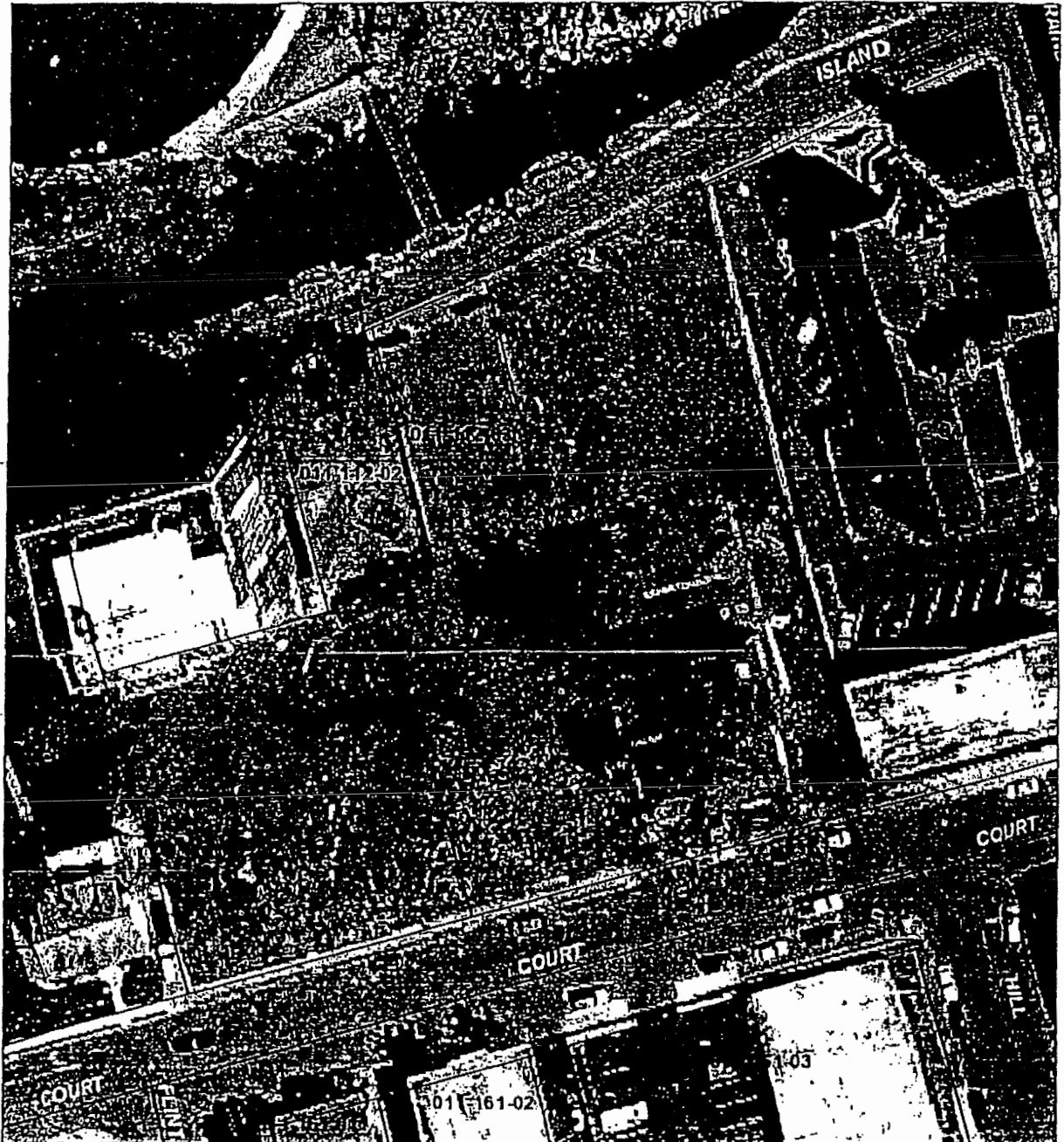
Buyer *[Signature]*

METZKER JOHNSON GROUP

Seller /

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ADDRESS Bjersu Land at Court St and Island Street



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Buyer _____ **METZKER JOHNSON GROUP** Seller _____

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***** This is a legal document. *****

METZKER JOHNSON GROUP.

COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY

1490 S. McCarran Blvd., SUITE 200, NEVADA 89501 PHONE: (775) 823-8848 FAX: (775) 823-8848

LAND PURCHASE AGREEMENT

Date Prepared: July 22, 2001

Property Address: APN: 011-112-04, 011-112-07, 011-112-12, 011-112-03

RECEIVED FROM CONSOLIDATED PACIFIC DEVELOPMENT INC., a Nevada Corporation, and/or assignees (hereinafter designated as "BUYER"), the sum of \$21,000,000 (Twenty One Thousand and no/100 Dollars) evidenced by ☐ Cash ☒ Check ☐ Other, on account of the PURCHASE PRICE of \$7,500,000 (Seven Million Five Hundred Thousand and no/100 Dollars) for that certain land, improvements, and personal property, if any, (hereinafter collectively referred to as the "Property") situated in the City of Reno, County of Washoe, State of Nevada, and more particularly described as follows: (the "Property") 212 Court Street (APN 011-112-12 John Jr. and Sonnie Blaine Trust Seller), 9 Court Street (APN 011-112-07 John Jr. and Sonnie Blaine Trust Seller), and 273 Court Street (APN 011-112-04 John Blaine Seller) (APN 011-112-03 John Jr. and Sonnie Blaine Trust Seller) consisting of approximately 39.414 square feet of land, whose rights defined in Paragraph 39(P) herein upon the following TERMS and CONDITIONS:

1. FINANCE TERMS:

1.1 DEPOSIT:

\$ 7,500,000.00

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

1.2 ADDITIONAL CASH DEPOSIT:

\$ 475,000.00

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

- ☒ an additional \$ 75,000.00 within 30 days from acceptance,
- ☒ an additional \$ 100,000.00 within 90 days from acceptance,
- ☒ an additional \$ 100,000.00 within 150 days from acceptance,
- ☒ an additional \$ 100,000.00 within 210 days from acceptance,
- ☒ an additional \$ 100,000.00 within 270 days from acceptance,
- ☒ if through no fault of the Buyer, additional time is required for governmental approvals of the project, Seller agrees to extend the time of escrow, as needed to obtain approvals. Buyer to pay an additional \$ 20,000.00 deposit within each 30 days extension from the 270 day payment due date. All extension deposits shall be credited to the purchase price upon close of escrow. Buyer shall have a 15 day grace period to make any of the above said deposits.

Buyer

METZKER JOHNSON GROUP

Seller

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ATTENTION: Please call at 11:00 AM and follow the instructions.

1.3 BALANCE OF CASH PAYMENT: \$7,000,000.00

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

1.4 EXISTING FINANCING: \$ N/A

For Terms and Conditions as specified below.

1.5 OWNER FINANCING: \$ N/A

For Terms and Conditions as specified below.

1.6 NEW LOAN: \$ N/A

Contingent upon the Terms and Conditions as specified below.

1.7 TOTAL PURCHASE PRICE: \$7,500,000.00

(Not including closing costs).

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

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

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

1. SUBORDINATION AND PARTIAL RECONVEYANCE:

2.1 SUBORDINATION CLAUSE: N/A

2.2 PARTIAL RECONVEYANCE:

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

DEFINITIONS

(Unless stated otherwise in this document)

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

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Buyer: MEIZKEER JOHNSON GROUP Seller: [Signature]

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

3. ADDENDUM:

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

☒ Notice Owned by a Nevada Real Estate Licensee.

☐ Consent to Act.

☒ Plot map—Exhibit A.

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

☒ Form 310.41, HAZARDOUS MATERIALS DISCLOSURE, to Buyer within 15 days of the execution of this agreement.

☐ Other: n/a

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

4. CLOSING AND ESCROW:

Within 175 (Two Hundred Seventy Five) days of acceptance, as may be extended pursuant to Paragraph 1.2 above both parties shall deposit with an authorized Escrow Holder, to be selected by ☐ Buyer, ☒ Seller, all funds and instruments necessary to complete the sale in accordance with the terms hereof. Promptly after mutual execution of this contract, Buyer and Seller shall open an escrow with (Escrow Holder) First Continental Title Company (Executive Officer) Mary Ann Johnston. Escrow fee paid by 10% by Seller and 50% by Buyer. Documentary Transfer Tax, if any, to be paid by ☐ Buyer, ☐ Seller, 65.00% by Seller and 10% by Buyer, ☐ Other n/a. All remaining closing costs shall be paid in customary manner and/or as required by law, ordinance and/or regulation. Possession of the Property shall be given to Buyer at close of escrow. Title shall be conveyed to Buyer by properly executed and duly recorded Grant Deed.

Buyer shall have the right to close escrow anytime prior to the closing designated in this Agreement.

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Buyer

METZGER JOHNSON GROUP

Seller

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(3)

ATTENTION: Please read the entire document carefully.

5. EVIDENCE OF TITLE.

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

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

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

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

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

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

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

6. BONDS:

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

7. EXPIRATION:

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

8. PROVISIONS AS FURTHER DEFINED:

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

BUYER ☒ INCLUDED ☐ WAIVED
SELLER ☐ INCLUDED ☒ WAIVED

☒ N/A + A. SOIL TESTS:

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

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

Buyer 1 MATTHEW JOHNSON GROUP Seller h/j

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K. Johnson

775-823-8848

P. 6

ADDRESS: (House, Lot, or Unit) (Street) (City) (State) (Zip) _____

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

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

BUYER INCLUDED: BUYER WAIVED:

☒ N/A 1-B. SURVEY: Survey paid by ☒ Buyer ☐ Seller.

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

BUYER INCLUDED: BUYER WAIVED:

☒ N/A 1-C. FLOOD HAZARD ZONE:

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

BUYER INCLUDED: BUYER WAIVED:

☐ N/A ☒ 1-D. BROKER REPRESENTING BOTH PARTIES:

Buyer and Seller acknowledge that the broker in this transaction represents both parties and Buyer and Seller cannot sue.

BUYER INCLUDED: BUYER WAIVED:

☒ N/A 1-E. SINGLE AGENCY

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

Buyer 1 Metzger Johnson Group Seller 1/1

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Rich K. Johnson

775-922-0048

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UNWARRANTED, EXCEPT AS SHOWN OTHERWISE

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

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

Offer is contingent upon the sale of (address) p/s

BUYER INCLUDED: ☒ N/A BUYER WAIVED: ☐ 2-G. TAX DEFERRED EXCHANGE (INVESTMENT PROPERTY):

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

Buyer may elect to do a 1031 Tax Deferred Exchange

Seller may elect to do a 1031 Tax Deferred Exchange

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

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

BUYER INCLUDED: ☒ N/A BUYER WAIVED: ☐ 4.2.1 ADDITIONAL INSPECTIONS:

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

Buyer: MEIZNER JOHNSON GROUP Seller: [Signature]

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APPENDIX: Buyer's Checklist of Items to be Inspected

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

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

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

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

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

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

9. CHANGES DURING TRANSACTION:

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

10. PROVISIONS:

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

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

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Buyer / METZGER JOHNSON GROUP Sole Agent

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775-823-8848

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UNWITNESSED: This document is not a legal document.

10.3 RENTALS, INTEREST AND EXPENSES: Persons, such as, but not limited to, utilities, and operating expenses shall be provided as of the date of Closing. Such items shall be supplied by Seller within ☒ ten (10) days or ☐ N/A (N/A) days prior to close of escrow. The Parties agree to promptly adjust between themselves outside of Escrow any rents received after the Closing.

10.4 SECURITY DEPOSIT AND LEASE CREDITS: Security Deposits held by Seller and considerations involving lease credits shall be given to Buyer by a credit to the cash required of Buyer at the Closing. Such items shall be supplied by Seller within ☒ ten (10) days or ☐ N/A (N/A) days prior to close of escrow.

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

12. ENCUMBRANCES:

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

13. NOTICES:

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

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

14. DEFAULT:

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

15. PHYSICAL POSSESSION:

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

16. TIME:

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

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Buyer _____

METZGER JOHNSON GROUP

Seller Metzger Johnson

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p. 10

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17. HAZARDOUS MATERIALS:

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

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

18. AGENT(S) DISCLAIMER:

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

19. CORRESPONDENCE:

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

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

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

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

Copies to: Richard K. Johnson Fax: 775-823-1111
6470 E. McCarran Blvd. Phone: 775-823-1177
Reno Nevada 89507

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

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Buyer METZGER JOHNSON GROUP Seller
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K. Johnson

775-523-8848

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THE WRITTEN AGREEMENT SHALL BE SIGNED BY THE PARTIES.

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

20. SEVERABILITY:

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

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

21. GOVERNING LAW:

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

22. NO ONE DEEMED DRAFTER:

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

23. COUNTERPARTS:

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

24. EFFECTIVE DATE OF THIS AGREEMENT:

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

25. AUTHORITY OF INDIVIDUALS SIGNING ON BEHALF OF ENTITY:

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

26. EXHIBITS AND ADDENDUM:

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

10

Buyer: /

MEYER JOHNSON GROUP

Seller: *[Signature]*

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Rich

K. Johnson

775-023-8848

p. 12

ATTENTION: Broker/Agent at 11501 S. 1st, Phoenix, AZ 85042

27. BUSINESS DAYS:

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

28. LAND USE RESTRICTIONS:

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

29. VERIFICATION OF INFORMATION:

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

30. ATTORNEYS FEES:

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

31. ACCESS TO PROPERTY:

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

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Buyer

METTLER JOHNSON GROUP

Seller

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K. Johnson

775-823-8848

p. 13

UNWARRANTED, INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS, ARISING OUT OF OR IN CONNECTION WITH ITS ACTIVITIES (INCLUDING, WITHOUT LIMITATION, BUYER'S AGENTS AND EMPLOYEES, AND INDEPENDENT CONTRACTORS RETAINED BY OR ACTING ON BEHALF OF BUYER (COLLECTIVELY, "BUYER'S AGENTS") ON THE PROPERTY. BUYER SHALL HAVE NO LIABILITY TO SELLER FOR ANY LOSS, LOSS CLAIM, DISSEMINATION IN VALUE, LIABILITY OR EXPENSE INCURRED BY SELLER ARISING OUT OF DISCOVERY BY BUYER OR BUYER'S AGENTS OF ANY HAZARDOUS MATERIALS OR TOXIC SUBSTANCES AS DECLARED IN APPLICABLE STATE OR FEDERAL LAW, OR ON OR ABOUT THE PROPERTY, SO LONG AS THE ACTIVITIES OF BUYER AND BUYER'S AGENTS ON THE PROPERTY ARE PERFORMED WITH DUE DILIGENCE IN ACCORDANCE WITH THE INDUSTRY STANDARDS FOR SUCH ACTIVITIES AND FURTHER PROVIDING THAT NEITHER BUYER OR BUYER'S AGENTS IS ACTIVELY NEGLIGENT IN THE PERFORMANCE OF SUCH ACTIVITIES.

32. PREPAYMENT:

Seller will pay any prepayment charge imposed on any existing Seller's loan paid off in whole or in part.

33. DUE ON SALE CLAUSE:

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

34. REAL ESTATE BROKERS AND FEES:

For the terms and conditions as herein set forth, Buyer and Seller herein agree that Seller shall pay the commission(s) through Close of Escrow, to METZGER JOHNSON GROUP, Broker (Richard K. Johnson, Agent) of the Seller, and NOMI, Broker (NOMI Agent) of the Buyer.

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

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

35. VESTED TITLE:

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

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Buyer: _____ METZGER JOHNSON GROUP Seller: [Signature]
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K. Johnson

775-823-8848

p. 14

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designed to follow instructions

36. IMPACT FEES:

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

37. DEFERRED AGRICULTURAL TAX:

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

38. EXISTING CONDITION:

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

39. ADDITIONAL TERMS AND CONDITIONS:

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

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Buyer 1 **MEITZER JOHNSON GROUP** Seller 1 **AD**

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File I. K. Johnson

773-828-8040

p. 15

JIM MONTGOMERY, Buyer, 10000 1st Avenue, NE, Seattle, WA 98108

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

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

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Zoning | <input checked="" type="checkbox"/> Future land use designations | <input checked="" type="checkbox"/> Availability of Utilities |
| <input checked="" type="checkbox"/> Legal Access | <input checked="" type="checkbox"/> Easements | <input checked="" type="checkbox"/> Subject Property Boundary |
| <input checked="" type="checkbox"/> Environmental | <input checked="" type="checkbox"/> Mineral Rights | <input checked="" type="checkbox"/> Flood Mitigation Agreement |
| <input checked="" type="checkbox"/> Phase I Environmental | | |
| <input type="checkbox"/> Corners Marked, or | <input checked="" type="checkbox"/> Survey print by <input type="checkbox"/> Seller, <input checked="" type="checkbox"/> Buyer | |
| <input type="checkbox"/> Percolation Test paid by <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer | | |
| <input type="checkbox"/> Well Test, Quantity, paid by <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer | | |
| <input type="checkbox"/> Well Test, Quantity, paid by <input type="checkbox"/> Seller, <input type="checkbox"/> Buyer | | |
| <input checked="" type="checkbox"/> Water Rights <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, in the amount of _____ acre feet of ground water under claim so. | | |
| <input type="checkbox"/> Yes <input type="checkbox"/> No, in the amount of _____ acre feet of surface water | | |

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

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

- G. The purchase price is based upon \$6/s. ☐ per acre, ☐ per square foot and ☒ will not ☐ will be adjusted in accordance with the area set forth in the survey.

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

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Buyer 1 METZNER JOHNSON GROUP Sety J. J. J.

(Signature) (Print) by BQP. All other necessary documents, including but not limited to, shall be submitted by B. JOHNSON.

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P. 10

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Original sent to HQ. A copy retained. The reproduction being published. This version approved by B. R. JOHNSON

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K. Johnson

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P.17

THE PARTIES AGREE THAT THE FOLLOWING PROCEDURE WILL GOVERN THE MAKING OF THE AWARD BY THE ARBITRATOR:

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

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

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

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

☐ (initial) Buyer agrees

☒ (initial) Buyer does not agree

☐ (initial) Seller agrees

☒ (initial) Seller does not agree

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

42. LIQUIDATED DAMAGES:

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

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Buyer 1

METZGER JOHNSON GROUP

Seller 1

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Rio

K. Johann

775-023-8848

P.18

... (Name, Last, First, Middle Initial) ...

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

☒ (X) Buyer agrees ☐ (N/A) Buyer does not agree

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

43. HOLD HARMLESS:

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

44. CODE OF ETHICS:

Not all real estate brokers are REALTORS. A REALTOR is a member of the National Association of REALTORS and therefore subscribes to a higher ethical standard in the industry, the REALTOR Code of Ethics. To receive a copy of the REALTOR Code of Ethics, ask your real estate professional, the Realtor's Association of REALTORS, or go to www.nar.org.

45. CONSULT YOUR ADVISORS:

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

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

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

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

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Buyer

Metzger Johnson Group

Seller

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M. Johnson

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

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

SELLING OFFICE: NONEREPRESENTED BY: NONEIs the Broker acting for (what one): N/A

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

The undersigned Buyer has read this agreement and all addenda/endorsements/changes and hereby acknowledges receipt of a copy hereof. Buyer's signature hereon constitutes an offer to Seller to purchase the Property on the terms and conditions set forth herein. Buyer acknowledges further that he has not relied upon statements or representations by the undersigned Agent which are not herein expressed. Buyer's Broker: NONE Dated: _____
By: None

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

ACCEPTANCE

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

COMMISSION:

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

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

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

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

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Buyer: 1 METZGER JOHNSON GROUP Seller: R.A.D.

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Rich

K. Johnson

775-823-8800

p.20

UNWARY - Buyer shall be deemed to have been advised of the

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

IRRITA (TAX WITHHOLDING)

(Foreign Investment and Real Property Tax Act).

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

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

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

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

SELLING OFFICER: Metzger Johnson GroupREPRESENTED BY: Richard K. Johnson

Is the licensee acting for (check one):

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

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

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

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

Sellers Broker: Metzger Johnson Group

Dated: _____

By (agent): Richard K. Johnson

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Buyer

Metzger Johnson GroupSeller Richard K. Johnson

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

OR

OR

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Buyer 1 MEITZER JOHNSON GROUT Sales 22/1A
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K. Johnson

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APPROX. 11:00am (approx. 11:00am) (approx. 11:00am)



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Buyer

MEIZNER JOHNSON GROUP

Seller *[Signature]*

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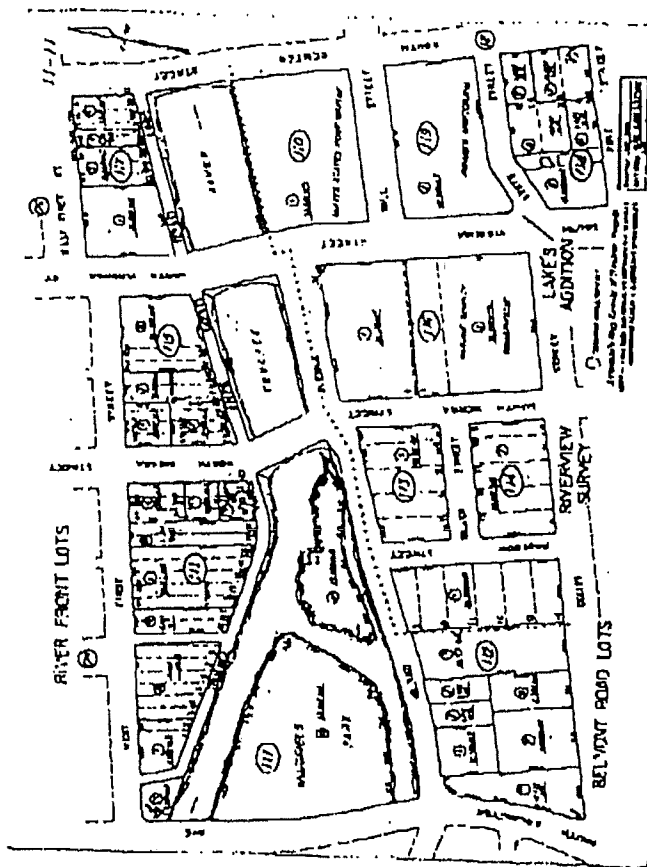
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REC. K. JOHNSON

775-827-8848

P. 23

ATTENTION: Please send all correspondence to the following address:



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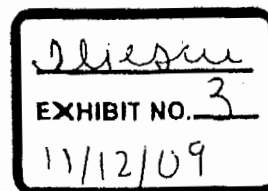
METTER JOHNSON GROUP

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Consolidated Pacific Development Inc.
932 Parker Street, Berkeley, CA 94710
(510) 548-6093 (FAX) 548-6164



TELECOPIER COVER SHEET

Please deliver enclosed pages to:

NAME: DICK JOHNSON

COMPANY: _____

FAX No.: 775-823-8848 Phone No.: _____FROM: Sam Caniglia

MESSAGE/COMMENTS:

Copy of Executed O&A. Good luck
Tomorrow. Talk to you early Monday.

I had to send page 7 again together
with balance on Contract.

Disper problems!!

Also I add a short additw to
Page 15 Letter L. How John
also initial. Thanks.

No. of Pages 24
(including this sheet)

Date 7/30/05

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

ADDENDUM NO. 1

Date Prepared: August 1, 2005

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

39. ADDITIONAL TERMS AND CONDITIONS:

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

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

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

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

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

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

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

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

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

Seller/Agent: _____ Date _____ Time _____

MEYER JOHNSON GROUP
COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY

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

ADDENDUM NO. 1

Date Prepared: August 1, 2003

Property address: APT. 811-112-06, 811-112-07, 811-112-12, 811-112-03
In reference to the offer made by CONSOLIDATED PACIFIC DEVELOPMENT INC.,
Nevada Corporation, Buyer, and Nicole John Jr. and Sonnie Trust, Seller, dated
7/29/2003, the following terms and changes are hereby incorporated as part of the Purchase
Agreement:

39. ADDITIONAL TERMS AND CONDITIONS:

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

1

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(23)

See Addendum #2 to 20.

06/04/2005 06:12 FAX 507 281 2042

S FIELD MOTEL

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Aug 03 05 11:54a

R101

K. Johnson

775-823-8848

P.75

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

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

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

Please see Hand Purchase Agreement & Addendum of all part of this transaction at 22

EXPIRATION: This Addendum/Counter Offer shall expire unless written acceptance is delivered to Seller/Landlord or Buyer Agent on or before 2:00 ☐ AM ☒ PM, on August 2, 2005.

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

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

Buyer/Tenant: _____ Date: _____ Time: _____
Sam Cardillo, for Consolidated Pacific Development, Inc.

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

Seller/Agent: _____ Date: _____ Time: _____

Consolidated Pacific Development Inc.
932 Parker Street, Berkeley, CA 94710
(510) 544-6093 (FAX) 548-6164

TELECOPIER COVER SHEET

Please deliver enclosed pages to:

NAME: DICK JOHNSON

COMPANY: _____

FAX No.: 775 823 8848

Phone No.: _____

FROM: Sam Canniglia

MESSAGE/COMMENTS:

Executed ADDENDUM #2GO TIGER!!

No. of Pages 2
(including this sheet)

Date

8/3/05

EXHIBIT 2

EXHIBIT 2

METZKER JOHNSON GROUP®
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6490 S. McCartan Blvd., Ste. 10

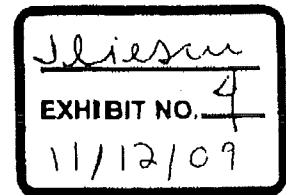
RENO, NEVADA 89509

PHONE: (775)823-8877

CELL: 775-741-0829

FAX: (775) 823-8848

FAX



PAGES ATTACHED: 2

DATE: Aug-11-2, 2005

TO: Dr. John d. SONNIA I LIESCU Room 517

FAX: 507-288-2677

PHONE: 212K Phone 507-288-2677

REFERENCE: OFFER ISLAND/COURT

FROM: Richard K Johnson, President

COMMENTS:

Following is the additions to accomplish what we discussed. SAMCANIGLIA was sent this also and he has AGREED.

Hope EVERYTHING is going well THERE.

Let me know as soon as possible if this accomplishes what we discussed.

[Signature]

METZKER JOHNSON GROUP
COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY

6490 S. McCarran Blvd., Reno, Nevada 89509 Phone: (775) 821-8877 Fax: (775) 821-8848

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: _____
Sonnio Iliescu, (Iliescu, John Jr. and Sonnia, Trust)

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

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

Seller/Agent: _____ Date _____ Time _____

Aug 03 03 05:38p

Rich: K. Johnson

775-923-8848

p.1

MEYER JOHNSON GROUP
 COMMERCIAL • RESIDENTIAL • INVESTMENT • REALTY

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

ADDENDUM NO. 2

Date Prepared: August 2, 2003

Property address: APNs 811-112-06, 811-112-07, 811-112-12, 811-112-03
 In reference to the LAND PURCHASE AGREEMENT made by CONSOLIDATED
PACIFIC DEVELOPMENT INC., a Nevada Corporation, Buyer, and Thomas, John Jr. and
Sandra Traci, Seller, Date Prepared: 2/29/2003 and the ADDENDUM NO. 1 Date
 Prepared: 10/10/02 the Buyer and Seller hereby agree as follows:

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

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

Please see Land Purchase Agreement & Addendum #1 as part of the finalization. JH

EXPIRATION: This Addendum shall expire unless written acceptance is delivered to Seller/Landlord or his/her Agent on or before 3:00 ☐ AM ☒ PM, on August 4, 2003.

Seller/Landlord: John Thomas Date: 8-3-03 Time: 7:30 PM
Of John Thomas, Thomas, John Jr. and Sandra, Traci

Seller/Landlord: Sandra Traci Date: 8-3-03 Time: 7:30 PM
Sandra Thomas, Thomas, John Jr. and Sandra, Traci

Buyer/Locals: _____ Date _____ Time _____
Sam Cardillo, for Consolidated Pacific Development, Inc.

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

Seller/Agent: _____ Date _____ Time _____

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EXHIBIT 3

EXHIBIT 3

Oct 08 05 05:25p

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Rich I K. Johnson

775-823-8848

P.1

Addendum No. 3

Iliescu
EXHIBIT NO. 5
11/12/09

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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ML
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MD *JD* 10/18/05

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

On the date of closing, Title Company shall issue a CLTA or an ALTA policy of title insurance as determined by Buyer, which may include appropriate endorsements as desired by Buyer and to be paid by Buyer, insuring Buyer's title in the Property in an amount equal to the purchase price for the Property. Said title policy shall insure that Buyer has good and marketable title to the Property, subject only to the Permitted Exceptions. As used herein, "Permitted Exceptions" shall mean the standard form printed title exceptions of the form of policy chosen by Buyer and the following Schedule B exceptions shown on the Preliminary Report ("Title Report") of First Centennial Title Company of Nevada ("Title Company") No. 145279-M1, 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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JLH
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10/8/05

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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J. J. [Signature]
10/9/05

[Signature]
10/8/05

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

JD
10/9/05

allo
10/9/05

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 (1/2) 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 (1/2) 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 (1/2) 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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J. J. AAO
10/9/05

allo
10/10/05

(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(f) 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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J. J. [Signature]
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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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Richard L. Johnson

775-823-8848

P. 1

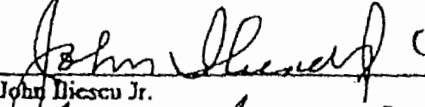
(b) Time is of the essence of this Agreement.

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

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

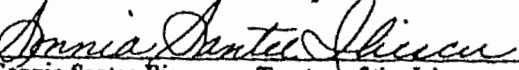
This Addendum No. 3 is dated this 8 day of OCTOBER, 2005.

Seller:


John Ilescu Jr.


Sonnia Santee Ilescu


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


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

Buyer:

Consolidated Pacific Development, Inc.,
a Nevada corporation

By: 
Sam A. Caniglia, President

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Rich: K. Johnson

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P. 8

Exhibit "A"
Preliminary Title Report

(See attached.)

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P. 10

FIRST CENTENNIAL TITLE COMPANY OF NEVADA

- ☐ 1150 RIDGEMAN DR. SUITE 100 * RENO, NV 89509 (775) 683-4310
- ☐ 500 DANFORTH RANCH PARKWAY, SUITE 200 * RENO, NV 89521 (775) 830-2133
- ☐ 716 NORTH CAMDEN STREET, #100 * CARSON CITY, NV 89701 (775) 687-8300
- ☐ 5121 LAKEVIEW DR. SUITE 150 * RENO, NV 89511 (775) 688-8330
- ☐ 320 TAIHOE BLVD. SUITE 200 * P.O. BOX 8206, INCLINE VILLAGE, NV 89450 (775) 531-8200
- ☐ 1025 ROBERTA LANE * SPARKS, NV 89431 (775) 683-2321
- ☐ 3708 LAKEVIEW DR. SUITE 100 * RENO, NV 89509 (775) 683-8233
- ☐ 5190 MAZANNE AVENUE SUITE 1 * RENO, NV 89521 (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 811-112-03, 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 thereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby.

Julie Moreno

by: _____
Julie Moreno, Title Officer

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P. J. J.

SCHEDULE A

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

Fee Simple

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

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

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

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

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Rich: K. Johnson

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P. 12

SCHEDULE B

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

1. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$1,501.77
First Installment: \$376.77, Unpaid
Said installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$375.00, each. Unpaid
Assessors Parcel No.: 011-112-03
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
2. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$2,010.02
First Installment: \$504.02, Unpaid
Said installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$502.00, each. Unpaid
Assessors Parcel No.: 011-112-06
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
3. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$3,541.47
First Installment: \$886.47, Unpaid
Said installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$885.00, each. Unpaid
Assessors Parcel No.: 011-112-07
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
4. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$4,984.02
First Installment: \$1,276.02, Unpaid
Said installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$1,236.00, each. Unpaid
Assessors Parcel No.: 011-112-12
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.

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SCHEDULE B

(Continued)

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

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P. 14

EXHIBIT "A"
Legal Description

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

PARCEL 1:

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

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

APN: 011-112-03

PARCEL 2:

Commencing at a point 129.6 feet West of where the center line of Hill Street projected Northerly will intersect the North line of Court Street; thence running Westerly along the North line of Court Street, 75 feet; thence running Northerly at an angle of $89^{\circ}58'$ 140 feet; thence running Easterly at an angle of $90^{\circ}05'$ 75 feet; thence running Southerly at an angle $80^{\circ}35'$, 140 feet to the place of beginning, comprising a parcel of land 75 by 140 feet.

APN: 011-112-06

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Richa K. Johnson

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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. BOUDWYN, 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: 011-112-17

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

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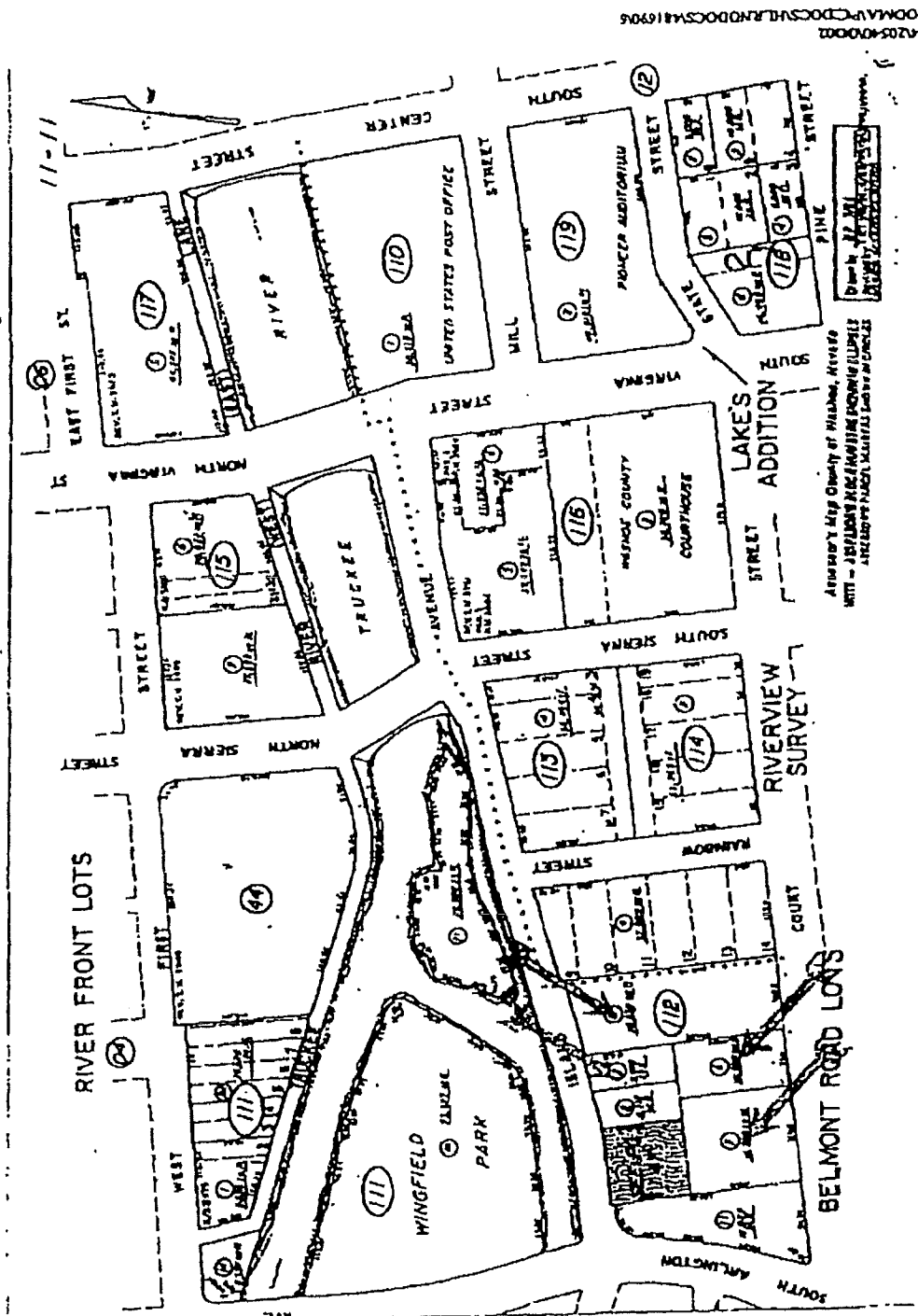
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EXHIBIT 4

EXHIBIT 4

HALE LANE

ATTORNEYS AT LAW

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

December 14, 2005

EXHIBIT NO. 10

11/12/09

Edward Everett Hale
(1979-1993)
Steve Lane
J. Stephen Peck
Karen D. Dennison
R. Craig Howard
Stephen V. Newman
Richard L. Elmon
Richard Bannan
Robert C. Anderson
Alex J. Flanagan
James L. Kelly
Kathy Tansolin
N. Patrick Flanagan
Matthew E. Woodhead
Michelle D. Mullins
Roger W. Jeysson
Lance C. East
Jeremy J. Marks
David A. Garcia
Elissa F. Canfield
Timothy A. Loken
Frederick J. Schmidt
James Newman
Terry A. Seaton
Patrick J. Bailey
Sean D. McHenry
Scott Scherer
Anthony L. Hall
Jerry M. Snyder
Brent C. Eckert
Frederick R. Reischer
Pauline C. Halstead
Matthew J. Kruttschnitt
Matthew B. Huppel
Brad M. Johnson
Bryce K. Kordiano
Douglas C. Plemmons
Justin C. Jones
Nicole M. Varner
Kimberlee Rotsky
Dore V. Dijkman
Simon Johnson
Sarah E. L. Claus
Helen E. Manderson

Of Counsel

Roy Farrow
Pauline Ng Lee
Andrew Pearl

*Admitted to New York
and New Jersey only

John Ilescu, Jr., an individual
Sonnja Santee Ilescu, an individual
John Ilescu, Jr. and Sonnia Ilescu,
as Trustees of the John Ilescu, Jr. and Sonnia Ilescu 1992 Family Trust
200 Court Street
Reno, Nevada 89501

Calvin Bary, an individual
c/o Consolidated Pacific Development, Inc.
932 Parker Street
Berkeley, California 94710-2524

Consolidated Pacific Development, Inc.
932 Parker Street
Berkeley, California 94710-2524

Re: Court Street/Island Avenue Condominium Project

Lady and Gentlemen:

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

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

HALE LANE PECK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2500 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone: (702) 222-2500 | Facsimile: (702) 265-6940
CARSON CITY OFFICE: 777 East William Street | Suite 300 | Carson City, Nevada 89701 | Phone: (775) 684-6000 | Facsimile: (775) 684-6001

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Page 2

HALE LANE

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

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

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

Very truly yours,

Robert L. Lichman

Karen D. Dennison

KDD:CST

ATTORNEYS AT LAW

100 West Liberty Street | Tenth Floor | Reno, Nevada 89501
Telephone: (775) 327-3000 | Facsimile: (775) 786-6179
Website: <http://www.halelanc.com>

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

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

RETURN TO: Danielle Aragon

Greetings:

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

HALE LANE PEEK DENNISON AND HOWARD

CONFIDENTIALITY NOTICE: The information contained in this facsimile message is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or as the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please inform us by telephone and return the original message to us at the above address via the U.S. postal service. We will gladly reimburse your telephone and postage expenses. Thank you.

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Acknowledgement

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

Iliescu:

Date: 12-15-05

John Iliescu, Jr.
John Iliescu, Jr.

Date: 12-15-05

Sonnica Santee Iliescu
Sonnica Santee Iliescu

Date: 12-15-05

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

Date: 12-15-05

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

Baty:

Date: _____

Calvin Baty

Consolidated:

Consolidated Pacific Development, Inc.,
a Nevada corporation

Date: _____

By: _____
Sam A. Caniglia, President

EXHIBIT 5

EXHIBIT 5

FILE / COPY

Claudia C. Hanson, AICP, Interim Planning Manager
Community Development Department
P. O. Box 1900
Reno, NV 89505
(775) 334-2381

October 5, 2006



Consolidated Pacific Development
932 Parker Street
Berkley, CA 94710

RECEIVED

OCT 12 2006

FISHER FRIEDMAN ASSOCIATES

Subject: LDC06-00321 (Wingfield Towers)
APN No. 011-112-03, 06, 07 and 12

Dear Applicant:

At the regular meeting of the Planning Commission on October 4, 2006, the Planning Commission approved your request for: (1) a tentative map to develop a 499 unit residential condominium subdivision; (2) special use permits to allow: (a) hillside development; (b) cuts of 20 feet or more, (c) modification to the building setback envelope for a building within the South Esplanade Frontage; and (d) 100 or more condominium units; and (3) a variance to allow the buildings to cast a shadow on a public park between the hours of 10 a.m. and 2 p.m. on December 21st. In addition to the condominium units, ±19,817 square feet of retail space and ±20,603 square feet of office space will be located within two towers which are ±492 and ±374 feet tall, respectively from Court Street. The ±1.36 acre site is located on the south side of Island Avenue ±200 feet east of Arlington Avenue and north of Court Street in the MU/DRRC (Mixed Use/Downtown Reno Regional Center Plan) zones.

Your approved request is subject to the following conditions:

1. The project shall comply with all applicable City codes, plans, reports, materials, etc., as submitted. In the event of a conflict between said plans, reports, materials and City codes, City codes in effect at the time the building permit is applied for, shall prevail.
2. The applicant shall record the final map in accordance with the time limit contained in state law or this approval shall be null and void.
3. Prior to the approval of a final map, the applicant shall demonstrate that a homeowner's association or equivalent has been formed to provide for the maintenance of all common areas.

4. Prior to the approval of a final map, the applicant shall demonstrate that pedestrian amenities will be provided in an amount equal to 1% of the entire project's costs exclusive of land and financing for buildings. These improvements shall be installed, prior to issuance of the first residential certificate of occupancy.
5. Grading and construction activities shall be allowed between the hours of 7:00 am and 7:00 pm Monday through Saturday. Grading or construction activities shall not take place on Sundays or on holidays.
6. Prior to approval of a final map, the applicant shall have plans approved for installation of landscaping around and on the parking structure up to the podium level as discussed on page 9 in the Urban Design section of the October 4, 2006, Planning Commission staff report for LDC06-00321.
7. Prior to the approval of any permit or final map, the applicant shall have an approved Sewerage Report in accordance with the Public Works Design Manual. Adequate access shall be provided for all sanitary sewer improvements per the Public Works Design Manual. All required on-site and off-site sanitary sewer improvements necessary to serve the project shall be complete and functional prior to the issuance of any certificate of occupancy.
8. Prior to the approval of any permit or final map, the applicant shall have approved plans for all proposed public sanitary sewer system improvements, abandonments, modifications, or relocations. The applicant shall coordinate the project improvements with completion of the City's sewer rehabilitation project in Arlington Avenue, between Court Street and Island Drive, which closely resemble the proposed sewer relocations shown in this application. These plans shall be approved by Community Development Department staff to the satisfaction of the Public Works Sanitation Engineering Division.
9. All proposed on-site sewer facilities and improvements shall be privately owned and maintained and shall be designed and constructed, with adequate access, in accordance with the City's minimum standards set forth in the Public Works Design Manual.
10. Prior to the approval of any permit or final map, the applicant shall have an approved Hydrology Report addressing on-site and off-site storm water flows and facility capacities for the pre-development and post-development site conditions. Specifically, the report shall analyze and provide mitigations for any impacts to floodwater flows in the Truckee River from the development of the project.

11. Prior to the approval of any permit or final map, the applicant shall demonstrate on-site storm water facilities meet minimum water quality standards for discharge into the Truckee River in accordance with RMC sections 12.16.530 and 12.12.555. Plans for the collection and treatment of roof-top, parking garage area, and elevator basin storm water effluent discharges shall be approved by Community Development Department staff to the satisfaction of the Public Works Sanitation Engineering Environmental Control Division.
12. On-site storm water management facilities and appurtenances will be privately owned and maintained. Adequate maintenance access shall be provided for all storm water management improvements per the Public Works Design Manual.
13. Prior to approval of any permit or final map, applicant shall demonstrate how Truckee River flood waters are to be accommodated through the building/site design in accordance with FEMA and City regulations.
14. Prior to the approval of any permit (excluding grading) or final map, the applicant shall demonstrate adequate gravity flow overland escape routes are provided for all roof-top and surface storm water collection and conveyance facilities.
15. Prior to the approval of any permit or final map, the applicant shall demonstrate compliance with flood control regulations regarding storm water detention and how the project will deal with parking garage levels that may be situated below flood elevations in the Truckee River. The applicant shall demonstrate how the subterranean elements of this project will be protected from shallow ground waters in accordance with the project geotechnical report.
16. Prior to the approval of each final Map, the applicant shall demonstrate all necessary on-site and off-site easement vacations, relocations, and grants are complete or in place. These easements include, but are not limited to; project construction, site access and cross access, utility access, emergency access, maintenance access, sewer lines, surface drainage, storm drains, irrigation ditches, and utility improvements. All required access, sewer, storm drainage, and utility improvements shall be constructed prior to the issuance of any certificates of occupancy.

17. Prior to the approval of any permit for public improvements or final map, the applicant shall have plans for all public improvements approved by the Community Development Department and shall obtain associated encroachment and excavation permits. Additionally, the applicant shall provide necessary dedications for rights-of-way and/or public use easements for the roadway, sidewalk, and pedestrian ramp improvements proposed along each project frontage.
18. Prior to the approval of each permit, the applicant shall have a preconstruction meeting and an approved Construction Management Plan. This plan shall include provisions for on-site and off-site construction material storage, employee parking and shuttle services (as appropriate), and construction activity phasing and staging. The plan shall also depict the proposed construction transportation and delivery routes within the project vicinity bounded by Center Street, California Avenue, Interstate 80, and Keystone Avenue. Access to adjacent businesses and properties shall be maintained during construction.
19. Prior to the approval of any permit for public improvements or final map, the applicant shall comply with the Quality Assurance Program as set forth in the Public Works Design Manual, Chapter VI, titles "Inspection, Testing and Verification" and "Quality Assurance Program."
20. Prior to the issuance of any permit, the applicant shall have plans and appropriate easements for the relocating or undergrounding of all overhead utilities proposed with this project in accordance with City standards and RMC Section 18.12.603 "Underground Utility Services."
21. Site circulation design, traffic control devices, and operational characteristics of the site accesses, common use driveways, on-site drive aisles, emergency accesses, fire access lanes, pedestrian routes, sidewalks, and parking areas shall be in accordance with the Public Works Design Manual and shall meet with the approval of the City Fire and Community Development Departments.
22. The applicant shall provide sidewalks and demonstrate accessible and ADA compliant pedestrian routes from all adjacent public rights-of-way to the on-site buildings.
23. Prior to the approval of any final map, the applicant shall demonstrate adequate street lighting exists or shall propose street lighting in accordance with City standards for the project entrances and adjoining properties. If new lighting is required, a private on-site street light shall be installed at the back of sidewalk near the private roadway entrances. This

street light can match other private on-site parking area lights provided adequate levels of lighting are achieved.

24. Prior to the approval of any final map, the applicant shall demonstrate adequate sight distance is provided in accordance with City code for the parking structure accesses and adjoining intersections. Sight distances shall be evaluated both horizontally and vertically.
25. Project accesses shall be located and designed in conformance with the master traffic study (prepared by Solaegui Engineers dated September 21, 2006, with all addenda and updates thereto) on file for the project and in accordance with the geometric standards of the Public Works Design Manual.
26. All traffic study updates shall be to the approval of the Community Development Department and shall provide analyses and review of the site plan and proposed mitigations for project generated impacts, relative to the trip generation distribution estimates included in the September 21, 2006 master traffic study, on the adjacent roadway network, site accesses, pedestrian routes, and cut-through traffic concerns.
27. Prior to the approval of each permit (excluding grading and underground improvements) and final map, the applicant shall provide a Transportation Management Plan for the project in accordance with the master traffic study and updates thereto. This plan shall stipulate specific strategies and management policies to control site generated traffic with regards to the operation of the parking structure, site accesses and turning movements, valet parking procedures, trip distributions from the site, pedestrian routes, off-site parking, shuttle service, loading zones/areas, metered parking, and mass transit utilization. This plan shall be on file with the Community Development Department and updated with each permit generating additional project traffic. This plan shall be continuously maintained in perpetuity, incorporated into the project Home Owners Association (HOA or equivalent) Covenants, Conditions, and Restrictions (CC& R's or equivalent), and a note shall be placed on each final map stating:

"The Transportation Management Plan, and all updates and addenda thereto, as required by Condition of Approval {#} for LCD06-00321 and finally approved by the City of Reno on {date}, shall remain in full force and effect for the life of this map and subsequent modifications thereof. The Transportation Management Plan shall be maintained and enforced by the Home Owners Association (HOA or equivalent) and filed with the Reno Community Development Department."

28. Prior to the issuance of the certificate of occupancy for the combined residential and non-residential portions of the project that will generate 50-percent (approximately 1,500 ADT) of the total project trips, the applicant shall have City approved traffic study and Transportation Management Plan updates for the project. This update shall evaluate background and project traffic patterns, site accesses, and pedestrian routes and review of the roadway capacities and intersection levels of service for the roadway network included in the project master traffic study. Prior to the issuance of any certificate of occupancy beyond a 65-percent combined occupancy threshold, the applicant shall have approved plans and securities in place for all recommended roadway or intersection improvements and/or shall provide alternate traffic mitigation plans as identified in the City approved 50-percent occupancy traffic study update.
29. Prior to the issuance of the certificate of occupancy for the combined residential and non-residential portions of the project that will generate 85-percent (approximately 2,600 ADT) of the total project trips, the applicant shall have City approved traffic study and Transportation Management Plan updates for the project. This update shall evaluate background and project traffic patterns, site accesses, and pedestrian routes and review of the roadway capacities and intersection levels of service for the roadway network included in the project master traffic study. Prior to the issuance of any certificate of occupancy beyond a 95-percent combined occupancy threshold, the applicant shall have approved plans/securities and shall construct and install all recommended roadway improvements and/or shall execute alternate traffic mitigation plans as identified in the City approved 85-percent occupancy traffic study update.
30. Prior to the approval of each permit (excluding grading and underground improvements) and final map, the applicant shall provide an updated estimate of the traffic generated from previously permitted and proposed project development.
31. Prior to the approval of any final map, the applicant shall provide a written response from RTC defining transit requirements for this project and shall dedicate rights-of-way or grant appropriate easements and construct transit improvement in accordance with RTC's requirements prior to the approval of any certificate of occupancy.
32. Prior to the issuance of the building permit containing 100-percent of the project commercial development and additional residential units that, collectively, will generate no less than 45-percent and no more than 55-percent of the total project trip generation estimate, the applicant shall develop a rehabilitation plan in conjunction with requirements established by engineering staff to determine the extents and nature of upgrades,

repairs, renovations, or reconstruction of the pavement structure and surface for the roadways identified as construction transportation and delivery routes within the project vicinity as depicted in the Construction Management Plan and all updates thereto. As a minimum, the applicant shall provide a 2-inch grind and overlay, with full depth replacement in required areas, for the full street widths of Court Street, Island Avenue, Arlington Avenue, and Rainbow Street within the block formed by these roadways. Prior to the issuance of the building permit containing 100-percent of the commercial development and residential units that, collectively, will generate no less than 85-percent and no more than 95-percent of the total project trip generation estimate, the applicant shall complete all pavement structure and roadway surface improvements necessary to sustain minimum roadway functional classifications within the project vicinity resulting from construction and project traffic impacts. The applicant shall replace all roadway markings and striping affected or displaced by the pavement improvements.

33. Prior to the issuance of each permit, the applicant shall have an approved Construction Traffic Control and Event Access Plan accommodating special events within the downtown and Wingfield Park areas. This plan shall be formulated in conjunction with and to the approval of the Community Development and Public Works Departments and shall be maintained on site at all times during construction. The plan shall include strategies for controlling construction traffic and potential temporary road closures for Island Avenue, Court Street, and Arlington Avenue and shall be updated at pre-determined intervals established within the plan or as required by the City.
34. Prior to approval of a final map the applicant shall have plans approved demonstrating that at least 25 bicycle parking spaces will be provided.
35. Prior to approval of a final map the applicant shall prepare, in coordination with the City's Historical Resources Commission, an architectural analysis and view shed inventory of historic structures in the area affected by construction of this project, to the satisfaction of Community Development Department staff.
36. Prior to approval of a final map, the applicant shall place a note on the final map and include in the project CC&R's a disclosure statement notifying residents of the potential for public events and street closures associated with adjacent downtown parks to occur.

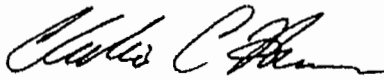
The decision of the Planning Commission may be appealed by completing an appeal form and filing it with the City Clerk and paying any fee within ten (10) days of the date of the meeting at which the decision was made. The City Clerk shall set the appeal for

public hearing before the City Council and mail a notice of the hearing to the appellant and all others who were mailed a notice of the hearing of the Planning Commission. Appeals may be filed by any person who is aggrieved by the decision. The City Council may affirm, reverse, or modify the decision.

In the absence of an appeal, no building permit may be issued until this letter has been on file with the City Clerk for ten (10) days.

You must attach a copy of this letter to your application for a building/sign permit.

Sincerely,



Claudia C. Hanson, AICP, Interim Planning Manager
Community Development Department

LDC06-00321 (Wingfield Towers) - VAK.doc

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

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

Lynnette Jones, City Clerk
Denny Peters, P.E., Interim Engineering Manager
Gary Warren, Washoe County Tax Assessor
Tonia Meyers, Management Assistant

EXHIBIT 6

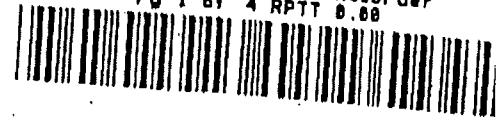
EXHIBIT 6

When Recorded Mail To:

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

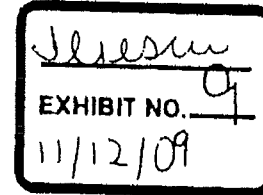
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BK1

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



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

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



NOTICE AND CLAIM OF LIEN

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

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

Claimant further states:

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

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

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



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

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

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

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

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



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3 of 4

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

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

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

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

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

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

APN: 011-112-12



3460499
11/07/2006
4 of 4

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

DATED: This 7th day of November, 2006.

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

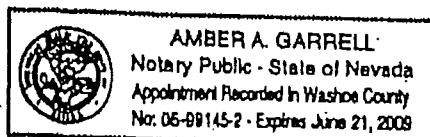
STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

Gayle A. Kern
Gayle A. Kern, Esq.

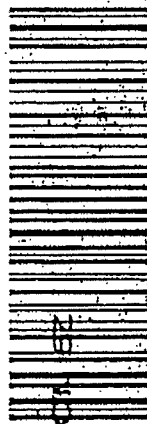
SUBSCRIBED AND SWORN to before me
this 7th day of November, 2006.

Amber A. Garrell
Notary Public



CAYLE A. KERN, LTD.
ATTORNEYS AT LAW
5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511

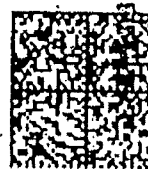
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RENO NV 895

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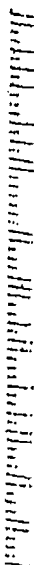


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John and Sonia Iliescu
200 Court Street
Reno, NV 89501

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ILIESCU000329



FIRST CENTENNIAL TITLE COMPANY OF NEVADA

1450 RIDGEVIEW DRIVE, STE. 100

RENO, NV 89519

PHONE: (775) 689-8510 • FAX: (775) 689-8520

December 8, 2006

Mark Steppan, AIA, CSI, NCARB

Via email to Counsels:

Sanford Margolin @margolin@oaklaw.com

blatch@oaklaw.com

Gayle Kern @kernld.com

RE: Escrow No: 145279-MI

I have been instructed to pay your demand for the Claim of Lien filed 11/7/06 as document No. 3460499, Washoe County Nevada Official Records involving property owned by John Iliescu, etal for work performed for DeCal Homes, or one of their subsidiaries.

on the property located on Court Street and Island Ave., Reno Nevada having APN 011-112-03, 06, 07 and 12, Reno, NV

We ask that you complete and sign the requested information below, and sign and have notarized the Lien Release enclosed.

Very truly yours,
First Centennial Title Company of Nevada
Maryann Infantino
Commercial Escrow Officer

The Outstanding Principal Balance is: \$ _____

Interest to _____ \$ _____

Daily Interest Is: \$ _____

Or Interest Rate Is: _____

Any Other Fees, Charges, Etc. Due

Description _____ \$ _____

You are also handed herewith a Lien Release, which you are authorized, and instructed to record in Washoe County, Nevada, when you hold for my account the above requested amounts.

Disbursement of said amount shall be sent to the undersigned in the following manner:

Federal Express to: _____

Wire to: _____ Acct # _____

Routing # _____

Date: _____

Signed: _____

Address: _____

ILIESCU000330

JA2032

EXHIBIT 7

EXHIBIT 7

HALE LANE

ATTORNEYS AT LAW

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

December 26, 2006

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

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

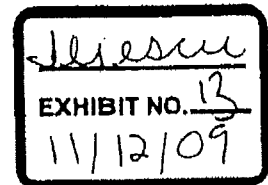
BSC Financial LLC
c/o Decal Nevada, Inc.
6121 Lakeside Drive, Suite 125
Reno, NV 89511

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

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

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

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



HALE LANE PEEK DENNISON AND HOWARD

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

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December 26, 2006
Page 2

HALE LANE
ATTORNEYS AT LAW

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

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

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

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

Sincerely,

R. Craig Howard

RCH:dvt

Acknowledgement

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

Iliescu:

Date: _____

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

Date: _____

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

BSC Financial LLC:

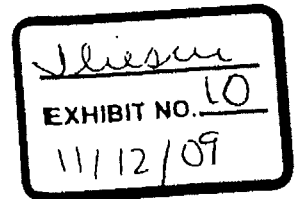
BSC Financial LLC, a limited liability company

Date: _____

By: _____
Calvin Baty, Manager

EXHIBIT 8

EXHIBIT 8



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 ("ALA 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 ALA 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


GALVIN BATY, individually

Dated: December 8, 2006

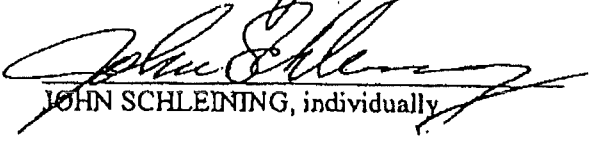

JOHN SCHLEINING, individually

EXHIBIT 9

EXHIBIT 9

ORIGINAL

FILED

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RONALD A. LONGTIN, JR.

BY  DEPUTY

1 \$3850

Jerry M. Snyder, Esq.

2 Nevada Bar Number 6830

Hale Lane Peek Dennison and Howard

5441 Kietzke Lane, Second Floor

Reno, Nevada 89511

(775) 327-3000; (775) 786-6179 (fax)

Attorney for Applicant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Applicants,

vs.

14 MARK B. STEPPAN,

Respondent.

Case No.

Dept. No.

CV07 00341

APPLICATION FOR RELEASE OF MECHANIC'S LIEN

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

22 **I. INTRODUCTION**

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

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

CV07-00341
JOHN ILIESCU ETAL VS. MARK S. 6 Pages
District Court 02/14/2007 01:59 PM
Washoe County \$3850

1 This lien is void and unenforceable because the putative lien claimant recorded the lien without
2 (1) providing notice of right to lien pursuant to NRS 108.245(6) (pre-lien notice) or (2) providing
3 notice of intent to lien under NRS 108.226(6). For these reasons, the mechanic's lien is facially
4 unenforceable and should be released.

5
6 **II. STATEMENT OF FACTS**

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

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

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

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

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1 **III. ARGUMENT**

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

4 1. Standard for Removal of Lien Under NRS 108.2275

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

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

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

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

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

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

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

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

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

24 ///

25
26
27
28 ¹NRS 108.245(5) states that "[a] prime contractor or other person who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to this section." Therefore, subsection 5 does not apply in this case because Steppan did not contract directly with the Owners of the Property.

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

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

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

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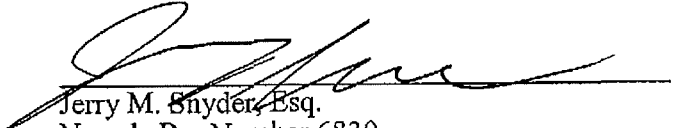
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1 **IV. CONCLUSION**

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

4 DATED: February 14, 2007.

5
6 
7 Jerry M. Snyder, Esq.
8 Nevada Bar Number 6830
9 Hale Lane Peek Dennison and Howard
10 5441 Kietzke Lane, Second Floor
11 Reno, Nevada 89511

12 *Attorney for Applicant*
13
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EXHIBIT 10

EXHIBIT 10

FILED

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Joey Orduna Hastings

Clerk of the Court

Transaction # 3534067.

1 **4050**

2 David R. Grundy, Esq. SBN 864
3 LEMONS, GRUNDY & EISENBERG
4 6005 Plumas Street, Suite 300
5 Reno, Nevada 89519
6 Telephone: (775) 786-6868
7 Facsimile: (775) 786-9716

8 Attorneys for Third Party Defendants

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

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

11 MARK B. STEPPAN,

12 Plaintiff,

13 vs.

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

18 Defendants.

19 **CONSOLIDATED**

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

23 Case No.: CV07-00341

24 Dept. No.: 10

25 Third-Party Plaintiffs,

26 vs.

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

29 Third-Party Defendants.

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

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

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

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

4 **RECITALS**

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

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

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

18 D. These parties entered into a stipulation to stay the case on or about December
19 13, 2007; however, no Order was entered thereon.

20 **STIPULATION**

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

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

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

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

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

7 Dated: Jan 31, 2013
November 2012

8 GORDON COWAN, ESQ.
9 Attorney for Third Party Plaintiffs

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

10 [Signature]
11
12 MICHAEL D. HOY, ESQ.
13 Attorney for Plaintiff Mark Steppan

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

14 [Signature] 11 Feb 2013
15

16 ORDER

17 It is ordered:

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

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

26 DATED: February 13, 2013

27 [Signature]
28 DISTRICT JUDGE

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

1 **CODE: 2010**

2 D. CHRIS ALBRIGHT, ESQ., #004904

3 G. MARK ALBRIGHT, ESQ., #001394

4 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**

5 801 South Rancho Drive, Suite D-4

6 Las Vegas, Nevada 89106

7 Tel: (702) 384-7111

8 Fax: (702) 384-0605

9 dca@albrightstoddard.com

10 gma@albrightstoddard.com

11 *Attorneys for Applicants/Defendants*

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

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

14 JOHN ILIESCU, JR.; SONNIA SANTEE
15 ILIESCU; JOHN ILIESCU, JR. and SONNIA
16 ILIESCU, as Trustees of the JOHN ILIESCU, JR.
17 AND SONNIA ILIESCU 1992 FAMILY TRUST
18 AGREEMENT;

19 Applicants,

20 vs.

21 MARK B. STEPPAN,

22 Respondent.

23 MARK B. STEPPAN,

24 Plaintiff,

25 vs.

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

Defendants.

And all pending third-party claims.

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

DEPT NO. 10

**ERRATA TO THE ILIESCUS'
VERIFIED MEMORANDUM OF
COSTS; AND ERRATA TO
DEFENDANTS' MOTION FOR
AN AWARD OF COSTS
AND ATTORNEY'S FEES AND
INTEREST THEREON**

COME NOW, JOHN ILIESCU, JR. and SONNIA SANTEE ILIESCU, individually, and/or
as Trustees of the JOHN ILIESCU, JR. AND SONNIA ILIESCU 1992 FAMILY TRUST
AGREEMENT, as Applicants in Case No. CV07-00341 and as Defendants in Case No. CV07-01021
(hereinafter the "Iliescus" or "Movants"), by and through their undersigned counsel of record,
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and hereby file this Errata to their Verified

Memorandum of Costs, filed on October 24, 2017 (Transaction #6361995):

- (a) Thomas J. Hall's total costs, referenced therein, should be designated as \$2,030.63, rather than the \$2,465.60 amount originally set forth therein, which contained a clerical error apparently based on the inadvertent inclusion of certain costs from Hall invoice(s) on the Hale Lane dispute.
- (b) The \$500.00 cost referenced therein, at page 2, line 19, for an appellate cost bond fee should be deleted, as the Washoe County Clerk has subsequently refunded said payment, as footnote 2 to the Memorandum had indicated might occur.
- (c) Based on the foregoing, the total costs sought in the Verified Memorandum of Costs should now be shown as \$40,224.82.

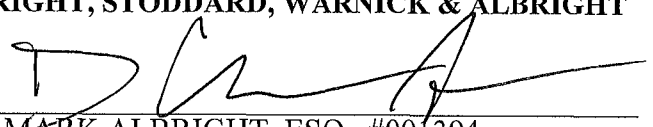
The Iliescus also hereby amend and file this Errata to the fees sought in their Motion for Attorneys' Fees, and Interest thereon (Transaction #6379698), as follows:

In the aforestated motion, \$55,447.50 in fees were asserted to have been incurred with attorney Thomas J. Hall. This sum was based on Hall's invoices for the "Steppan Lien" matter, and not for his invoices on two other related matters involving claims against Hale Lane. It has come to the attention of the undersigned that a reduced payment was negotiated with and accepted by Mr. Hall, on his outstanding invoices. It appears that the amount of the invoice reduction allocable to the Steppan Lien invoice amounts due and owing at the time the reduction was agreed upon (as opposed to the other matters), is \$15,700.00 (rounding up), such that this amount should be deducted from the amounts in fees claimed as due and owing with respect to the Hall invoices. Thus, the total fees to be sought on the Hall invoices would be reduced and should be \$39,747.50, instead of \$55,447.50.

DATED this 13th day of December, 2017.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

By


G. MARK ALBRIGHT, ESQ., #001394
D. CHRIS ALBRIGHT, ESQ., #004904
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Tel: (702) 384-7111 / Fax: (702) 384-0605
gma@albrightstoddard.com / dca@albrightstoddard.com
Attorneys for Applicants/Defendants

AFFIRMATION

The undersigned does hereby affirm this 15th day of December, 2017, that the preceding document filed in the Second Judicial District Court does not contain the social security number of any person.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

By


G. MARK ALBRIGHT, ESQ., #001394
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Attorneys for Applicants/Defendants

1 **CERTIFICATE OF SERVICE**

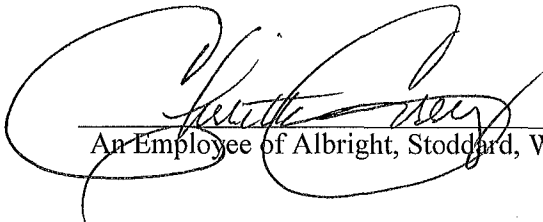
2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of ALBRIGHT, STODDARD,
3 WARNICK & ALBRIGHT, and that on this 15th day of December, 2017, service was made by the
4 ECF system to the electronic service list, a true and correct copy of the foregoing **ERRATA TO**
5 **THE ILIESCUS' VERIFIED MEMORANDUM OF COSTS; AND ERRATA TO**
6 **DEFENDANTS' MOTION FOR AN AWARD OF COSTS AND ATTORNEY'S FEES**
7 **AND INTEREST THEREON**, to the following person:

8
9 Michael D. Hoy, Esq.
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11 50 West Liberty Street, Suite 840
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13 Tel: (775) 786-8000
14 mhoy@nevadalaw.com
15 *Attorney for Plaintiff Mark Steppan*

☐ Certified Mail
☒ Electronic Filing/Service
☐ Email
☐ Facsimile
☐ Hand Delivery
☐ Regular Mail

13 David R. Grundy, Esq.
14 Todd R. Alexander, Esq.,
15 LEMONS, GRUNDY & EISENBERG
16 6005 Plumas Street, Third Floor
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18 Tel: (775) 786-6868
19 drg@lge.net
20 tra@lge.net
21 *Attorneys for Third-Party Defendant Hale Lane*

☐ Certified Mail
☒ Electronic Filing/Service
☐ Email
☐ Facsimile
☐ Hand Delivery
☐ Regular Mail

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An Employee of Albright, Stoddard, Warnick & Albright

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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.

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

DEPT NO. 10

MARK B. STEPPAN,
Plaintiff,
vs.
JOHN ILIESCU, JR., et al.,
Defendants.

**THIRD-PARTY PLAINTIFFS'
OPPOSITION TO THIRD-PARTY
DEFENDANT HALE LANE'S
MOTION FOR SUMMARY
JUDGMENT DISMISSAL OF THIRD-
PARTY CLAIMS; AND
COUNTERMOTION TO AMEND
THIRD-PARTY COMPLAINT AND
FOR FURTHER TIME TO
COMPLETE DISCOVERY**

AND RELATED THIRD-PARTY CLAIMS.

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" or "Iliescu"), and hereby oppose the Motion for Summary Judgment (Transaction #6399784) filed on November 11, 2017, by Third-Party Defendant, HALE, LANE, PEEK, DENNISON & HOWARD (hereinafter "Third-Party Defendant" or "Hale Lane"), seeking Summary Judgment dismissal of the third-party claims of the Iliescus against movant for legal malpractice/professional negligence. Third-Party Plaintiffs'


1 Opposition is made and based upon the below Points and Authorities in support hereof, the exhibits
2 attached herewith, the pleadings and papers on file with this Court and the argument of counsel at any
3 hearing on this matter.

4 Third-Party Plaintiffs also hereby countermove for leave of court to file an Amended Third-
5 Party Complaint, in substantially the form attached as **Exhibit "1"** hereto, and further counter-move
6 under NRCp 56(f) for additional time to complete discovery.

7 These Countermotions are made and based upon the Points and Authorities set forth below,
8 the sworn declaration of Dr. John Iliescu attached hereto, all papers and pleadings on file with the
9 Court, and any argument of counsel at any hearing of this matter.

10 DATED this 18th day of December, 2017.

11 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**

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25 **POINTS AND AUTHORITIES IN OPPOSITION TO THIRD-**
26 **PARTY DEFENDANT HALE LANE'S MOTION FOR**
27 **SUMMARY JUDGMENT DISMISSAL OF THIRD-PARTY CLAIMS AND IN**
28 **SUPPORT OF COUNTERMOTION FOR LEAVE TO AMEND**

I. STATEMENT OF FACTS

29 This Court is familiar with the facts of this case. This action arises out of an agreement entered
30 into by the Iliescus to sell certain property in downtown Reno to a potential purchaser which intended
31 to develop the property for a high-rise mixed use condominium project known as Wingfield Towers.

32 As part of that transaction, one or more of the attorneys at the Hale Lane law firm, together
33 with the firm, were retained by the Iliescus to represent their interests in preparing certain Addendums

1 (initially, a Third Addendum, and then subsequently, a Fourth Addendum) to the purchase agreement
2 by and between the Iliescus and the buyer/would-be developer (herein referred to as
3 “BSC/Consolidated” or buyer or purchaser). Hale Lane was also retained by the property purchaser.
4 In both capacities, Hale Lane learned facts which should have apprised Hale Lane of the danger to its
5 clients, the Iliescus, of an exorbitantly high mechanic’s lien claim being asserted against their property,
6 as a result of architectural services provided during escrow.

7 Hale Lane, however, repeatedly failed (i) to *inform* their clients of the information known to
8 Hale Lane about these facts, (ii) to *warn* their clients of the risks of an exorbitant mechanic’s lien
9 arising against their otherwise unimproved property during escrow as was or should have been known
10 to Hale Lane from these facts, or (iii) to *advise* and consult with their clients with respect to any steps
11 they could take to avoid these risks. As a result of these and other failures by Hale Lane, the Iliescus
12 suffered losses in the form of a mechanic’s lien which encumbered and clouded their downtown
13 property for over a decade, and took hundreds of thousands of dollars in costs and fees to overcome.

14 **A. Hale Lane Creates an October 2005 Addendum No. 3 for the Iliescus, and in Conjunction**
15 **Therewith, Fails to Inform, Warn, or Advise the Iliescus About How to Avoid the**
Potential for an Architectural Mechanic’s Lien Arising as a Result Thereof.

16 Initially, Hale Lane attorney Karen Dennison was hired by the Iliescus and prepared an
17 Addendum No. 3 to the purchase agreement, on their behalf. This document was executed in October
18 2005. **Exhibit “2” hereto.** This Addendum included, at Paragraph 1, a modification of certain terms
19 relating to any extensions of the close of escrow date. The Addendum also included, at Paragraph 7,
20 an indication that obtaining the necessary entitlements from the relevant government agencies,
21 including any required height, set-back, or other zoning variances, and any required special use permit,
22 or zoning changes, master plan amendments, etc., was a condition precedent to the parties’ obligations
23 under the purchase agreement, which entitlements were required to be obtained by the buyer, “at
24 buyer’s expense” and also noted the potential future involvement of an architect as that process
25 progressed, at paragraph 8(1).

26 Based on these and other provisions, the attorneys at Hale Lane, including attorney Dennison,
27 knew, or should have known, at the time this Addendum was drawn up, that architectural and design
28 services would eventually be commencing with respect to the project, as necessary to allow the project

1 to go through the entitlements process. Since Nevada law allows architects and other providers of
2 design services to lien real property for their services, these provisions of the Addendum put the
3 Iliescus at special risk of having their property title clouded by a multi-million dollar claimed
4 mechanic's lien, before any financing was in place to ensure that potential lien claimants were being
5 paid for the work they claimed to be doing. Hale Lane therefore had a duty to warn and inform the
6 Iliescus of this risk, and to advise the Iliescus to include language within this Addendum No. 3 which
7 would protect the Iliescus from such liens.

8 For example, the Addendum could have required the establishment of a surety bond for the
9 payment of architectural fees, or the establishment of a construction control account to ensure any
10 design professionals were being regularly paid and signing unconditional progress payment lien
11 releases, etc., or could have required the buyer to inform the seller before entering into such contracts,
12 with a right to review and approve the same, so the seller could be protected against onerous provisions
13 therein. Moreover, the Paragraph 1 terms of the Addendum referenced escrow closing extensions, and
14 those extension dates could have been made contingent and conditioned upon any architect or other
15 design professionals providing progress payment lien releases for all work performed through the date
16 of any such extension, in addition to or in lieu of the other conditions for such extensions set forth
17 therein.

18 However, Hale Lane failed to inform the Iliescus of the relevant facts as to these issues, failed
19 to warn the Iliescus regarding the risks they faced under those facts, and failed to advise the Iliescus
20 to include provisions in Addendum No. 3 to deal with this very real concern. Thus, no such reasonable
21 provisions or protections were included within this Addendum No. 3. Instead, Hale Lane merely
22 included some boilerplate language about the duty of the buyer to protect and indemnify the seller from
23 liens against the property, which language is essentially worthless with respect to potential mechanic's
24 lien claims, since the whole point of such liens is to ensure the provider of services has security for
25 payment, if the party with whom he contracted cannot pay (in which event that same party will also
26 be unable to pay on any indemnity obligation).

27 ///

28 ///

1 **B. Hale Lane Begins, in November of 2005, to Provide Legal Services to the Property**
2 **Purchaser, but Still Fails to Inform or Warn the Iliescus, or to Advise the Iliescus**
3 **Regarding How to Deal with Potential Lien Claims.**

4 Shortly after this Addendum No. 3 work was performed, the potential buyer of the Iliescus'
5 land (BSC/Consolidated), retained the same Hale Lane law firm which also was representing the
6 Iliescus as sellers, to provide assistance to the buyer (BSC/Consolidated), with regard to the buyer's
7 attempts to obtain developmental approvals from the relevant Washoe County governmental entities,
8 for the project to be performed. These legal services commenced in November of 2005, and included
9 reviewing BSC's contract with its hired architect (*i.e.*, FFA/Steppan). Hale Lane accepted this
10 November 2005 employment as counsel for the buyer, with Hale Lane attorney R. Craig Howard
11 accepting the assignment from Sam Caniglia of BSC and delegating the Hale Lane work performed
12 thereon to Hale Lane attorney Sarah Class. *See*, R. Craig Howard Deposition, portions of which are
13 attached hereto as **Exhibit "3"** at pp. 18-20, 41-42, 45-46. *See, also*, Trial Exhibits 10, 11, and 12
14 jointly attached as **Exhibit "4"** hereto, consisting of certain November 2005 communications from
15 Hale Lane attorney Sarah Class, to certain principals of BSC, with respect to recommended revisions
16 to the buyer BSC's proposed future AIA contract with the architect, Steppan/FFA.

17 Hale Lane thus placed itself in the highly unusual and potentially troubling role of concurrently
18 representing both the buyer and also the seller on this multi-million dollar land acquisition and high-
19 rise development transaction. The potential for malpractice to be committed when a law firm
20 represents both the purchaser and the seller on a commercial real estate transaction is so great that at
21 least one state supreme court has adopted a bright-line rule expressly forbidding it: *See, Baldassarre*
22 *v. Butler*, 132 N.J. 278, 295-296 625 A.2d 458, 467 (N.J. 1992)("This case graphically demonstrates
23 the conflicts that arise when an attorney, even with both clients' consent, undertakes the representation
24 of the buyer and the seller in a complex commercial real estate transaction. The disastrous
25 consequences of Butler's dual representation convinces us that a new bright-line rule prohibiting dual
26 representation is necessary in commercial real estate transactions where large sums of money are at
27 stake, where contracts contain complex contingencies, or where options are numerous. The potential
28 for conflict in that type of complex real estate transaction is too great to permit even consensual dual
representation of buyer and seller. Therefore, we hold that an attorney may not represent both the buyer

1 and the seller in a complex commercial real estate transaction even if both give their informed
2 consent.”).

3 Due to an apparent failure of the Hale Lane conflict-checking system which must have occurred
4 at that time, Hale Lane attorney Karen Dennison who had worked for the Iliescus to prepare and
5 negotiate Addendum No. 3, was not, apparently, initially informed that her firm Hale Lane, was now
6 also providing services for a new and conflicting client, the purchaser.

7 As this Court is aware, the would-be Property purchaser, BSC/Consolidated, sought out an
8 architect to help obtain the entitlements, namely, the California architectural firm of Fisher Friedman
9 Associates (“FFA”), which had its Nevada licensed employee, Mark Steppan, execute an initial hourly
10 fee contract for the work, while concurrently beginning the process of negotiating a flat-fee AIA
11 Agreement which would eventually allow the work to be re-invoiced on a flat-fee basis, tied to a
12 percentage of the anticipated cost of construction (which would never commence). Hale Lane lawyer
13 Class would have learned of Steppan’s/FFA’s retention in her review of the proposed architectural
14 agreements, but no one from Hale Lane informed the Iliescus of that retention.

15 At some point in time prior to December 14, 2005, Hale Lane lawyers, R. Craig Howard and
16 Doug Flowers, learned that the firm had different lawyers working for both the buyer and the seller,
17 respectively, on the same Property transaction. **Exh. “3,”** at p. 53. Howard and Flowers discussed
18 these troubling facts with Class and Dennison in December of 2005. **Exh. “3”** at pp. 58-59; and
19 65-66. One might hope that such a meeting would lead the Hale Lane law firm to discuss ways to
20 protect their clients. But no, Hale Lane’s attorneys still did not inform the Iliescus of the architect’s
21 retention or of his identity, or of the nature of the contract terms the architect was negotiating to obtain,
22 as that time, or thereafter. *See*, Trial Transcript (“TT”) at pp. 811-815. Thus, the Iliescus were also
23 not advised of any protective strategies for dealing with this information.

24 **C. Hale Lane Writes to the Iliescus About Hale Lane’s Work for the Owner in**
25 **December of 2005 But Again Fails in this Writing or Otherwise to Inform,**
Warn, or Advise the Iliescus.

26 Based on the information the four lawyers at Hale Lane discussed, in December of 2005, Hale
27 Lane communicated with the Iliescus about these matters via a letter dated December 14, 2005. *See*,
28 **Exhibit “5”** hereto, December 14, 2005 letter from Hale Lane signed by Hale Lane lawyer Karen

1 Dennison (ILIESCU000134-135) (who had prepared the Addendum 3), with attached cover fax sheet
2 showing letter was faxed "FROM:" Hale Lane lawyer "Sarah E. L. Class, Esq." (ILIESCU000136)
3 (who had reviewed the architectural agreement between the Property Purchaser and the future lien
4 claimant architect), and with subsequently attached client signatures. The preparation and delivery of
5 this letter presented Hale Lane with an opportune time and medium to inform the Iliescus of
6 information then known to Hale Lane, to warn the Iliescus about risks arising from that information,
7 and to advise the Iliescus of some method or strategy for dealing with those risks. But this was not to
8 be, as the letter was apparently not written to protect the Iliescus, but rather, solely to protect Hale
9 Lane.

10 This letter thus comprised yet another failure by Hale Lane to inform the Iliescus of
11 information then known to Hale Lane (concerning the property owner's contract with Steppan) or to
12 warn the Iliescus of the implications of that information, or to advise the Iliescus as to what to do with
13 that information, as the letter did none of those things.

14 Rather, Hale Lane determined that it could overcome its direct, obvious, and concurrent
15 conflict of interest in representing both the buyer for the Property and the seller for the Property in the
16 same multi-million dollar transaction by merely having a short conflict waiver letter executed,
17 after-the-fact. Thus, the December 14, 2005 letter contained no information which the Iliescus should
18 then have been provided about the retained architect. Instead, the letter solely addressed a conflict
19 waiver request.

20 However, even in the context of a self-protective letter designed to help not the Iliescus, but
21 Hale Lane, the Iliescus might have been saved later loss had the letter complied with the duties of care
22 which lawyers are to follow when seeking a conflict waiver, by providing sufficient information for
23 the client's waiver to be given with informed consent. But the letter even failed this test: The letter
24 contained only four brief paragraphs of explanatory text, which acknowledged its "existing"
25 attorney-client relationship with the Iliescus, but omitted to inform the Iliescus of the firm's also
26 already existing relationship with the buyer entity, instead indicating that it "will" now start to
27 represent the buyer, as to entitlements work for the Property, as though such representation had not
28 already previously begun. **Exh. "5"** at ILIESCU000133. The letter asked for consent to this

1 representation of the buyer, and for a waiver of any conflict arising from the same, in language which
2 gave the impression of a routine request, without providing any of the detail necessary to ensure that
3 the conflict was only being waived with informed consent, as required by Nevada's Rules of
4 Professional Conduct. The letter failed to inform the Iliescus of what work Hale Lane had already
5 done for the purchaser entity, or what they had learned about the architect and about a potential
6 onerous flat fee architectural contract in that process. The letter ended with two contradictory
7 sentences as to whether Hale Lane would continue to represent the Iliescus in the event of any future
8 conflict which involved the Property, or would only do so if it did not involve the Property.

9 The Iliescus contend and allege that this letter was inadequate as a matter of law, and contained
10 inconsistent and false information, bad advice and bad counsel, and material omissions, such that the
11 letter was itself an act of malpractice. For example, this letter, signed by Hale Lane lawyer Dennison
12 and faxed by Hale Lane lawyer Class, did not advise that Hale Lane had already begun representing
13 the buyer before the letter was sent (but was written in a manner which claimed such representation
14 "will" now begin, to obscure this fact); did not inform the Iliescus that Hale Lane had thereby become
15 aware of the nature of architectural services being provided at the project, the exorbitant contractual
16 rates potentially applicable to such work, and of the identity of the architect allegedly providing the
17 same. Nor did the letter inform the Iliescus of the details of that information then known to their law
18 firm, by then providing Steppan's or FFA's name or the details of their contract or any information
19 about their services to the Iliescus.

20 The letter did not provide legal advice to the Iliescus which should naturally have arisen from
21 this information then in Hale Lane's possession: namely that Nevada allows architects to assert lien
22 claims under its mechanic's lien statutes and that the Iliescus should employ certain protective
23 strategies to avoid this result, or that the Iliescus should at least keep this in mind at the time of any
24 future amendments to its arrangements with the purchaser, such as any closing extensions. The letter
25 did not inform the Iliescus that the Hale Lane law firm's awareness of information regarding the
26 architect might be argued to be legally imputable to the Iliescus. Nor did the letter advise the Iliescus
27 that they should contact the buyer and request that no binding architectural contracts be entered into,
28 before financing was obtained and closing of the sale had been accomplished, on any onerous flat fee

1 terms, tied to the value of construction which could only commence after such a financed-closing. Nor
2 did the Hale Lane lawyers write any separate letter, apart and distinct from the conflict waiver letter,
3 or engage in any other separate communication with the Iliescus, at that time, to provide them with the
4 information which should have been made known to them.

5 Nevada Rule of Professional Conduct 1.8(h)(1) mandates that: "A lawyer shall not: Make an
6 agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is
7 independently represented." The letter did not however advise the Iliescus to obtain separate counsel
8 before agreeing to the same, an unfortunate oversight as such new counsel might have asked the
9 questions which would have prompted Hale Lane to disclose the information then in its possession
10 which the Hale Lane letter concealed, such that said new counsel might have given the Iliescus the
11 warnings and advice which Hale Lane was not providing, which would naturally flow from that
12 information. Instead, because this first conflict waiver letter did not provide sufficient information to
13 Dr. and Mrs. Iliescu to provide for informed consent, as required by Nevada Rule of Professional
14 Conduct 1.7(b)(4), as part of the waiver of a concurrent conflict of interest, the letter was a missed
15 opportunity for the Iliescus to be informed, warned, and advised of matters which it was vital for them
16 to be apprised of at that time.

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

27 The brief letter did not however explain the advantages or disadvantages of allowing Hale Lane
28 to represent the seller at the same time that the buyer was being represented by that same law firm, or

1 explain alternative options, or provide any of the information then in Hale Lane's possession as
2 discussed above. The letter also did not explain the unique nature of the conflict being asked to be
3 waived, which was a concurrent and presently existing conflict between the seller and the buyer of real
4 property, under a multi-million dollar contract which had not yet closed, such that the buyer and the
5 seller had currently existing inherently contrary interests.

6 As Hale Lane's motion, wisely, does not claim this conflict waiver letter acts as some sort of
7 defense to the claims against it, the merits of any such absurd proposition need not be examined herein.
8 Rather, the important point for present purposes is not to analyze any Hale Lane defense arising out
9 of this letter, but to note how this letter itself constitutes additional grounds for a legal malpractice
10 claim against Hale Lane. Had Hale Lane followed the rules of informed consent in drafting this letter,
11 it would thereby have properly represented the Iliescus, by giving the Iliescus the information,
12 warnings, and advice, to which the Iliescus were then entitled, on matters which were of even greater
13 importance than whether to waive a conflict with their lawyers.

14 Even if this letter were not the correct medium in which to inform, warn, and advise the
15 Iliescus with respect to potential mechanic's lien risks being developed against their property, it is
16 nevertheless clear that, given the information that was in the possession of the firm at that time, and
17 given the internal communications which had apparently taken place at the firm before sending this
18 letter, at least some other separate and independent communication to the Iliescus could and should
19 have been made at that time, separate and apart from this letter if it were felt appropriate, discussing
20 these issues with the Iliescus. But no such communication was provided.

21 **D. Hale Lane Prepares Addendum No. 4 While Still Failing to Properly Inform, Warn, or**
22 **Advise the Iliescus.**

23 Several months after the delivery of the subject conflict waiver letter, the Iliescus were asked
24 to and agreed to grant an extension to the close of escrow date in favor of the buyer, thereby providing
25 the buyer with more time to purchase the property than was originally allotted. However, in
26 conjunction with providing these services, Hale Lane still did not *inform* the Iliescus of facts then
27 known to Hale Lane, *warn* the Iliescus of the existence of a potential lien threat arising from those
28 facts, nor *advise* the Iliescus to hold off on agreeing to this extension until the potential mechanic's

1 lien threat had first been dealt with or resolved.

2 Instead, at some point prior to September 18, 2006, Hale Lane prepared Addendum No. 4 on
3 behalf of the Iliescus, which allowed for this extension, and told the Iliescus to sign it, which bad
4 advice was also an act of malpractice. Addendum No. 4 is **Exhibit “6”** hereto.

5 As demonstrated above, by the time this Addendum No. 4 was prepared, Hale Lane’s other
6 work (for the purchaser) on the project had been sufficiently substantial for Hale Lane to be even more
7 aware of the facts of the project, and the manner in which those facts potentially impacted the Iliescus,
8 for even further and stronger duties to have arisen on the part of Hale Lane, to inform, warn, and
9 advise the Iliescus, than had existed when Addendum No. 3 was drafted. However, Hale Lane, once
10 again, failed to *inform* the Iliescus of what facts Hale Lane knew, failed to *warn* the Iliescus of a
11 potential lien threat to their property arising from those facts, and failed to *advise* the Iliescus of any
12 strategies for how to deal with those facts and their implications. Hale Lane could have used the
13 opportunity afforded by the buyer’s request for this extension, to protect the Iliescus, by conditioning
14 this escrow extension on a lien release from the architect, or other protective measures. Hale Lane,
15 however, did not take this opportunity, or inform, warn, or advise their clients to do so.

16 **E. The Purchaser Defaults and the Iliescus’ Property is Liened.**

17 The purchaser, BSC/Consolidated ultimately defaulted, as its investors were unable to obtain
18 the necessary financing for the project and therefore declined to complete the sale. By that time, FFA
19 had already recorded a mechanic’s lien in Mark Steppan’s name (*see, Exhibits “7,” “8,” and “9”*
20 hereto, comprising prior Trial Exhibits 1-3), for the FFA architectural services, as supported by the
21 FFA flat fee invoices, which constituted new and much higher invoices for work previously billed and
22 paid on an hourly basis.

23 **F. Failed Mitigation Attempts by Hale Lane.**

24 Upon the filing of the first iteration of this lien, realizing how poorly it had represented the
25 Iliescus’ interests, and in order to protect itself from the risks which it had subjected itself to, via its
26 unusual concurrent representation of both the buyer and the seller on this subject transaction and via
27 its failure to advise Dr. and Mrs. Iliescu, during its representation of the Iliescus, how they might be
28 protected during the entitlements process, from mechanic’s liens which might arise as a result of that

1 process, which could be recorded by architects which were known of by Hale Lane, Hale Lane
2 frantically attempted to nominally protect the Iliescus so as to protect Hale Lane from being sued by
3 the Iliescus for Hale Lane's malpractice. However, the representation which Hale Lane offered during
4 this time period was also inadequate, continuing the prior pattern.

5 Hale Lane first sought and obtained an indemnity agreement, whereby the purchasers would
6 indemnify the Iliescus from any harm suffered by the Iliescus as a result of the lien. This indemnity
7 agreement has not however, ever resulted, to date, in any one other than the Iliescus paying a dime of
8 the fees or costs incurred by the Iliescus to defend against the Steppan lien claim.

9 Hale Lane/Craig Howard also asked for a second conflict letter to be signed by the buyer and
10 the seller, a copy of the form of which is attached as **Exhibit "10"** hereto, promising that Hale Lane
11 would act to resolve the Mechanic's Lien filed by Steppan, a promise which Hale Lane however, did
12 not keep.

13 Hale Lane then filed an NRS 108.2275 Application on behalf of the Iliescus, dated February
14 14, 2007, for the release of Steppan's lien, initiating the first of these two consolidated suits. This
15 Application relied on two theories: that Steppan's lien was not valid because Steppan had failed to
16 provide a statutorily required 31-day right-to-lien notice that work was being provided by an
17 architectural firm for the project under NRS 108.245, and was invalid due to the lack of any 15-day
18 "intent-to-lien" notice as required for residential projects. The application was a rather brief, half-
19 hearted effort, which failed to distinguish then existing Nevada case law on an actual notice exception
20 to the mandates of NRS 108.245. When this Application was argued, the Iliescus were horrified to
21 see that the lawyer who Hale Lane sent to argue the same on their behalf, was Jerry Snyder, a Hale
22 Lane attorney who was adverse to the Iliescus on another then pending matter. The Iliescus wondered,
23 due to Snyder's hostility to them in that other still pending matter (the *Pinecrest* litigation; **Exhibit**
24 **"11"** hereto), how he could zealously represent their interests in the instant litigation. At the hearing
25 on the Application, no victory for the Iliescus was obtained. Instead, the case was sent into discovery,
26 was ultimately consolidated with Steppan's lien foreclosure suit, and the Iliescus then hired new
27 counsel without any conflicts, to represent them.

1 That new counsel then filed a much lengthier set of arguments, in the form of summary
2 judgment briefs and oppositions to Steppan countermotion briefs, as the Iliescus' arguments under
3 NRS 108.245 were reasserted by attorneys Downey Brand, who did raise a distinction between
4 Steppan's offsite work, and the onsite work which had been performed in the actual notice cases relied
5 on by Steppan, to preserve that issue for appeal. This Court initially rejected the Iliescus' arguments
6 under NRS 108.245, raised in the Hale Lane Application, and also in the summary judgment briefs,
7 apparently accepting instead the Steppan counter-arguments, which included an argument that Hale
8 Lane's knowledge of the Steppan work should be imputed to the Iliescus, and the Iliescus were
9 therefore not entitled to notice. See Judge Brent Adams June 22, 2009 Order of partial summary
10 judgment attached as **Exhibit "12"** hereto at pg. 2, lines 6-9 and 25-28. A trial would later take place,
11 after which this prior order would initially be upheld. See the prior final Judgment of this Court dated
12 February 26, 2015, attached as **Exhibit "13"** hereto.

13 The Iliescu Defendants subsequently obtained an appellate reversal of that post-trial Judgment,
14 via a Nevada Supreme Court decision, which determined that Steppan's reliance on certain cases
15 which created an "actual notice" exception to the mandates of NRS 108.245 was unavailing, as those
16 cases involved on-site work, not offsite work.¹ See, *Iliescu v. Steppan*, 133 Nev. Adv. Op. 25, 394
17 P.3d 930 (2017), comprising the Nevada Supreme Court reversal of Judge Adams' partial summary
18 judgment Order and of this Court's later final Judgment based in part thereon, which appellate decision
19 of reversal was entered on May 25, 2017. **Exhibit "14."** A Petition for Rehearing was then denied
20 by the Nevada Supreme Court on September 21, 2017. See **Exhibit "15."** Remittitur issued and was
21 filed with this Court, on October 17, 2017. See **Exhibit "16."**

22 However, before that appellate victory was obtained, this case had gone through years of
23 litigation, an initial appeal and remand; before a subsequent bench trial and final Judgment, and a
24 subsequent appeal; with the Iliescus having incurred hundreds of thousands of dollars in fees and costs
25 seeking to defend against the Steppan lien, and then successfully appealing a trial court Judgment
26

27 ¹The Hale Lane briefs did not adequately address this onsite/offsite distinguishing factor, although it was addressed in the
28 course of certain subsequent cross-motions for Summary Judgment briefs filed by a later attorney for the Iliescus, Downey
Brand, whose arguments on this point were apparently rejected by Judge Adams, but the issue was thereby preserved for
appeal, and it was also raised in a later post-trial NRCP 60(b) brief filed for the Iliescus by Albright Stoddard.

upholding the Steppan lien. Those fees and costs could have been avoided had Hale Lane better protected the Iliescus' interests in the first place.

H. Hale Lane's Malpractice.

Accordingly, Hale Lane's malpractice committed in its representation of the Iliescus may be established on the basis of several distinct negligent and inadequate acts by Hale Lane in its representation. These include, without limitation:

(i) Hale Lane's and Dennison's and Howard's ongoing failure to properly inform, warn, or advise the Iliescus of various risks which they needed protection from, at all relevant times in which Hale Lane represented the Iliescus, including (a) their failure to ever timely inform the Iliescus that third-party architectural services were being performed for the Purchaser in order to obtain the entitlements for the project, (b) their failure to ever warn the Iliescus that, unlike other states, many of which only allow labor and materials directly incorporated into the work of improvement to form the basis of a statutory mechanic's lien, Nevada allows mechanic's liens for architectural, engineering, and design services, and (c) that it would therefore be essential for the Iliescus to take steps to attempt to mitigate against this potential lien threat; and (d) their failure to ever advise the Iliescus as to any such steps which could be taken or to ever discuss strategies for dealing with this threat with the Iliescus;

(ii) Hale Lane's and Dennison's failures to properly inform, warn, or advise the Iliescus as to lien risks and how to deal with the same, in conjunction with their work performed on the Second Addendum;

(iii) The failure by Third-Party Defendant Dennison and Third-Party Defendant Hale Lane, to properly prepare the Addendum No. 3, in a manner which protected the Iliescus from mechanic's lien claims, by, for example, (a) 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; (b) including language in Paragraph 1 of that 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

1 design work; and/or (c) requiring the buyer to immediately inform the Iliescus prior to executing any
2 agreements or allowing any work to be performed which might lead to a mechanic's lien claim being
3 asserted for design work, and/or (d) requiring that the Iliescus be allowed to review all contracts to be
4 executed between the buyer and any such third-parties performing any such work to verify that the
5 terms of such contracts were fair and adequate to seller before they could be signed;

6 (iv) Hale Lane's and Howard's conduct in beginning to represent the would be buyer of the
7 Iliescu Property even though they already represented the sellers, on the same transaction, without,
8 apparently, having a sufficient conflict check system in place, or without properly using such system,
9 to avoid commencing such conflicting representation, and their acts and omissions and misfeasance
10 during this dual representation, and subsequent wrongful attempts to cover themselves for this
11 misconduct; which conflicting employment caused loss and harm to the Iliescus, and which
12 substantially increased the lien-claim risk to the Iliescus by subjecting the Iliescus to arguments that
13 Hale Lane's knowledge was imputable to the Iliescus, which arguments had to be countered, costing
14 fees and costs to the Iliescus, including through appeal;

15 (v) Having accepted this conflicting representation, Hale Lane's and its attorneys' and
16 Howard's inadequacies in its representation of the buyer entity in its negotiations with the architect,
17 which representation should have protected the buyer, and, therefore, the Iliescus as well, from onerous
18 flat-fee percentage based contract terms which were not conditioned on financing;

19 (vi) Hale Lane's and Howard's and Dennison's failures, in conjunction with preparing and
20 sending the first conflict waiver letter, to adequately inform, advise, and warn the Iliescus about
21 various lien claim threats they were facing at the time said letter was written, which would have been
22 provided had the Third-Party Defendants met the applicable standards and duties for procuring
23 informed consent to the conflict waiver requested in said letter;

24 (vii) Hale Lane's and Dennison's and Howard's failure, at the time of sending the first
25 conflict waiver letter, to provide any separate or independent communication at that time advising as
26 to such lien risks, based on information available to Hale Lane at that time, which had arisen due to
27 the very representation which prompted the sending of that letter;

28

1 (viii) Said Third-Party Defendants' failure to accurately disclose that their representation of
2 the buyer had already begun, in the first conflict waiver letter;

3 (ix) Said Third-Party Defendants' failure to advise the Iliescus to retain independent counsel
4 to review the first conflict waiver letter;

5 (x) Third-Party Defendants' Hale Lane and Dennison's and Howard's failure to ever
6 properly inform, warn, or advise the Iliescus regarding lien claims risks in conjunction with preparing,
7 sending and advising the Iliescus to sign the Fourth Addendum.

8 (xi) Third-Party Defendants' Hale Lane and Dennison's and Howard's failure to assist the
9 Iliescus to take full advantage of the possibilities created by the buyer's request for Addendum No. 4
10 (which allowed the buyer an extension to close escrow) as demonstrated by their failure to prepare that
11 Addendum in such a manner as to ensure that, as a condition to that escrow extension, any potential
12 lien claims which had accrued prior thereto had been fully and unconditionally released and paid off
13 or disclaimed prior to the escrow being extended as a condition of such extension;

14 (xii) Third Party Defendant Hale Lane's and Howard's and Dennison's providing of
15 inadequate advice in the second conflict waiver letter, and bad advice to sign the same, and, despite
16 promising therein to resolve the lien matter, their failure to take adequate steps to do so;

17 (xiii) Third-Party Defendant Hale Lane's and Howard's and Dennison's bad advice in
18 recommending to and obtaining the Iliescus' consent to the assignment of the Land Purchase
19 Agreement to BSC;

20 (xiv) Said Third-Party Defendants' preparation of an ineffective indemnity agreement to
21 supposedly protect the Iliescus;

22 (xv) Said Third-Party Defendants' failure to advise the Iliescus to get their own counsel to
23 advise them of their potential rights before both conflict waiver letters were provided and once the
24 Stepan mechanic's lien was asserted;

25 (xvi) Third-Party Defendants' Hale Lane's and Jerry Snyder's failure to adequately represent
26 the Iliescus in their filings and appearances in this litigation, and Hale Lane's assigning of a litigation
27 attorney to the Iliescus who was adverse and hostile to them, so as to prevent free and frank
28 communications as to Hale Lane's work in this litigation.

II. LEGAL ANALYSIS

A. Hale Lane's Motion for Summary Judgment Is Premature.

The Iliescus are seeking costs and attorneys' fees from Steppan herein. Until it is known whether those requests will be granted by this Court, and until it is also known whether the Iliescus will be able to collect, from Steppan, any such fees or costs awarded, Hale Lane's current motion is premature. It should therefore be denied as material facts are not yet known which are necessary in order to rule thereon. *See, e.g., Preble v. Schwabe, Williamson & Wyatt*, 875 P.2d 526 (Or. Ct. App. 1994)(attorneys fees and litigation expenses incurred in litigation which arose due to lawyer's malpractice in failing to inform client of a conflict of interest would be recoverable against the law firm as part of malpractice claims against firm, if said expenses were not paid by opposing party against whom award for such fees had been granted; thus, Summary Judgment in favor of law firm on legal malpractice suit was inappropriately granted, as a question of fact existed as to whether the lawyer's injured client would be able to recover his litigation fees, which were a valid element of damages against law firm, from third party, or would need to recover them from malpractice-committing law firm.)

B. The Elements of Breach and Causation are Established as a Matter of Law, and Hale Lane's Motion Must Therefore Be Rejected.

The elements of a malpractice claim are set forth at *Mainor v. Nault*, 120 Nev. 750, 101 P.3d 308 (2004).² They include: (i) the existence of an attorney-client relationship creating a duty of care; (ii) a breach of that duty; (iii) that this breach proximately caused damages to the client; and, finally, (iv) the existence of actual loss or damage, resulting from the negligence.

Hale Lane argues that the elements of such a claim are lacking in this case, asserting that (i) attorneys are not, as a matter of law, held to a duty of care requiring them to protect their clients against *unfounded* legal claims; such that (ii) Hale Lane had no duty to protect the Iliescus against Steppan's filing of what turned out to be an *invalid* mechanic's lien; and (iii) thus, no standard of care was breached by Hale Lane; such that (iv) any losses incurred by the Iliescus to finally obtain a ruling on appeal invalidating the Steppan lien, were not proximately caused by Hale Lane, but were the result

²Abrogated in part on other grounds by *Delgado v. American Family Insurance Group*, 125 Nev. 564, 217 P3d 563 (2009).

1 of judicial error by this Court. *See, e.g.*, Hale Lane Motion at pp. 7-8; and pp. 12-13.

2 Hale Lane's argument on these points must however fail under the facts of this case, which
3 demonstrate that each of the elements of a malpractice case could be established at trial.

4 **1. The First Element of a Malpractice Claim Cannot Be Reasonably Contested.**

5 Hale Lane cannot reasonably contest its prior representation of the Iliescus herein, which
6 representation included transactional and litigation services, giving rise to duties of care.

7 **2. Second Element: Breach of the Standard of Care.**

8 Hale Lane argues that there would be no way for it or its attorneys to have known that Steppan
9 would file an invalid lien, and that Hale Lane should not be held to an incredibly difficult standard of
10 care: to anticipate all of the invalid things which third parties might do, and to try to protect the Iliescus
11 against such possible invalid attempts by others arising out of the purchase agreement, which standard
12 of care, Hale Lane contends, does not even exist.

13 This argument might be persuasive under a different set of facts, where, for example, Nevada
14 was a state that did not allow architects to pursue mechanic's liens, *at all*, such that Steppan's lien was
15 substantively unfounded and non-foreseeable; or if Steppan were a party providing catering services
16 to a construction crew, who simply had no substantive lien rights, who tried to pursue a lien anyway.

17 But that is simply not the case, and the damages which the Iliescus have suffered were
18 imminently foreseeable by Hale Lane, who should have acted to prevent them.

19 Nevada *does* expressly allow architectural liens under NRS 108.2214(1) (and various
20 substantive challenges which were asserted against the Steppan lien were not accepted by this Court,
21 were not reached by the Nevada Supreme Court, and were in any event not the type of challenge which
22 would have rendered the lien claim non-foreseeable). Under NRS 108.222(1) and NRS 108.2214(1),
23 an architect or other lien claimant "has a lien" once he performs \$500.00 of work for a project, which
24 it is then incumbent on the architect to properly procedurally perfect. Steppan's lien was invalidated
25 solely due to his own *procedural* failures to properly preserve and perfect his statutory mechanic's lien
26 rights, by failing to ever serve the written notice as mandated by NRS 108.245, within 31 days of any
27 work being performed for which a lien would later be sought by Steppan, such that his lien was
28 invalidated under NRS 108.245(3), as the consequence of this procedural failure on his part. The

1 determination that his lien was invalid was not due to any ruling that Steppan's lien was substantively
2 lacking in merit or was substantively "unfounded" such that there would be no reason for Hale Lane
3 to have foreseen it.

4 The invalidity of the Steppan lien is, thus, nothing more than a lucky break, on procedure not
5 substance, for Hale Lane, the ameliorating effects of which lucky break were, however, paid for at a
6 highly steep price by Hale Lane's one-time clients, Third-Party Plaintiffs, who spent a decade of costs
7 and attorneys' fees fighting for that result, all while missing out on the ability to own, free and clear,
8 and pursue an alternative sale, or rental, or use as collateral, of valuable downtown property held in
9 their name, but clouded by the claimed lien in a manner which prevented its economic exploitation.
10 The possibility that such a lien might be asserted by a party providing architectural services was or
11 should have been known to Hale Lane at the time it was representing the Iliescus; and the fact that such
12 an asserted lien claim, even if ultimately not upheld (due to the lien claimant's procedural mistakes,
13 and not on substantive grounds) would in the meantime cause costs and losses to the Iliescus, and a
14 multi-year deprivation of their right to own their property free and clear, was foreseeable by Hale Lane.

15 Hale Lane's reliance on *Ventura County Humane Society v. Holloway*, 115 Cal.Rptr. 464 (Ct.
16 App. 1974) is completely misplaced as the case is wholly inapposite. In that case, the lawyer who
17 negligently drafted a Will to include a misnamed, non-existent beneficiary, was held to bear no liability
18 for the attorneys' fees of a litigant who had successfully acquired a portion of the estate in litigation
19 resulting from this mis-drafting. While the court acknowledged that a drafting attorney has a duty of
20 care to both the testator and the testator's beneficiaries, the attorney was not held liable because the
21 litigant in question could not demonstrate that, had the Will been properly drawn, and no Will-content
22 required, said litigant *would have been the intended named beneficiary* in a properly drawn Will:

23 The importance of this omission can hardly be overstated. . . . [I]n the absence of an
24 allegation that the testator did intend to leave a part of his residuary estate to appellants
25 specifically, it cannot be determined with any degree of certainty that appellants
26 suffered harm or injury at all. It is entirely possible that, had the suggested inquiry by
27 respondents been made and the 'true intention' of the testator detected, appellants
28 would have been altogether precluded from acquiring any portion of the estate

Id. at 470.

By contrast, in the present case, no one is claiming that Hale Lane may not have owed any
duties to the Iliescus at all, or that someone else was possibly Hale Lane's true client, or the true owner

1 of the Property liened by Steppan, and any such argument would, in the context of this case, simply
2 be absurd.

3 Hale Lane also cites to 1 Ronald E Mallen, Legal Malpractice §8:23 pp. 1037-38 (2016 Ed.)
4 (hereinafter the “Mallen Malpractice Treatise”) to support their proposition that there was no duty to
5 inform, warn or advise their clients on how to protect themselves against what were ultimately ruled
6 to be unfounded third-party claims. But the Mallen quote relied upon by Movants is misplaced in the
7 context of this case, which, as noted above, involved an entirely foreseeable third-party lien claim
8 which was rejected on procedural, not substantive, grounds. In other paragraphs in that *same section*
9 of the *same* Treatise, the following much more applicable analysis is provided:

10 **A negligently drafted provision or erroneous advice** can involve the client in
11 litigation or prolonged litigation. **Those expenses may be the only damages**
12 **sustained and can be recoverable as direct damages.**

12

13 A 1997 California decision **allowed the client’s heirs to sue** a law firm **for failing to**
14 **advise its client** to obtain his wife’s consent to an estate plan or an acknowledgment
15 that only his separate property was involved.³ After the client’s death, **the plaintiffs**
16 **sought the cost of litigation** with the spouse concerning what assets were included
17 properly within the client’s estate.

16 A 1993 Colorado decision concerned the inclusion of an offset provision in a loan,
17 which resulted in litigation with the borrower. The lawsuit was compromised for less
18 than the full amount of the loan. The trial court held that there was no right of offset,
19 but the bank subsequently **sued its lawyers** for allowing the provision to be in the
20 contract, **as an allegedly negligent cause of litigation**. The appellate **court agreed**
21 **that such an action could be pursued.**

19

20 A Georgia court held that **legal fees incurred in defending a fraud claim**, based on
21 a transfer of assets, could be recovered from the attorney, **even if the plaintiffs**
22 **prevailed in the fraud case.**⁴

22 Mallen Malpractice Treatise at § 8:23 Causation; Cost of Litigation (emphasis added).

23 In order to protect their clients against the losses they suffered in defending against the Steppan
24 lien, which losses *are*, as the Mallen Malpractice Treatise points out, fully recoverable, Hale Lane did
25 not have to anticipate that someone might pursue an invalid and substantively meritless legal theory
26

27 ³*Sindell v. Gibson, Dunn & Crutcher*, 54 Cal. App. 4th 1457, 63 Cal. Rptr. 2d 594 (2d Dist. 1997).

28 ⁴*Rogers v. Hurt, Richardson, Garner, Todd & Cadenhead*, 203 Ga. App. 412, 417 S.E.2d 29 (1992) (there was also a
dispute over whether the plaintiffs were clients and, if not, whether they had standing as nonclients).

1 against their clients, such that Hale Lane had to meet the difficult standard of guarding against
2 substantively unfounded third-party claims. Rather, Hale Lane and its attorneys merely had to be
3 aware that Nevada's mechanic's lien statute allows architects to lien real property for their services
4 (which it does), and Hale Lane merely needed to know that an architect would be necessary to provide
5 certain of the services to be completed (which, likewise Hale Lane did know). Moreover, Hale Lane's
6 awareness went beyond that: Hale Lane was also aware of the identity of that architect and the
7 potentially horrific nature of the flat-fee percentage based cost structure the architect was negotiating,
8 having participated in a review of that contract. The information known to Hale Lane was information
9 which Hale Lane had a duty to share with the Iliescus, as Hale Lane had every reason to know and
10 realize that this factual and legal information (about the architect's identity and contract terms and
11 services being performed, and about Nevada's mechanic's lien statute allowing architectural liens)
12 would be vitally important to their clients, and so that Hale Lane could provide legal assistance and
13 advice in dealing with the same. No actual doubt exists that Hale Lane had such a duty of care, or that
14 it breached the same.

15 For example, in *Lucero v. Suttan*, 341 P.3d 32 (N.M. Ct. App. 2014), a lawyer was sued for
16 malpractice for his failure to warn the client of the dangers of entering into an unsecured Nevada loan.
17 The district court entered judgment for the lawyer, on the theory that the client's damages were caused
18 by an intervening and superceding cause (namely, the collapse of the Nevada real estate market). But
19 the appellate court reversed, ruling that the lawyer *had negligently increased the risk of loss* to the
20 client, via his *failure to warn* the client of the inherent dangers in the transaction, and remanded the
21 case for a determination of damages.

22 The duties owed by an attorney to her client have been succinctly described in *In re Seare*, 493
23 B.R. 158, 188-89 (Bankr. D. Nev. 2013), as corrected (Apr. 10, 2013), *aff'd*, 515 B.R. 599 (B.A.P. 9th
24 Cir. 2014) which explained as follows: the "[c]ompetent handling of a legal matter includes inquiry
25 into and **analysis of the factual and legal elements** of the problem" with the lawyer obligated to
26 "provide **the bundle of services that are reasonably necessary** to achieve the client's **reasonably**
27 **anticipated result**" such that, as a "baseline" obligation, "a lawyer must . . . learn about the client's
28 particular legal and financial situation, **and independently investigate any 'red flag' areas.**" *Id.*

1 (citations and internal quotations omitted; emphasis added). Merely investigating such red flags is not
2 of course enough, one must also inform and warn the client of such red flags (especially when they are
3 in a lawyer's possession in any event, without the necessity of any investigation, as the facts about the
4 potential Steppan lien came to be in Hale Lane's possession), and advise as to how they might be able
5 to be dealt with. For example, the *In re Seare* court explained that a bankruptcy client is entitled "to
6 be informed" by a Nevada lawyer "that student debts are not dischargeable absent undue hardship" and
7 should explain the factors which might qualify for such a ruling. *Id.* at 189. The analogy of Hale
8 Lane's equal duty to inform, warn, and advise the Iliescus as to the potential Steppan lien, and what
9 might be done to avoid it, is obvious in this case.

10 Hale Lane breached this standard of care. Hale Lane could and should have advised the Iliescus
11 (either when the Addendum No. 3 was being negotiated; or when the conflict was discovered and the
12 conflict waiver letter was sent; or in conjunction with Addendum No. 4) that the Iliescus should make
13 escrow closing extensions conditional on obtaining evidence from the Architect that it had been paid
14 in full for all work completed to date and was releasing all liens for that work, including via an
15 unconditional progress payment lien release, under NRS 108.2457(5)(b). Hale Lane also could and
16 should have insisted on a surety bond being posted, to be utilized to bond around any future lien or a
17 construction control account created, as a condition to any extension, as to any invoices the buyer
18 might have received for work done after such an extension was granted, and before the new closing
19 date. Hale Lane could have advised the Iliescus to insist that no flat-fee architectural contract be
20 signed until financing had been obtained, or could have told the Iliescus not to agree to any extension,
21 if these matters were not first worked out and resolved.

22 A lawyer's duties to properly inform and warn and advise its client stems from Nevada Rule
23 of Professional Conduct 1.4, governing lawyer communications with the client, which requires that
24 lawyers keep their clients informed, that they consult with their clients (which would include providing
25 proper warnings and advice to their clients) and that they explain matters as necessary to their client
26 (which would include providing proper advice to their client to assist in reaching a client's reasonably
27 anticipated results).

28 NRPC 1.4 provides in pertinent part that:

1 (a) A lawyer **shall**:

2 (1) Promptly **inform the client** of any . . . **circumstance with respect to**
3 **which the client's informed consent is required by these Rules**;

4 (2) Reasonably **consult with the client about the means by which the**
5 **client's objectives are to be accomplished**;

6 (3) Keep the client **reasonably informed** about the status of the matter;

7 (b) A lawyer shall **explain a matter** to the extent reasonably necessary **to permit**
8 **the client to make informed decisions** regarding the representation.

9 *See, Mainor v. Nault*, 120 Nev. 750, 769, 101 P.3d 308, 321 (2004) (the rules of professional conduct
10 can be used as evidence to establish the standard of care lawyers owe to their clients).

11 **3. Third Element: Causation.**

12 Hale Lane has not cited to any authority which, on the facts of the case, would allow it to
13 simply walk away from the years of litigation costs and expenses which the Iliescus incurred herein.
14 This is a unique case in which Hale Lane's own involvement with the buyer, including at some point
15 a review of the buyer's contracts with the architect, should have allowed Hale Lane to uniquely
16 understand the dangers to its Iliescu clients which were being created thereby. Any number of
17 approaches could have been taken, via the right terms and conditions in Addendum No. 3 or in
18 Addendum No. 4, or in advice provided by way of and at the time of the conflict waiver letter, to
19 protect against these dangers. In short, given Hale Lane's particular knowledge of the inherent risks
20 of the transaction, which knowledge only increased as Hale Lane's troubling involvement on both
21 sides of the transaction caused it to acquire more and more information in regard to the same, Hale
22 Lane had a duty to disclose these risks to its clients the Iliescus, and to offer advice and counsel
23 regarding various concurrent or alternative measures to avoid the same. At the very least, Hale Lane
24 should have informed the Iliescus of what Hale Lane knew, and warned the Iliescus against the risks
25 being faced by the Iliescus, even if Hale Lane offered no advice about how to deal with that
26 information, so the Iliescus could have decided what to do with full information at their disposal.
27 Instead, Hale Lane chose to keep the Iliescus in the dark, as to information known by the lawyers at
28 Hale Lane.

29 In the present case, the Hale Lane law firm had unique knowledge of the red flag areas
30 potentially applicable to the Iliescus' transaction, given that the Hale Lane firm was itself
31 knowledgeable of the property purchaser's retention of an architect. This knowledge would be argued

1 to be imputed to the Iliescus throughout these proceedings, including on appeal, and costs and fees had
2 to be incurred by the Iliescus to counter these arguments, and, more importantly, to overcome the other
3 arguments in support of the Steppan lien. Ultimately, Hale Lane's knowledge of architectural work
4 being performed for the site was irrelevant because the architect was not able to rely on any claimed
5 Iliescu knowledge (including knowledge which should have been imparted to the Iliescus through their
6 counsel) to overcome Steppan's own failure to comply with NRS 108.245, as the "actual knowledge"
7 exception to the mandates of that statute were held inapplicable to the facts of this case.

8 Nevertheless, costs and fees were incurred to establish that outcome, which need not have been
9 incurred had Hale Lane given proper advice or counsel to the Iliescus when it wrote the first conflict
10 waiver letter, or in conjunction with its drafting of the Addendum 3 or the Addendum 4, or if it had
11 written those Addendums in such a manner as to protect the Iliescus' against lien claims (which,
12 whether or not properly procedurally pursued would need to be defended) which the Hale Lane firm
13 was uniquely positioned to know of. Based thereon, any lack-of-causation defense raised by Hale Lane
14 must be rejected. Just because the Steppan lien foreclosure lawsuit was defended successfully, this
15 does not mean that Hale Lane had no duty to warn the Iliescus how to avoid such a claim in the first
16 instance. *See, e.g., Temple Hoyne Buell Foundation v. Holland and Hart*, 851 P.2d 192 (Colo. Ct.
17 App. 1993)(even though validity of option contract drafted by attorneys accused of professional
18 negligence was ultimately upheld on appeal, this did not mean that the legal malpractice action against
19 the attorneys who drafted the option would be dismissed, as the attorneys could have foreseen the
20 challenge which would be raised to the contract, and could have avoided that challenge, and the legal
21 dispute which arose and caused the client damages, by more careful drafting of the option, to include
22 a savings clause.)

23 Likewise, had Hale Lane fully informed the Iliescus of the red flags they faced at the time of
24 Addendum No. 4, or prior thereto when Hale Lane sent the conflict waiver letter, the Iliescus could
25 have declined to extend closing, to avoid any further events from occurring which would increase the
26 architect's lien, such as its reaching a particular project phase, to allow for a certain percentage of flat
27 fee billing. These facts render this case different than the types of scenarios relied upon in the Hale
28

1 Lane Motion, especially as that unique position was later utilized against the Iliescus, and added to the
2 expense of defending the Steppan lien.

3 **4. The Fourth Element Is Met as the Iliescus Have in Fact Suffered Actual Damages.**

4 Nevada law recognizes that attorneys' fees incurred in order to defend against a third-party's
5 claim, including a mechanic's lien claim, may be pursued as special damages in suits against those
6 whose failures or breaches led to this claim. For example, in *Liu v. Christopher Homes, LLC*, 321
7 P.3d 875, 130 Nev. Adv. Op. 17 (2014), the Nevada Supreme Court allowed a plaintiff whose property
8 had been clouded by a mechanic's lien claim, to recover the attorneys' fees she had incurred in
9 defending against that mechanic's lien claim, and the lien foreclosure suit thereon, as part of her
10 damages in her own cross-claim against the developer, for breach of the developer's warranty of good
11 title. This was allowed even though she had settled with the lien claimant, rather than ever obtaining
12 an Order dismissing the lien on the merits.

13 This same analysis would apply where the costs to defend a mechanic's lien arose as the result
14 of a lawyer's breach of his or her standard of care, and the litigation expenses, including costs and
15 attorneys' fees incurred in such litigation, are a valid measure of damages in a legal malpractice suit,
16 just as they are a valid measure of damages in a breach of warranty of good title suit. As noted by the
17 Mallen Malpractice Treatise quoted above, "erroneous advice" or, in the present case, the failure to
18 provide any advice, based on what was known to Hale Lane, "can involve the client in litigation or
19 prolonged litigation," the expenses from which litigation, even if they are ultimately "the only damages
20 sustained . . . can be recoverable as direct damages" stemming from legal malpractice. Mallen
21 Malpractice Treatise at §8:23. Clearly, therefore, in precisely like fashion in this case, if the Iliescus
22 can demonstrate at trial that the losses they are suffering from the lien arose out of Hale Lane's
23 malpractice, then Hale Lane is liable for the fees the Iliescus have incurred in defending against and
24 ultimately prevailing in their efforts to defeat that lien.

25 *See also*, that same Mallen Malpractice Treatise, at §21:12: "Sometimes, a result of negligent
26 advice is that the client is sued, incurs the cost of defense The cost of avoidable litigation or
27 unnecessary legal services, ultimately, may be chargeable to the attorney as damages [in a legal
28 malpractice suit]. . . . **Attorneys' fees and expenses are recoverable [in a legal malpractice suit]**

1 **if litigation occurred because of the attorney's negligence, whether incurred in the prosecution**
2 **or the defense of an action."** *Id.* (bracketed language and emphasis added.)

3 Here the Iliescus both prosecuted an application to release the Steppan lien, and defended an
4 action to foreclose the lien, such that this analysis applies in either event. Clearly, the damages element
5 is satisfied, given the costs and fees which the Iliescus had to expend to avoid a lien which they were
6 never warned about, or advised how to avoid. *See e.g., Rogers v. Hurt, Richardson, Garner, Todd &*
7 *Cadenhead*, 417 S.E.2d 29 (Ga. Ct. App. 1992) (shareholders whose reliance on bad advice from
8 attorneys resulted in shareholders being sued for fraud, had a valid legal malpractice action against
9 attorneys, as the costs and attorneys' fees incurred in the suit were recoverable from said attorneys as
10 the damages element of a legal malpractice claim); *Hill v. Okay Const. Co., Inc.*, 252 N.W.2d 107
11 (Minn. 1977)(attorney who negligently represented both parties to a transaction held liable to both for
12 the attorneys' fees and expenses incurred in litigation between them arising therefrom); *Boulders at*
13 *Escalante LLC v. Offen Johnson Robinson Neff and Ragonetti*, 2015 WL 3776866 — P.3d ---- (Colo.
14 Ct. App. 2015)(publication status not yet determined)(evidence sufficiently supported jury's finding
15 that lawyer's malpractice and bad advice caused plaintiff to incur legal fees which it would not have
16 otherwise incurred); *Temple Hoyne Buell Foundation v. Holland and Hart*, 851 P.2d 192 (Colo. Ct.
17 App. 1993)(malpractice claims would not be dismissed against attorneys who could have foreseen the
18 legal dispute arising from challenged validity of option agreement, and could have more carefully
19 drafted the option to avoid their clients expenses incurred in that dispute); *Preble v. Schwabe,*
20 *Williamson & Wyatt*, 875 P.2d 526 (Or. Ct. App. 1994)(client would be entitled to seek litigation
21 expenses from legal malpractice defendant if not reimbursed from opposing party). The fees which the
22 Iliescus had to incur in order for their defense of the Steppan lien claim to finally have been vindicated,
23 and for that lien to have finally been released, are therefore, recoverable against Hale Lane as legal
24 malpractice damages.

25 Hale Lane was the Iliescus' counsel at the time that events were occurring which subjected the
26 Iliescus' property to an outrageously high potential lien risk. This risk was or should have been
27 recognized by Hale Lane, during the preparation of Addendum No. 3 and when Hale Lane obtained
28 additional information with respect to this issue as a result of its concurrent and conflicting

1 representation of both the buyer and the seller, and during the preparation of Addendum No. 4. Hale
2 Lane however repeatedly failed to warn its clients against this risk, or to counsel them to take any of
3 a number of different available steps to mitigate against it, which malpractice proximately resulted in
4 substantial costs and attorneys fees and related losses to the Iliescus, whose property was burdened by
5 an invalid mechanic's lien for ten years, which it took the Iliescus' substantial fees and costs to oppose.
6 The Iliescus losses thus include the hundreds of thousands of dollars in costs and attorneys' fees
7 expended to reach their ultimate victory (*see, e.g.*, the other recent Iliescus' filings in this action,
8 seeking costs and fees from Steppan).

9 Other losses have also been incurred, such as the lost value of moneys which the Iliescus would
10 have received, and could have received, if their Property had not been clouded and encumbered by the
11 Steppan Mechanic's Lien for all of these years, and had the Iliescus therefore been able to sell the
12 Property heretofore. The deprivation of an interest in real property for an extended period of time, due
13 to a possibly imminent loss of the property, can create a compensable loss and damage. *Conroy-Prugh*
14 *Glass Co. v. Dept. of Transportation*, 321 A.2d 598 (Penn. 1974)(case involving losses incurred due
15 to publicized likelihood of eminent domain taking, even before any formal condemnation occurred.)

16 **C. Hale Lane's Motion for Summary Judgment Must Also Be Denied Given the Many**
17 **Questions of Fact which Exist in this Case.**

18 To the extent that the movant contests any of the foregoing facts asserted by the Iliescus, then
19 the Motion for Summary Judgment may not be granted as numerous genuine issues of material fact
20 remain to be analyzed and resolved before summary judgment can issue.

21 These include genuine questions of material fact with respect to why Hale Lane failed to ever
22 inform the Iliescus of what Hale Lane knew at various times, and why Hale Lane consistently and
23 repeatedly failed to inform, warn, or advise the Iliescus about the risk of an architectural lien; why their
24 conflict waiver letters contained inadequate information; what attorney Class, who faxed the first
25 conflict waiver letter signed by Dennison, had told attorney Dennison about Class's work reviewing
26 the architectural contract, and why neither attorney included information in that letter about what Class
27 had learned in that process; why the conflict letter did not explain that the conflicting representation
28 had already begun, rather than claiming it "will" now start to occur; why did Hale Lane not originally
discover the conflict in representing both the buyer and the seller on this transaction earlier than it did;

1 why, given that Hale Lane worked on the flat-fee percentage based fees AIA agreement for the buyer,
2 did that agreement not include terms against it becoming effective, to replace the hourly fee contract,
3 until after financing and closing, to protect both the buyer and the Iliescus; why Karen Dennison failed
4 to include adequate language in Addendum No. 3 to protect the Iliescus from liens which might arise
5 from off-site architectural and design work which would be performed as part of obtaining entitlement
6 approvals referenced therein, by conditioning future escrow extensions, also referenced therein, upon
7 unconditional lien releases; why Addendum No. 3 did not contain any language mandating that a
8 construction control account be in place, or that a bond in lieu of liens be provided by the purchaser,
9 to ensure payments were regularly being made to any designer or architects performing work in
10 relation to the project during escrow, and prior to financing being obtained; why Hale Lane did not
11 ensure that Addendum No. 4, which extended the closing date, did not protect the Iliescus by
12 conditioning this extension on a release of any mechanic's lien claims by any party who had provided
13 any services for the contemplated project up until that date; why Hale Lane chose an attorney with an
14 existing hostile relationship with the Iliescus to represent them in court, and why that attorneys' filing
15 did not address all of the relevant arguments in their favor. Etc.

16 **III. POINTS AND AUTHORITIES IN**
17 **SUPPORT OF COUNTERMOTIONS TO AMEND THIRD-**
18 **PARTY COMPLAINT AND FOR ADDITIONAL DISCOVERY TIME**

18 The Iliescus have countermoved for leave to file an Amended Third-Party Complaint, in order
19 to more clearly enunciate all of the acts of malpractice for which Hale Lane and its attorneys are being
20 sued. A true and correct copy of a proposed Amended Third Party Complaint is attached as **Exh. "1"**
21 hereto. This proposed pleading also re-adds the names of certain attorney defendants at Hale Lane,
22 previously named herein, who were dismissed and stayed, without prejudice, pending the outcome of
23 appeal, via a prior stipulation and order.

24 Leave to Amend should be freely granted when justice so requires. NRCP 15(a) provides in
25 pertinent part:

26 A party may amend the party's pleading once as a matter of course at any time
27 before a responsive pleading is served or, if the pleading is one to which no
28 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.

1 Otherwise a party may amend the party's pleading only by leave of court or by
2 written consent of the adverse party; ***and leave shall be freely given when justice
so requires.*** . . . (Emphasis added).

3 In determining whether leave to amend shall be granted pursuant to NRCP 15, the Nevada Supreme
4 Court has adhered to the doctrine set forth by the United States Supreme Court in *Foman v. Davis*, 371
5 U.S. 178, 83 S.Ct. 227, 230 (1962). See, *Adamson v. Bowker*, 85 Nev. 115, 450 P.2d 796, 800 (1968).
6 In *Foman*, the Supreme Court reiterated the philosophy of Rule 15, that amendments of the pleadings
7 are to be freely granted in the absence of any compelling reasons not to do so, such as undue delay or
8 bad faith or dilatory motive. In the present case, no such concerns about delay exist, as this
9 countermotion is being filed shortly after the remittitur issued (and a prior attempt at amendment was
10 denied by this Court on the grounds that the a stay should remain in place while the appeal was
11 pending).

12 Based on the depositions and trial and other discovery completed in the years subsequent to
13 the Iliescus' most recent Third-Party Complaint, and based on the final outcome on appeal, the Third-
14 Party Plaintiffs are now in a much better position to clarify and enunciate the entire premises and bases
15 for their Third-Party Claims. Refusing to grant them leave to do so, and instead granting Summary
16 Judgment against them on their currently existing pleading, would violate what justice requires. For
17 example, their prior third-party pleading focused on the Hale Lane firm's failure to advise the Iliescus
18 to file a Notice of Non-responsibility to protect against a Steppan or FFA architectural lien. We now
19 know, based on certain *dicta* in the Supreme Court's *Iliescu* decision, that such a theory would not be
20 availing to the Iliescus. Justice therefore requires that the Iliescus, with the benefit of the knowledge
21 now available to all parties, be allowed to amend their pleading, even were such an amended pleading
22 hereafter rejected by this Court, in order to allow a clean and updated record for appeal of any such
23 adverse ruling by this Court, to allow an appeal on the merits of all claims, as now better and more
24 fully understood. Based thereon, in order to allow their third-party claims to be more fully and
25 comprehensively articulated, this Court should grant this Motion for Leave to Amend, and allow the
26 amended pleading, substantially in the proposed form attached as **Exh. "1"** hereto, to now be filed.

27 It should also be noted that litigation, including discovery, regarding the third-party claims at
28 issue herein, has been stayed for several years, pending the outcome of appeal. Hale Lane filed their

1 Motion for Summary Judgment only 30 days after Remittitur had issued in this case, basing its
2 arguments on procedural facts and ultimate dispositions which were not known to be the ultimate
3 outcome until that occurred. The Iliescu will now need to retain an expert to address the ultimate
4 facts of this case, now only recently learned, and to opine on the standard of care arguments asserted
5 by Hale Lane, and should be given time to do so. Based thereon, pursuant to NRCP 56(f), the Iliescu
6 hereby request additional discovery time herein. *See*, **Exhibit "17"** hereto, Sworn Declaration of Dr.
7 Iliescu in support of NRCP 56(f) Request.

8 IV. CONCLUSION AND AFFIRMATION

9 For the reasons set forth above, Hale Lane's Motion for Summary Judgment should be denied.
10 Instead, the Iliescu's counter-motion to amend should be granted. The undersigned does hereby affirm
11 that the preceding document filed in the Second Judicial District Court does not contain the social
12 security number of any person.

13 DATED this 18th day of December, 2017.

14 **ALBRIGHT, STODDARD, WARNICK**
15 **& ALBRIGHT**

16 By


17 G. MARK ALBRIGHT, ESQ.

Nevada Bar No. 001394

18 D. CHRIS ALBRIGHT, ESQ.

Nevada Bar No. 004904

19 801 South Rancho Drive, Suite D-4

Las Vegas, Nevada 89106

20 Tel: (702) 384-7111

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21 gma@albrightstoddard.com / dca@albrightstoddard.com

22 *Attorneys for Applicants/Defendants*

1 **CERTIFICATE OF SERVICE**

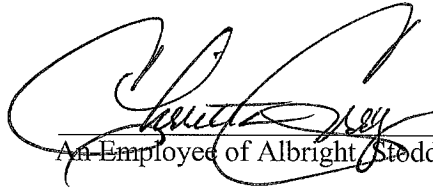
2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of ALBRIGHT, STODDARD,
3 WARNICK & ALBRIGHT, and that on this 18th day of December, 2017, service was made by the
4 ECF system to the electronic service list, a true and correct copy of the foregoing **THIRD-PARTY**
5 **PLAINTIFFS' OPPOSITION TO THIRD-PARTY DEFENDANT HALE LANE'S**
6 **MOTION FOR SUMMARY JUDGMENT DISMISSAL OF THIRD-PARTY CLAIMS;**
7 **AND COUNTERMOTION TO AMEND THIRD-PARTY COMPLAINT AND FOR**
8 **FURTHER TIME TO COMPLETE DISCOVERY**, and a copy mailed to the following person:

9 Michael D. Hoy, Esq.
10 HOY CHRISSINGER KIMMEL P.C.
11 50 West Liberty Street, Suite 840
12 Reno, Nevada 89501
13 (775) 786-8000
14 mhoy@nevadalaw.com
15 *Attorney for Plaintiff Mark Steppan*

____ Certified Mail
16 X Electronic Filing/Service
____ Email
____ Facsimile
____ Hand Delivery
____ Regular Mail

14 David R. Grundy, Esq.
15 Todd R. Alexander, Esq.,
16 LEMONS, GRUNDY & EISENBERG
17 6005 Plumas Street, Third Floor
18 Reno, Nevada 89519
19 (775) 786-6868
20 drg@lge.net / tra@lge.net
21 *Attorneys for Third-Party Defendant*
22 *Hale Lane*

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23 X Electronic Filing/Service
____ Email
____ Facsimile
____ Hand Delivery
____ Regular Mail

24
25
26
27
28


An Employee of Albright, Stoddard, Warnick & Albright

Index of Exhibits

1. Proposed Restated Third-Party Complaint
2. Addendum No. 3, October 8, 2005
3. Deposition Transcript of R. Craig Howard, February 10, 2010
4. Trial Exhibits 10, 11, and 12
5. Conflict Letter, December 14, 2005
6. Addendum No. 4, September 19, 2006
7. Notice of Claim of Lien, November 7, 2006
8. Amended Notice and Claim of Lien, May 3, 2007
9. Second Amended Notice and Claim of Lien, November 8, 2013
10. Second Conflict Letter, December 26, 2006
11. *Pinecrest* Litigation
12. Order, June 22, 2009
13. Judgment, Decree and Order for Foreclosure of Mechanic's Lien, February 26, 2015
14. Court's Opinion, May 25, 2017
15. Petition for Rehearing, September 21, 2017
16. Remittitur, 10.17.17
17. Declaration of Dr. John Ilescu, Jr., December 14, 2017

FILED
Electronically
CV07-00341
2017-12-18 09:00:31 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6442526 : pmsewell

EXHIBIT “1”

JA2087

1 **CODE: 4180**

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3 D. CHRIS ALBRIGHT, ESQ., #004904

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9 *Attorneys for Applicants/Defendants*

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

12 MARK B. STEPPAN,

13 Plaintiff,

14 vs.

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

21 Defendants.

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

26 Third-Party Plaintiffs,

27 vs.

28 CONSOLIDATED PACIFIC DEVELOPMENT,
INC., a Nevada Corporation; DECAL OREGON,
INC., an Oregon Corporation; CALVIN BATY,
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 THIRD-
PARTY COMPLAINT AGAINST
CONSOLIDATED PACIFIC
DEVELOPMENT, INC. AND DeCAL
OREGON, INC., AND AMENDED
THIRD-PARTY COMPLAINT
AGAINST HALE LANE PEEK
DENNISON AND HOWARD
PROFESSIONAL CORPORATION, a
Nevada professional corporation, dba
HALE LANE; AND AGAINST
THIRD PARTY DEFENDANTS
KAREN DENNISON; R. CRAIG
HOWARD; AND JERRY SNYDER;
and JOHN DOES I thru XX**

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, having previously filed an Answer herein on which they have now prevailed, 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 DENNISON; CRAIG HOWARD; JERRY SNYDER; CONSOLIDATED PACIFIC DEVELOPMENT, INC., a Nevada corporation; DECAL OREGON, INC., an Oregon corporation; and JOHN DOES I thru XX, hereby aver and allege as follows:

A. Statement Concerning Answer to Steppan Complaint.

The Iliescus originally filed the herein Third-Party claims, amended and realleged as amended below, in conjunction with their Answer to the Complaint of Mark B. Steppan in the second of these two consolidated cases. Said Answer has now been fully adjudicated, through trial and through a subsequent appeal to the Nevada Supreme Court, which ruled in favor of the Iliescus, which ruling is hereby incorporated by reference as the law of this case, with respect to the now fully adjudicated Iliescu Answer to and defense of the Steppan claims.

B. Restatement of Other Third-Party Claims.

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 (“Consolidated”), including without limitation, as set forth in Paragraphs 44-50 of their Third-Party Complaint filed in this action on or about 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 Consolidated have been dismissed by virtue of the instant filing (as might be construed to be the case were said claims wholly omitted from this amended filing). The Third-Party Claims against Consolidated 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. This third-party suit was originally filed in conjunction with the Third-Party Plaintiffs' Answer to a mechanic's lien foreclosure lawsuit filed by Mark Steppan (the underlying Steppan lien foreclosure action), which is the second of these two consolidated cases. Said Answer has now been fully adjudicated, through trial and through a subsequent appeal to the Nevada Supreme Court, which ruled in favor of the Iliescus, which ruling is hereby incorporated by reference as the law of this case, with respect to the now fully adjudicated Iliescu Answer to and defense of the Steppan claims.

5. Third-Party Defendant Hale Lane Peek Dennison and Howard was at all relevant times a Nevada professional corporation, practicing law in Washoe County, Nevada and is sometimes herein referred to as "Hale Lane."

6. Hale Lane has been a Third-Party Defendant to the action, continuously since the original Third-Party Complaint was filed on or about September 27, 2007. The Third-Party claims against Hale Lane have heretofore been stayed pending resolution of the underlying suit, through trial and appeal, including via a Stipulation and Order entered on February 14, 2013 (Transaction #3534067), which Stipulation and Stay Order remained effective (per a subsequent Order of this Court dated December 19, 2016 (Transaction #5860697)) "pending a final determination of" the Iliescus "Appeal by the Supreme Court" in the underlying Steppan lien foreclosure action. That appeal has now been completed and Remittitur to this Court has now issued, such that the underlying Steppan lien action is now resolved and said stay is no longer pending.

7. Hale Lane employed certain attorneys, including *inter alia*, Third-Party Defendants, Karen D. Dennison, R. Craig Howard, and Jerry M. Snyder, who 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 attorneys are hereinafter referred to individually as "Dennison", and "Howard" and "Snyder." Said attorneys were previously named as Third-Party Defendants to this action, but the claims against them were stayed and dismissed

1 “without prejudice” by the aforementioned prior stipulation, pending appeal. That appeal has now
2 been completed, such that it is now appropriate to rename said individual Third-Party Defendants
3 herein.

4 8. Upon information and belief, all of the acts of negligence by Hale Lane described herein
5 were performed by Third-Party Defendants Dennison, or Howard, or Snyder, or by other associate or
6 partner attorneys of Hale Lane, acting at the direction of Third-Party Defendants Dennison and/or
7 Howard and/or Snyder and/or Hale Lane.

8 9. Third-Party Defendant Consolidated Pacific Development, Inc. is a Nevada corporation
9 (sometimes hereinafter “Consolidated”).

10 10. Third-Party Defendant DeCal Oregon, Inc. is or was an Oregon corporation (hereinafter
11 “DeCal”) and the successor, by name, to DeCal Custom Homes and Construction, Inc.

12 11. Third-Party Defendants, John Does I through XX, are persons or entities who
13 participated in the acts alleged herein, or received the proceeds of the acts alleged herein, whose names
14 or identities are not yet known to Third-Party Plaintiffs, or may have been misidentified herein, or who
15 are known to Third-Party Plaintiffs but who will require further motion practice to name herein for
16 procedural reasons. Third-Party Plaintiffs reserve the right to amend this Complaint to also name
17 Third-Party Defendants John Does I through XX hereafter

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

24 **GENERAL ALLEGATIONS**

25 13. Third-Party Plaintiffs are or were the owners, pursuant to legal title or in recognition
26 of community property principles, of the real property assigned Washoe County Assessors Parcel
27 Numbers 011-112-03, 011-112-06, 011-112-07, and 011-112-12, also commonly known as 219 Court
28 Street, Reno, Nevada, and 223 Court Street, Reno, Nevada (all collectively, the “Property”).

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

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

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

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

14 18. At some point subsequent to August 10, 2005, without the knowledge and/or consent
15 of the Iliescus, Consolidated had unilaterally purported to assign and transfer its interests in the
16 Purchase Agreement to DeCal's predecessor entity, DeCal Custom Homes and Construction, which
17 had in turn subsequently transferred or assigned its interests in the Land Purchase Agreement to BSC
18 Financial, LLC (sometimes hereinafter "BSC").

19 19. Consolidated and/or DeCal and/or BSC, as the context may require, are sometimes
20 hereinafter referred to as the "buyer."

21 20. On or before September 22, 2005, the Iliescus retained Hale Lane and the other Lawyer
22 Third-Party Defendants to review, fine tune, clarify and, in all respects, advise the Iliescus and protect
23 the Iliescus' best interests relative to the Purchase Agreement. Hale Lane and its attorneys, including
24 Dennison, remained counsel for the Iliescus throughout certain subsequent months and events
25 described herein.

26 21. After Hale Lane's retention, an Addendum No. 3 to the Purchase Agreement was
27 prepared by Third-Party Defendants Dennison/Hale Lane on behalf of the Iliescus.

28 22. Addendum No. 3 was executed by the Iliescus and Consolidated on or about October

1 8, 2005, and provided that, in certain circumstances, Consolidated could assign its interests in the
2 Purchase Agreement to another entity.

3 23. The assignments which had already occurred, as referred to above, however, were not
4 addressed, disclosed or contained in Addendum No. 3. The Iliescus did not timely learn of any of the
5 prior purported assignments or even of the existence of BSC.

6 24. In preparing Addendum No. 3, Dennison and Hale Lane failed to meet their duty of care
7 to properly inform the Iliescus of facts known to Hale Lane, or to warn the Iliescus of how those facts
8 created risks to the Iliescus; and failed to advise the Iliescus of how to deal with those risks.

9 25. Thus, Third-Party Defendants Dennison and Hale Lane failed to protect the best
10 interests of the Iliescus, failed to properly advise them as to potential risks of the transaction and failed
11 to address those risks.

12 26. For example, Addendum No. 3 specifically indicated at ¶7 that the purchaser would be
13 going forward, prior to closing, with attempts to obtain zoning approvals and other entitlements for
14 a planned development at the Property, which would mean that offsite architectural and design work
15 would be commencing with respect to the Property, which, under Nevada law could potentially allow
16 the providers of architectural and design services, whose work was performed while the Property was
17 still in escrow, to claim to have a mechanic's lien against the Property. However, Dennison and Hale
18 Lane did not inform or warn the Iliescus of these facts or advise the Iliescus regarding how to protect
19 themselves from the same.

20 27. Nor did Addendum No. 3 include sufficient provisions to protect the Iliescus against
21 this threat, even though Addendum No. 3 would have been the perfect vehicle through which Dennison
22 and Hale Lane could have protected the Iliescus, by including such protections therein, including for
23 example by requiring a bond to be posted by the buyer, in favor of the architect, to be utilized to bond
24 around any future architectural lien, if any should arise; and/or requiring a construction control account
25 to be established and pre-funded by the buyer for that same purpose; and/or requiring regular
26 unconditional progress payment lien releases to be obtained from the architect as an ongoing condition
27 to the seller's obligations under the Agreement; and/or by requiring that buyer could not retain an
28 architect or design professional or execute any agreement with such professionals before the form,

1 terms, and effective date thereof had been agreed upon by sellers; and or by requiring, in Paragraph
2 1 of the Addendum, dealing with conditions to future escrow closing extensions, that such extensions
3 would be conditioned on unconditional progress payment lien releases from any architect or other
4 design professionals providing any architectural or similar work or services relating to the Property,
5 or by providing other similar provisions to provide real and practical benefits and protections to the
6 Iliescus.

7 28. Hale Lane's failure to properly inform, warn, or advise the Iliescus was a breach of Hale
8 Lane's duty to the Iliescus which caused loss and damage to the Iliescus.

9 29. At some point in time after the Purchase Agreement and the first three Addendums
10 were executed, certain of the lawyer employees and partners of the Hale Lane firm, including attorney
11 Howard and other Hale Lane attorneys acting at his direction, began representing the buyer of the
12 Iliescu Property, and certain of its principals or investors such as Calvin Baty and/or Sam Caniglia in
13 relation to obtaining the necessary entitlements on the Property as contemplated by the Purchase
14 Agreement, even though Third-Party Defendant Hale Lane was concurrently representing the Iliescus,
15 as seller.

16 30. A major component of the entitlements process was the work and drawings of an
17 architectural firm, and one of the first tasks which Hale Lane was asked to perform for the buyer
18 involved reviewing the buyer's architectural contract(s) with its architect.

19 31. By accepting employment as counsel for the buyer, Hale Lane placed itself in the highly
20 unusual and potentially troubling role of concurrently representing both the buyer and also the seller
21 (the Iliescus) on this multi-million dollar land acquisition and development transaction, thus creating
22 inherent and intrinsic conflicts of interest.

23 32. Due to an apparently negligent failure in Hale Lane's conflict-checking procedures,
24 Hale Lane did not initially realize that such conflicting employment and retention had occurred.

25 33. On or about November 5, 2005, unbeknownst to the Iliescus, architect Mark Stepan,
26 a Nevada licensed employee architect of the California architectural firm Fisher Friedman Associates
27 ("FFA"), executed, at FFA's direction, an hourly fee contract with the most recent buyer assignee,
28 namely BSC, in relation to the Property. Stepan and FFA on the one hand, and BSC on the other then

1 began negotiating an AIA Agreement and Steppan would later claim that the hourly fee agreement had
2 been superseded by the subsequent AIA Agreement, ultimately executed on April 21, 2006, but with
3 a claimed retroactive effective date of October 31, 2005.

4 34. The AIA Agreement contained onerous terms, allowing the architect to invoice on a
5 flat-fee basis, tied to the anticipated costs of construction, such that, upon its future execution, the
6 Architect would reissue new, duplicative but extraordinarily higher bills, for its work, even though the
7 hourly value of that work had already previously been invoiced and paid, and even though the flat-fee
8 percentages were tied to anticipated construction costs as to construction which never commenced.
9 These terms were adverse to the Iliescus, whose Property title could potentially be clouded via a
10 claimed lien based thereon.

11 35. Certain of the Hale Lane lawyers, including attorney Howard and/or an associate
12 working at his direction, assisted BSC in its review and discussions and negotiations with
13 FFA/Steppan over the terms of these architectural contracts, such that Hale Lane came to know
14 Steppan's and FFA's identity, and that said architects were providing services to the buyer and were
15 going to enter into a flat-fee percentage based AIA Agreement with the buyer of the Iliescus' Property,
16 and knew the terms thereof.

17 36. This information should have been provided by Hale Lane to the Iliescus, but was not;
18 instead, Hale Lane failed to inform the Iliescus of this information.

19 37. The implications of this information, and the risks created to the Iliescus thereby,
20 should have been communicated to the Iliescus but was not; instead, Hale Lane failed to warn the
21 Iliescus of those implications and risks.

22 38. A strategy for how to deal with those risks should have been discussed with the Iliescus
23 but was not; instead, Hale Lane failed to advise the Iliescus with respect to any strategies for dealing
24 with these risks.

25 39. Hale Lane completely failed to inform, warn, or advise the Iliescus as to the information
26 which became known to Hale Lane in November of 2005.

27 40. Upon information and belief, at some point in time in late November 2005 or early
28 December 2005, the lawyers at Hale Lane discovered the conflict and Dennison and Howard and the

1 other lawyers providing work for the two sides to the transaction discussed the conflict arising out of
2 the work being performed by those different Hale Lane lawyers, for both the buyer and the seller, but
3 Hale Lane did not as a result of these conversations then disclose to the Iliescus any information which
4 it had learned from its representation of the buyer, about the architect, let alone provide any warnings
5 or advice with respect to how to deal with that information.

6 41. Hale Lane did decide to write the Third Party Plaintiffs, the Iliescus, about these
7 matters, but only to protect Hale Lane, not to protect the Iliescus.

8 42. On or about December 14 or December 15, 2005, Third-Party Defendant Hale Lane,
9 having now realized that a conflict had arisen, faxed the Iliescus a December 14, 2005, Waiver of
10 Conflict letter, signed by Third-Party Defendant Dennison, and faxed by Hale Lane attorney Sarah
11 Class, who had worked on the Steppan AIA Agreement review for the buyer under the direction of
12 Hale Lane attorney Howard.

13 43. This letter indicated that a prospective conflict might arise between the firm's
14 "existing" clients, the Iliescus, on the one hand, and a new client Hale Lane "will" now start
15 representing, the buyer, on the other hand, which information was false and misleading as such
16 representation of the buyer had in fact already begun, and a conflict had in fact already arisen.

17 44. Nor did this letter adequately explain the unique nature of the conflict being asked to
18 be waived, which was a concurrent and presently existing conflict between the seller and the buyer of
19 real property, under a multi-million dollar contract which had not yet closed, such that the buyer and
20 the seller had currently existing inherently contrary interests.

21 45. This first conflict waiver letter did not provide sufficient information to Dr. and Mrs.
22 Iliescu to provide for informed consent, as required by Nevada Rule of Professional Conduct 1.7(b)(4),
23 as part of the waiver of a concurrent conflict of interest.

24 46. The December 14, 2005 letter did not, for example, provide any of the information
25 contemplated by the ABA in its comment to Model Rules of Professional Conduct (upon which
26 Nevada's Rules of Professional Conduct are based) Model Rule 1.0(E), in which comment "informed
27 consent" is discussed, and which comment requires that, in order to provide a client with informed
28 consent, the client should receive a communication which ensures "that the client . . . possesses

1 information reasonably adequate to make an informed decision. Ordinarily, this will require
2 communication that includes a disclosure of the facts and circumstances giving rise to the situation,
3 any explanation reasonably necessary to inform the client or other person of the material advantages
4 and disadvantages of the proposed course of conduct and a discussion of the client's options or
5 alternatives." The comment also discusses advising a client to seek separate counsel.

6 47. In order for Hale Lane to comply with these duties of disclosure and explanation, to
7 ensure informed consent, Hale Lane should have informed the Iliescus of what Hale Lane then knew
8 about the buyer's architect and about the lien risks to Hale Lane posed by the architect and its contract.

9 48. But the letter, which was only four paragraphs long, contained no such information and
10 the disclosures and explanations in the letter were not "reasonably adequate" and did not inform the
11 Iliescus of information which was "reasonably necessary" for them to provide informed consent, and
12 did not explain the advantages or disadvantages or the risks of allowing Hale Lane to represent the
13 seller at the same time that the buyer was being represented by that same firm; and did not discuss
14 other "options or alternatives" to allowing for such conflicting representation.

15 49. The letter for example did not contain an adequate "disclosure of the facts and
16 circumstances giving rise to the situation" by informing the Iliescus of information then in the
17 possession of Hale Lane with respect to the identity of a potential architectural lien claimant then
18 providing services to the Property's would be purchaser, under an agreement then being negotiated
19 which might one day allow for a multi-million dollar percentage-based flat fee lien to be asserted, for
20 work already paid for on an hourly basis, based on construction costs, even if never incurred; and the
21 letter did not, as a further example, explain that one of the disadvantages to the conflicting
22 representation was that information learned by the firm in the process of representing the buyer might
23 later be argued as imputed knowledge of the Iliescus, even if that information was not shared with the
24 Iliescus.

25 50. The letter also did not warn the Iliescus that they needed to take action to avoid a
26 statutory mechanic's lien for architectural design services, nor did the letter advise the Iliescus as to
27 any strategies they might then employ to deal with this risk; even though information then known to
28 Hale Lane was sufficient for Hale Lane to be aware of these risks.

1 51. The letter did not tell the Iliescus they should restrict the Purchaser from entering into
2 certain types of architectural contracts, before closing of the sale had been financed and finalized so
3 that the buyer would know whether it had the ability to pay any architect before agreeing to any
4 onerous flat fee terms, or any similar terms which could not be fully paid without financing being first
5 secured.

6 52. The information missing from this letter, had it been provided as the rules of informed
7 consent require, would have informed, and warned, and advised the Iliescus of information they were
8 entitled to receive from their lawyers at that time in any event, such that the letter not only fails as a
9 defense for Hale Lane but is itself another affirmative act of malpractice by Hale Lane and its lawyers
10 which caused damages to the Iliescus.

11 53. Nevada Rule of Professional Conduct 1.8(h)(1) mandates that: "A lawyer shall not:
12 Make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the
13 client is independently represented." The letter did not however advise the Iliescus to obtain separate
14 counsel before agreeing to the same.

15 54. This was a material failure as such independent counsel might have asked Hale Lane
16 the types of questions which would have led to such counsel properly informing, warning and advising
17 the Iliescus, as to facts and risks known to Hale Lane, which Hale Lane was concealing and failing to
18 disclose to or discuss with the Iliescus.

19 55. The Iliescus executed the letter based on Hale Lane's bad advice and bad counsel to do
20 so.

21 56. The information, warnings, and advice, which were missing from the conflict waiver
22 letter was information and advice to which the Iliescus were then entitled in any event, regardless of
23 whether a conflict waiver was or was not sought at that time, such that the failure of Hale Lane to
24 independently provide this information, and these warnings and counsel, to the Iliescus at that time,
25 aside and apart from doing so or not doing so in the conflict waiver letter, was in and of itself an act
26 of malpractice.

27 57. Third-Party Defendant Hale Lane's lawyers, including without limitation, Dennison and
28 Howard, never discussed with or advised the Iliescus at any time to take any steps to protect

1 themselves from a lien claim which might be asserted by any design professionals retained by would
2 be Property buyer BSC and also never advised as to other steps which might be taken to protect against
3 this possibility, even while the Lawyer employees and partners of Hale Lane were putting themselves
4 into a position to obtain knowledge and information which would later be argued to be imputable to
5 the Iliescus, which risk Hale Lane never disclosed to the Iliescus, notwithstanding that certain of the
6 Hale Lane lawyers knew or should have known the very information Hale Lane failed to share with
7 the Iliescus.

8 58. Despite becoming aware of the purported assignment to DeCal and to BSC, Third-Party
9 Defendant Hale Lane never advised or discussed with their clients, the Iliescus: the assignment;
10 whether DeCal and then BSC was an appropriate assignee of the Purchase Agreement, which had the
11 means and financial viability to close the sale; and whether or how the purported assignments affected
12 the Iliescus' interests under the Purchase Agreement.

13 59. Based on Hale Lane's representation of the would-be Property buyer at the same time
14 that it was concurrently representing the Iliescus, as sellers, conflicts of interest came to exist which
15 were so intrinsic as to not be waivable, or which gave Hale Lane access to information which it had
16 a duty to share with the Iliescus in order to protect the Iliescus' best interests, but which it failed to
17 share.

18 60. On or about April 2006, four months after the conflict waiver letter was issued,
19 Steppan/FFA entered into the onerous and exorbitant flat fee AIA Agreement with BSC, and the two
20 sides to that Agreement claimed therein that the AIA would be given an effective date of October
21 2005, so as to retroactively apply to the period of FFA architectural services already previously
22 performed under the hourly fee agreement, thereby allowing new, higher and exorbitant flat-fee
23 invoices to be sent by FFA to BSC, for work which had already been reimbursed and paid for on an
24 hourly fee basis.

25 61. Steppan/FFA would thereafter never file a lawsuit or sue the other party to this contract,
26 BSC, or any of its principals or predecessors or agents, for breach thereof, but would utilize this AIA
27 Agreement solely to pursue an exorbitant mechanic's lien claim for flat fee invoices, and 18% interest
28 charges, never agreed to by the Iliescus, against the Iliescus' Property.

1 62. In or about September of 2006, Hale Lane attorney Dennison, acting on behalf of the
2 Iliescus, drew up an Addendum No. 4, with respect to extending the closing date for the sale of the
3 Property, and advised the Iliescus to execute the same, which advice was not in the Iliescus' best
4 interests.

5 63. Third-Party Defendants Hale Lane and Dennison failed to take the opportunity
6 represented by this Addendum No. 4 and the purchasers' requested extension giving rise to the same,
7 to properly inform, warn, and advise the Iliescus as to the risks of a lien claim being asserted against
8 their Property and how to deal with the same.

9 64. Third-Party Defendants did not recommend for example, that the Iliescus condition the
10 extension on an unconditional progress payment release as to any architectural or other liens for offsite
11 architectural or design work completed through the date of the extension; or to condition the same on
12 an agreement that any flat fee architectural agreement calling for rates on a percentage-of-construction-
13 costs basis would be amended to only become effective after financing had been obtained and escrow
14 closing had occurred; or to condition the extension on a cessation of work by the architect to prevent
15 the architect from later claiming it had reached a certain phase of performance allowing for a certain
16 percentage based fee; or to condition the extension on any other conditions which might have protected
17 the Iliescus from the risks which Hale Lane then knew, or should have known, the Iliescus were then
18 facing, even though Hale Lane was in possession of information regarding the facts which gave rise
19 to those risks.

20 65. Hale Lane did not warn or advise the Iliescus to hold off on agreeing to this extension
21 until after the potential mechanic's lien threat had been dealt with, or even inform the Iliescus of that
22 threat.

23 66. Instead, during and or prior to September 2006, Hale Lane and Karen Dennison
24 prepared Addendum No. 4 on behalf of the Iliescus, which allowed for this extension, and advised the
25 Iliescus to sign it, which was bad advice.

26 67. By the time this Addendum No. 4 was prepared in September 2006, certain of the
27 lawyers at Hale Lane had long since been exposed to information regarding the identity of the project
28 architect, and certain of the onerous terms of the architect's retention.

1 68. Third-Party Defendants Hale Lane and Howard and Dennison nevertheless, did not
2 advise the Iliescus to demand a release of any architectural lien as a condition to signing the 4th
3 Addendum.

4 69. By the time the 4th Addendum was prepared, even further and stronger duties had
5 arisen on the part of Hale Lane and Dennison and Howard and/or other Hale Lane lawyers to advise
6 the Iliescus of the relevant facts and their implications, and to use the opportunity afforded by the
7 buyers' request for this extension, to protect the Iliescus.

8 70. Dennison and Howard and Hale Lane and the other Hale Lane attorneys, however,
9 despite the information previously learned by Hale Lane and then in its possession, did not advise the
10 Iliescus to take advantage of the extension request to protect themselves from any alleged mechanic's
11 lien, by negotiating for a release of any such lien as a condition to signing the 4th Addendum.

12 71. When the Addendum No.4 to the Purchase Agreement was prepared by Third-Party
13 Defendant Hale Lane prior to or during September 2006, and executed by the Iliescus and
14 Consolidated on or about September 19, 2006, said Addendum contained no disclosure of or reference
15 to DeCal or BSC, nor did Third-Party Defendant Hale Lane disclose to the Iliescus any assignments
16 to said entities which had occurred theretofore.

17 72. Nor did Hale Lane inform the Iliescus, at the time of the 4th Addendum's preparation
18 and execution, of the identity, or of the work then being performed by, any architect, for the buyer or
19 of the dangers such work represented to the Iliescus, as to possible liens against their Property, which
20 dangers should have been made known to the Iliescus and addressed and resolved in Addendum No.
21 4, had their counsel properly represented the Iliescus.

22 73. Nor did the Third-Party Defendant Hale Lane take the opportunity to then advise the
23 Iliescus of the information the Third-Party Defendant Hale Lane had by then obtained, including
24 information regarding the potential existence of an architectural lien claimant, which knowledge by
25 Hale Lane had been acquired in the course of events which led to the Hale Lane December 14, 2005
26 conflict-waiver letter to the Iliescus, which letter had likewise failed to disclose the relevant
27 information to the Iliescus, and had likewise failed to properly inform, warn, or advise the Iliescus.

28 74. On November 7, 2006, FFA caused a mechanic's lien to be recorded against the

1 Iliescus' Property in the name of Mark Steppan, as lien claimant, in the sum of \$1,783,548.00, which
2 would be amended and which would subsequently result in a Judgment on the lien in excess of \$4.5
3 million dollars, entered in February of 2015, which lien would not be set aside until an appellate
4 reversal of said Judgment issued in May of 2017, such that the Iliescus' Property was clouded by this
5 claimed Steppan Mechanic's Lien, and then by the Judgment thereon, for a period of over ten (10)
6 years.

7 75. The \$4.5 million plus Judgment upholding the Steppan lien would later be reversed on
8 appeal, in 2017, but only after the Iliescus had incurred hundreds of thousands of dollars in costs and
9 attorneys' fees in order to reach this result, which fees and costs might have been avoided had the
10 Iliescus been properly represented by Hale Lane and its attorneys in the first instance, to avoid a lien
11 which was finally revoked only after the Iliescus had suffered a ten year plus deprivation of their right
12 to enjoy clean title to their Property, which Property could otherwise have been utilized for any number
13 of profitable purposes.

14 76. Upon service of the November 7, 2006 lien notice on the Iliescus, the Iliescus first
15 became aware of the possibility of any such lien, with respect to which none of the lawyers of Third-
16 Party Defendant Hale Lane had ever lifted a finger to inform, warn, or advise the Iliescus, and with
17 respect to the possibility of which Hale Lane had not adequately protected their clients, the Iliescus,
18 despite adequate opportunities to do so during the drafting of Addendum No. 3 and during the drafting
19 of the first conflict waiver letter, and during the drafting of Addendum No. 4.

20 77. The Mechanic's Lien recorded by Mark Steppan on November 7, 2006 made reference,
21 at its Paragraph 2, to BSC as the entity that had allegedly employed Mark Steppan, AIA to furnish the
22 work and services in connection with the Iliescus' Property.

23 78. Prior to said date, the Iliescus had no knowledge of the existence of or involvement of
24 BSC or of the identity of Mark Steppan, as an individual who would claim to have provided and/or
25 be entitled to legally lien for architectural services relative to the Property.

26 79. On or about December 8, 2006, in a desperate ploy to protect itself from a malpractice
27 claim arising from the recordation of the Mechanic's Lien by Mark Steppan, Third-Party Defendant
28 Hale Lane, including via Third-Party Defendant Howard, prepared an Indemnity Agreement

1 purportedly to protect the Iliescus from all claims and costs related to the Mechanic's Lien recorded
2 by the architects on the subject real Property.

3 80. Said Indemnity Agreement was signed by certain individuals related to the buyer and
4 other indemnitors on December 8, 2006, and submitted to the Iliescus on or about December 12, 2006.

5 81. The Iliescus have not to date collected a single dime from any of these indemnitors to
6 reimburse the Iliescus for the fees and costs they have incurred to date to protect their Property from
7 the Stepan lien.

8 82. Hale Lane did not advise the Iliescus that Hale Lane could now be sued by the Iliescus
9 for malpractice.

10 83. On or about December 26, 2006, Third-Party Defendant Hale Lane drafted a Second
11 Conflict of Interest Waiver letter and consent agreement, and submitted it to the Iliescus and BSC for
12 signature. This letter and consent agreement was executed by the Iliescus on the basis of bad advice
13 received from Third-Party Defendant Hale Lane to do so.

14 84. Third-Party Defendant Hale Lane never advised the Iliescus that the conflict of interest
15 that existed might not be waivable, nor did they advise the Iliescus of the problems that now existed
16 as set forth in the above paragraphs, or that the Iliescus now also had an additional potential conflict
17 with Hale Lane based on a potential malpractice claim against it, nor did the Third-Party Defendants'
18 conduct meet the requirements of Nevada law to ensure that the Iliescus' signature on this document
19 was provided with informed consent.

20 85. Third-Party Defendant Hale Lane promised in this letter and agreement, as an
21 inducement to the Iliescus' execution thereof, to resolve the mechanic's lien issue.

22 86. Third-Party Defendant Hale Lane thereafter breached this promise to resolve the
23 mechanic's lien issue and failed to act adequately or in good faith to attempt to resolve said claim.

24 87. In the meantime, after obtaining the Iliescus' signature on the second ill-advised conflict
25 waiver letter, the Third-Party Defendant Hale Lane embarked upon a course of advising the Iliescus
26 and preparing documents so as to allow the Purchase Agreement to close with BSC.

27 88. This course of conduct included inadequate attempts to deal with the Mechanic's Lien
28 of Mark Stepan, and improperly recommending to and obtaining the Iliescus' consent to the

1 assignment of the Land Purchase Agreement to BSC.

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

7 90. On or about February 14, 2007, Hale Lane, on behalf of the Iliescus, filed a short and
8 brief Application for Release of the Steppan Mechanic's Lien in Case No. CV07-00341 (the first of
9 the two consolidated cases in which this amended Third-Party Complaint is now filed).

10 91. Said Application was inadequate, as it failed to fully explore all of the arguments which
11 could potentially have been asserted at that time.

12 92. The Iliescus were horrified to learn, when said Application was argued at an oral
13 hearing on their behalf, that Hale Lane had assigned a lawyer to argue the same, Jerry Snyder, who was
14 adverse to the Iliescus on another then-pending matter.

15 93. This conflict and perceived hostility between the Iliescus and Snyder contributed, upon
16 information and belief, to the half-hearted nature of the effort on the Iliescus' behalf.

17 94. On or about May 4, 2007, Mark Steppan, AIA filed a Complaint to foreclose
18 mechanic's lien and for damages in Case No. CV07-01021, subsequently consolidated into Case No.
19 CY07-00341. These consolidated cases (the "Steppan Lien Litigation") are the same case in which
20 the aforesaid Judgments, subsequently reversed on appeal, was entered, and is the same case in
21 which this Amended Third-Party Complaint has been filed.

22 95. BSC filed for Chapter 11 bankruptcy protection on April 25, 2007, and Calvin Baty
23 filed for Bankruptcy protection on May 3, 2008.

24 96. As described above, Steppan's herein suit for foreclosure of the architect's lien resulted
25 in the Iliescus incurring hundreds of thousands of dollars in costs and fees to defend against the same;
26 a February 26, 2015 Judgment being entered enforcing that lien against the Iliescus' Property in an
27 amount exceeding \$4.5 million, and allowing foreclosure of this architect's lien upon the Iliescus' real
28 Property, which was ordered to be sold to satisfy the lien; a subsequent appeal of that Judgment, and,

1 finally, an appellate decision of the Nevada Supreme Court invalidating the Steppan lien, but only after
2 the Iliescus had lost the time value of the money which might have been enjoyed by them had they
3 been able to sell the property free of the lien at some time between 2006 and 2017, or had the Iliescus
4 been able to make some other use of the Property (as collateral for a loan, or a rental, etc.) during that
5 time period.

6 97. Third-Party Defendant Hale Lane and Third-Party Defendants Dennison, Howard, and
7 Snyder, committed several distinct acts of malpractice in representing the Third Party Plaintiffs, the
8 Iliescus, which include, without limitation, the various acts of malpractice already outlined herein,
9 above, certain of which might be summarized in non-exhaustive fashion as follows:

10 (i) Hale Lane's and Dennison's and Howard's ongoing failure to properly inform,
11 warn, or advise the Iliescus of various risks which they needed protection from, at all relevant times
12 in which Hale Lane represented the Iliescus, including (a) their failure to ever timely inform the
13 Iliescus that third-party architectural services were being performed for the Purchaser in order to obtain
14 the entitlements for the project, (b) their failure to ever warn the Iliescus that, unlike other states, many
15 of which only allow labor and materials directly incorporated into the work of improvement to form
16 the basis of a statutory mechanic's lien, Nevada allows mechanic's liens for architectural, engineering,
17 and design services, and (c) that it would therefore be essential for the Iliescus to take steps to attempt
18 to mitigate against this potential lien threat; and (d) their failure to ever advise the Iliescus as to any
19 such steps which could be taken or to ever discuss strategies for dealing with this threat with the
20 Iliescus;

21 (ii) Hale Lane's and Dennison's failures to properly inform, warn, or advise the
22 Iliescus as to lien risks and how to deal with the same, in conjunction with their work performed on
23 the Second Addendum;

24 (iii) The failure by Third-Party Defendant Dennison and Third-Party Defendant Hale
25 Lane, to properly prepare the Addendum No. 3, in a manner which protected the Iliescus from
26 mechanic's lien claims, by, for example, (a) ensuring, as part of the Addendum No. 3, that a
27 construction control, surety bond, or other procedures were in place to protect the Iliescus from a
28 possible lien claim for design work performed and not paid for before financing was obtained; (b)

1 including language in Paragraph 1 of that Addendum (which paragraph dealt with escrow extensions)
2 conditioning escrow extensions on unconditional progress payment lien releases being obtained from
3 any party who had performed any work with respect to the Property through the date of the extension,
4 including offsite design work; and/or (c) requiring the buyer to immediately inform the Iliescus prior
5 to executing any agreements or allowing any work to be performed which might lead to a mechanic's
6 lien claim being asserted for design work, and/or (d) requiring that the Iliescus be allowed to review
7 all contracts to be executed between the buyer and any such third-parties performing any such work
8 to verify that the terms of such contracts were fair and adequate to seller before they could be signed;

9 (iv) Hale Lane's and Howard's conduct in beginning to represent the would be buyer
10 of the Iliescu Property even though they already represented the sellers, on the same transaction,
11 without, apparently, having a sufficient conflict check system in place, or without properly using such
12 system, to avoid commencing such conflicting representation, and their acts and omissions and
13 misfeasance during this dual representation, and subsequent wrongful attempts to cover themselves
14 for this misconduct; which conflicting employment caused loss and harm to the Iliescus, and which
15 substantially increased the lien-claim risk to the Iliescus by subjecting the Iliescus to arguments that
16 Hale Lane's knowledge was imputable to the Iliescus, which arguments had to be countered, costing
17 fees and costs to the Iliescus, including through appeal;

18 (v) Having accepted this conflicting representation, Hale Lane's and its attorneys'
19 and Howard's inadequacies in its representation of the buyer entity in its negotiations with the
20 architect, which representation should have protected the buyer, and, therefore, the Iliescus as well,
21 from onerous flat-fee percentage based contract terms which were not conditioned on financing;

22 (vi) Hale Lane's and Howard's and Dennison's failures, in conjunction with
23 preparing and sending the first conflict waiver letter, to adequately inform, advise, and warn the
24 Iliescus about various lien claim threats they were facing at the time said letter was written, which
25 would have been provided had the Third-Party Defendants met the applicable standards and duties for
26 procuring informed consent to the conflict waiver requested in said letter;

27 (vii) Hale Lane's and Dennison's and Howard's failure, at the time of sending the
28 first conflict waiver letter, to provide any separate or independent communication at that time advising

1 as to such lien risks, based on information available to Hale Lane at that time, which had arisen due
2 to the very representation which prompted the sending of that letter;

3 (viii) Said Third-Party Defendants' failure to accurately disclose that their
4 representation of the buyer had already begun, in the first conflict waiver letter;

5 (ix) Said Third-Party Defendants' failure to advise the Iliescus to retain independent
6 counsel to review the first conflict waiver letter;

7 (x) Third-Party Defendants' Hale Lane and Dennison's and Howard's failure to ever
8 properly inform, warn, or advise the Iliescus regarding lien claims risks in conjunction with preparing,
9 sending and advising the Iliescus to sign the Fourth Addendum.

10 (xi) Third-Party Defendants' Hale Lane and Dennison's and Howard's failure to
11 assist the Iliescus to take full advantage of the possibilities created by the buyer's request for
12 Addendum No. 4 (which allowed the buyer an extension to close escrow) as demonstrated by their
13 failure to prepare that Addendum in such a manner as to ensure that, as a condition to that escrow
14 extension, any potential lien claims which had accrued prior thereto had been fully and unconditionally
15 released and paid off or disclaimed prior to the escrow being extended as a condition of such
16 extension;

17 (xii) Third Party Defendant Hale Lane's and Howard's and Dennison's providing
18 of inadequate advice in the second conflict waiver letter, and bad advice to sign the same, and, despite
19 promising therein to resolve the lien matter, their failure to take adequate steps to do so;

20 (xiii) Third-Party Defendant Hale Lane's and Howard's and Dennison's bad advice
21 in recommending to and obtaining the Iliescus' consent to the assignment of the Land Purchase
22 Agreement to BSC;

23 (xiv) Said Third-Party Defendants' preparation of an ineffective indemnity agreement
24 to supposedly protect the Iliescus;

25 (xv) Said Third-Party Defendants' failure to advise the Iliescus to get their own
26 counsel to advise them of their potential rights before both conflict waiver letters were provided and
27 once the Stepan mechanic's lien was asserted;

28 (xvi) Third-Party Defendants' Hale Lane's and Jerry Snyder's failure to adequately

1 represent the Iliescus in their filings and appearances in this litigation, and Hale Lane's assigning of
2 a litigation attorney to the Iliescus who was adverse and hostile to them, so as to prevent free and frank
3 communications as to Hale Lane's work in this litigation; and

4 (xvii) All other acts of malpractice described in, or arising out of the events described
5 in this Pleading, and in the other papers and pleadings and filings before this Court.

6 **FIRST CLAIM FOR RELIEF**

7 **(Professional Negligence and Legal Malpractice Against Third-Party Defendant Hale Lane
8 and Against Third-Party Defendants Dennison, Howard, and Snyder)**

9 98. The Iliescus reallege and incorporate by reference the above and foregoing Paragraphs
10 of this Amended Third-Party Complaint, as if fully set forth at length herein.

11 99. Third-Party Defendant Hale Lane, by and through its lawyers, lawyer employees and
12 lawyer partners, who are licensed attorneys and counselors at law in Nevada, and as the Law Firm
13 through which the individual lawyers practiced, and Third-Party Defendants Dennison, Howard, and
14 Snyder, represented the Iliescus as aforestated, and had an attorney-client relationship with the Iliescus,
15 as described above.

16 100. Based thereon, said Third-Party Defendants owed the Iliescus a duty to have and to
17 employ and apply that degree of learning and skill ordinarily possessed by reputable licensed attorneys
18 engaged in the type of transactions and litigation for which they were retained herein;

19 101. Said Third-Party Defendants owed a duty to reasonably and properly communicate with
20 the Iliescus, and to properly investigate any areas of potential concern and to inform, warn, and advise
21 and consult with the Iliescus as to any risks or threats or red flags faced by the Iliescus which would
22 prevent the Iliescus from reasonably achieving the results which they sought from said Third-Party
23 Defendants' representation.

24 102. The Third-Party Defendants had a duty to properly advise and counsel and protect the
25 Third-Party Plaintiffs, the Iliescus, and competently represent their interests and to utilize their best
26 judgment in the exercise of skill and the application of learning held by reputable licensed attorneys
27 in Northern Nevada engaged in the type of business and transactions and litigation described herein,
28 with respect to and during the representation provided by these Third-Party Defendants herein.

103. Said Third-Party Defendants breached the duties enumerated above, and failed to

1 perform these duties, as addressed herein, and breached the standard of care owing from said Third-
2 Party Defendants to the Iliescus herein, including by way of the breaches and omissions set forth
3 above.

4 104. Third-Party Defendants Hale Lane, including by and through its attorneys for whose
5 actions it is liable, and Third-Party Defendants Dennison, Howard, and Snyder, were professionally
6 negligent and committed legal malpractice in their representation of the Third-Party Plaintiffs as
7 alleged herein and as described above

8 105. The specific acts of malpractice described herein were committed by both Hale Lane
9 and by at least the following Hale Lane Lawyers, who are also named as Third-Party Defendants
10 herein: Craig Howard; Karen Dennison; and Jerry M. Snyder; and were also committed by other Hale
11 Lane lawyers for whose actions Hale Lane is responsible.

12 106. As a proximate result of the foregoing facts and the breaches of duties by Third-Party
13 Defendant Hale Lane and its lawyer employees and partners, including those also named as Third-
14 Party Defendants herein, Third-Party Plaintiffs have suffered damages and losses in excess of fifteen
15 thousand dollars (\$15,000) and are entitled to an award as and for their damages and losses incurred
16 herein, in excess of fifteen thousand dollars (\$15,000.00) and are entitled to be reimbursed and
17 indemnified from all such losses.

18 107. The losses and damages suffered by the Iliescus include without limitation all of the
19 losses resulting from the recordation, by Mark Steppan, of a Notice of Mechanic's Lien, including any
20 amended Notices, against the Third-Party Plaintiffs' Property, and the lawsuit to foreclose that Steppan
21 Mechanic's Lien Notice, as amended, and any lis pendens recorded in conjunction therewith, and any
22 prior judgment entered thereon which was ever recorded, and which was subsequently reversed, which
23 lien claims and recordings clouded the Iliescus' Property for over ten years, causing a loss during that
24 time period of the Iliescus' ability to sell, rent, borrow against, or otherwise economically exploit their
25 Property for over ten years; leading to losses based on the time value of money lost from any such lost
26 opportunities; as well as other damages such as the costs and attorneys' fees and expert fees and other
27 damages and losses incurred by the Iliescus to engage in litigation with Steppan and to defend their
28 property against the Steppan mechanic's lien foreclosure claims, in order to ultimately and finally free

1 their Property from the claimed Steppan lien, and all other losses resulting from the same including
2 any and all direct, indirect, compensatory, consequential, and special damages incurred herein.

3 108. Third-Party Plaintiffs have been required to retain the services of attorneys to prosecute
4 this action and, therefore, Third-Party Plaintiffs are entitled to recover reasonable attorney's fees and
5 costs incurred in these Third-Party Complaint proceedings (in addition to the costs and fees sought as
6 damages herein and incurred in the Steppan lien proceedings), pursuant to any rule, contract, or statute
7 allowing for the same, and also as special damages incurred herein, and are entitled to pre-judgment
8 and post-judgment interest thereon at the legally applicable rate.

9 **SECOND CLAIM FOR RELIEF**

10 **(Breach of Contract/Express or Implied
Contractual Indemnity Against Third-Party Defendant Hale Lane)**

11 109. The Iliescus reallege and incorporate by reference the above and foregoing Paragraphs
12 of this Amended Third-Party Complaint, as if fully set forth at length herein.

13 110. Third-Party Defendant Hale Lane promised, in writing, in its second conflict waiver
14 request letter, to resolve the Steppan Mechanic's Lien, which promise was detrimentally relied on by
15 the Iliescus and induced action as well as inaction on their part.

16 111. Third-Party Defendant Hale Lane breached this promise, and failed to take adequate
17 steps to attempt to resolve the mechanic's lien, and did not resolve the mechanic's lien.

18 112. Third-Party Defendant Hale Lane also agreed to adequately represent the Iliescus in
19 legal proceedings to set aside the Steppan lien, which efforts failed and were inadequate in breach of
20 these promises.

21 113. Taken together, and in the context of the surrounding circumstances, Third-Party
22 Defendant Hale Lane's promises and assurances rose to the level of and created contractual obligations
23 on the part of said Third-Party Defendant, to indemnify, protect against, or otherwise become
24 responsible to the Third-Party Plaintiffs, with respect to any and all losses they might incur, as a result
25 of any breach by Hale Lane of its promise to Third-Party Plaintiffs.

26 114. Hale Lane has breached and failed to meet their contractual obligations to the Third-
27 Party Plaintiffs.
28

115. As a result of Third-Party Defendant Hale Lane's acts and/or omissions, Third-Party Plaintiffs have been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), and are entitled to an award as and for their damages incurred herein.

116. 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 Consolidated and DeCal Reconfirmed)

117. The Iliescus have acknowledged, confirmed, incorporated and restated by reference above, without amendment, their previously filed third-party claims and Third Claim for Relief against Consolidated 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, and incorporated by reference herein, with damages in excess of Fifteen Thousand Dollars (\$15,000.00) now claimed therein.

FOURTH CLAIM FOR RELIEF

(Specific Performance of Contractual Obligations Against Consolidated and DeCal Reconfirmed)

118. The Iliescus have acknowledged, confirmed, incorporated and restated by reference above, without amendment, their previously filed third-party claims and Fourth Claim for Relief against Consolidated 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, and incorporated by reference herein, with damages in excess of Fifteen Thousand Dollars (\$15,000.00) now claimed therein.

WHEREFORE, the Iliescus pray for judgment against Third-Party Defendants, and each of them, jointly and severally, as follows:

- A. For damages against all of the attorney Third-Party Defendants, including Hale Lane; Dennison; Howard; and Snyder; jointly and severally, pursuant to theories of legal malpractice and professional negligence for any and all losses incurred by the Iliescus as a result thereof, including, without limitation, direct, indirect, compensatory, special

- 1 and consequential damages, in an amount in excess of \$15,000.00;
- 2 B. For damages against Third-Party Defendant Hale Lane including pursuant to theories
- 3 of breach of contract and in indemnity, for any and all losses incurred by the Iliescus
- 4 as a result thereof, including, without limitation, direct, indirect, compensatory, special
- 5 and consequential damages, in an amount in excess of \$15,000.00;
- 6 C. For damages against Consolidated and DeCal, jointly and severally, on theories of
- 7 breach of contract and in indemnity, and including, without limitation, direct, indirect,
- 8 compensatory, special and consequential damages, in an amount in excess of
- 9 \$15,000.00 to compensate for the losses, damages, and expenses incurred by the
- 10 Iliescus by reason of the foregoing allegations;
- 11 D. For a Judgment of this Court declaring and decreeing and requiring the Third-Party
- 12 Defendants, and each of them, jointly and severally, to reimburse and pay for the
- 13 Iliescus' costs and attorneys' fees incurred in the Steppan lien litigation portion of these
- 14 proceedings, in the amount thereof and based thereon;
- 15 E. For attorneys' fees and costs of this suit incurred in the prosecution of this third-party
- 16 complaint portion of this action, sought herein both under any rule, contractual
- 17 provision or statute allowing for the same, and also as special damages incurred herein;
- 18 F. For both pre-judgment and also for post-judgment interest, accruing at the highest rate
- 19 legally applicable herein, upon the Court's damages and other awards, from the time
- 20 incurred, and until paid in full; and
- 21 G. For such other and further relief as this Court deems just and proper.

22 DATED this _____ day of January, 2018.

23 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**

24
25 By _____

26 G. MARK ALBRIGHT, ESQ., #001394
27 D. CHRIS ALBRIGHT, ESQ., #004904
28 801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Tel: (702) 384-7111
Fax: (702) 384-0605
gma@albrightstoddard.com

dca@albrightstoddard.com
Attorneys for Applicants/Defendants

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 _____ day of January, 2018.

By _____
G. MARK ALBRIGHT, ESQ., #001394
D. CHRIS ALBRIGHT, ESQ., #004904
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106
Tel: (702) 384-7111
Fax: (702) 384-0605
gma@albrightstoddard.com
dca@albrightstoddard.com
Attorneys for Applicants/Defendants

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 ____ day of December, 2017, service was made by the ECF system to the electronic service list, a true and correct copy of the foregoing **[PROPOSED] RESTATED THIRD- PARTY COMPLAINT AGAINST CONSOLIDATED PACIFIC DEVELOPMENT, INC. AND DeCAL OREGON, INC., AND AMENDED THIRD- PARTY COMPLAINT AGAINST HALE LANE PEEK DENNISON AND HOWARD PROFESSIONAL CORPORATION, a Nevada professional corporation, dba HALE LANE; AND AGAINST THIRD PARTY DEFENDANTS KAREN DENNISON; R. CRAIG HOWARD; AND JERRY SNYDER; and JOHN DOES I thru XX**, to the following persons:

Michael D. Hoy, Esq.
HOY CHRISSINGER KIMMEL VALLAS, P.C.
50 West Liberty Street, Suite 840
Reno, Nevada 89501
Tel: (775) 786-8000
mhoy@nevadalaw.com
Attorney for Plaintiff Mark Steppan

____ Certified Mail
☒ 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
Tel: (775) 786-6868
drg@lge.net / tra@lge.net
Attorneys for Third-Party Defendant Hale Lane

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☒ Electronic Filing/Service
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gfw@gfwilsonlaw.com
Attorney for John Schleining

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An Employee of Albright, Stoddard, Warnick & Albright

EXHIBIT “2”

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Addendum No. 3

EXHIBIT NO. 5
11/12/09

This Addendum No. 3 ("Third Addendum") is made by and between Consolidated Pacific Development, Inc., a Nevada corporation, ("Buyer"), and John Ilicscu, Jr. and Sonnia Santee Ilicscu, individually and as Trustees of the John Ilicscu, Jr. and Sonnia Ilicscu 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 (1/2) 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 (1/2) 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 (1/2) 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:

43. 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 foregoing, Buyer shall be entitled to assign this Agreement to an entity in which Buyer owns no less than thirty-three and one-third percent (33.33%) of the ownership interests, without Seller's consent.

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

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

Seller:

John Ilescu Jr.
John Ilescu Jr.
Sonia Santee Ilescu
Sonia Santee Ilescu

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

Buyer:

Consolidated Pacific Development, Inc.,
a Nevada corporation

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

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Exhibit "A"
Preliminary Title Report

(See attached.)

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Richr K. Johnson

775-823-8848

P-10

FIRST CENTENNIAL TITLE COMPANY OF NEVADA

- ☐ 100 RIDGEMONT DR. SUITE 101 * RENO, NV 89509 (775) 453-4310
- ☐ 320 DANCOURT RANCH PARKWAY, SUITE 200 * RENO, NV 89521 (775) 630-2125
- ☐ 216 NORTH CARSON STREET, #100 * CARSON CITY, NV 89701 (775) 887-4169
- ☐ 5121 LAKEVIEW DR. SUITE 100 * RENO, NV 89501 (775) 453-4330
- ☐ 820 TAIHOE BLVD. SUITE 300 * P.O. BOX 1006, INCLINE VILLAGE, NV 89310 (775) 531-4200
- ☐ 1001 ROBERTA LANE * SPARKS, NV 89431 (775) 645-2121
- ☐ 3048 LAKEVIEW DR. SUITE 100 * RENO, NV 89509 (775) 453-4330
- ☐ 6190 MAZANNE AVENUE, SUITE 1 * RENO, NV 89521 (775) 746-2100

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 011-112-33, 06, 07 and 12,
Reno, NV

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

Escrow Officer: Maryann Infantino

Our No.: 145279-M1

The information contained in this report is through the date of
July 12, 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 Warranties of said Policy form.

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

Julie Moreno

by: _____
Julie Moreno, Title Officer

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HL
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4. 1. 1

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

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Rich: K. Johnson

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P. 12

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: \$575.00, 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: \$883.00, each, Unpaid
Assessors Parcel No.: 011-112-07
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.
4. General and Special Taxes for the fiscal year, 2005-2006, including any secured personal property taxes, a lien due and payable.
Total Amount: \$4,984.02
First Installment: \$1,276.02, Unpaid
Said installment becomes delinquent August 26, 2005.
The Second, Third and Fourth Installments: \$1,236.00, each, Unpaid
Assessors Parcel No.: 011-112-12
Note: The second, third and fourth installments will become delinquent if not paid on or before the first Monday in October, 2005, and January and March, 2006, respectively.

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Rich - K. Johnson

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SCHEDULE B
(Continued)

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

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Richa K. Johnson

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P. 14

EXHIBIT "A"
Legal Description

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

PARCEL 1:
Commencing at the intersection of the East line of Flint Street (if said Flint Street were
protracted Northerly) with the North line of Court Street, in the City of Reno, Nevada;
thence Easterly along the North line of Court Street 125 feet, more or less, to the Westerly
line of what is known as and called "The Gregory" property; thence at an angle of 89°58'
Northerly 148 feet to the Northwestern corner of the aforesaid "Gregory" property;
thence Easterly along the Northerly line of the said "Gregory" property a distance of 25
feet, said last point being the place of beginning; thence at an angle of 90°5' Easterly a
distance of 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 80°35', 140 feet to the place of beginning, comprising a parcel of land 75 by 140
feet.

APN: 011-112-06

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Richa K. Johnson

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. 188219, 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 Rehori and Charloita Rehori, his wife, to Charles Snyder, May 27, 1907, and by Antonio Rehori 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 640, Page 753, of Official Records.

APN: 011-112-17

The above legal descriptions was taken from previous Documental No. 2472304.

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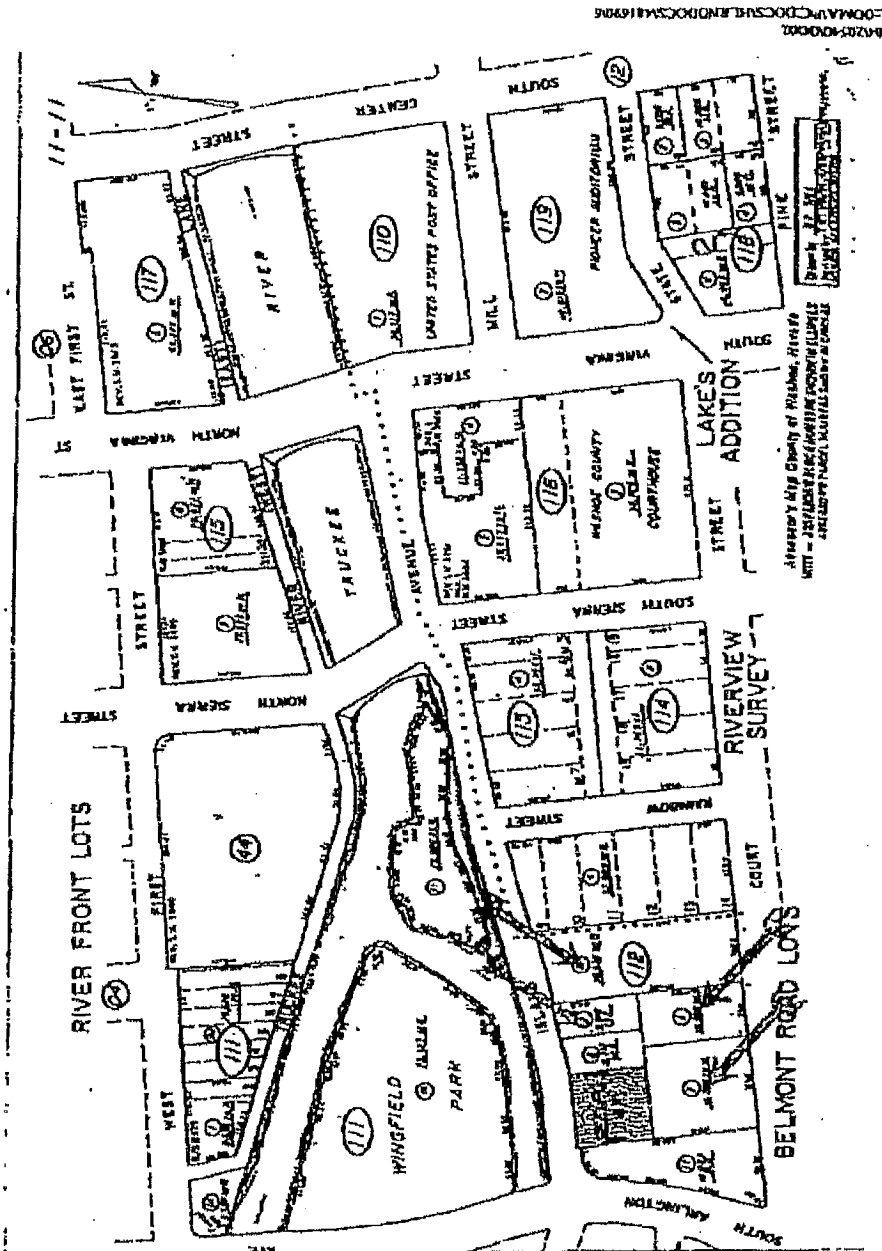
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Ric and K. Johnson

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EXHIBIT “3”

JA2132

Case No. CV07-00341 (CONSOLIDATED)

Dept. No. B6

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; JOHN ILIESCU,
individually; DOES I-V,
inclusive; and ROE
CORPORATIONS VI-X, inclusive,

Defendants.

AND RELATED ACTIONS

=====

DEPOSITION OF R. CRAIG HOWARD

Wednesday, February 10, 2010

Reno, Nevada

Reported By: MARIAN S. BROWN PAVA, CCR #169
CALIFORNIA CSR #4525

1 Dr. Iliescu and Dick Johnson and you were present?

2 A I don't recall. It could be, I don't recall.

3 Q Okay. Have you ever met Dr. Iliescu's wife?

4 A Yes.

5 Q Were those occasions when Dr. Iliescu was also
6 present?

7 A Yes.

8 Q Is it true that every time you met Dr. Iliescu,
9 his wife was also present?

10 A I believe that's true, to the best of my
11 recollection.

12 Q Have you ever met Sam Caniglia?
13 C-a-n-i-g-l-i-a.

14 A Yes.

15 Q When was the first time you met him?

16 A That would have been in November of '05.

17 Q What was the occasion for first meeting Sam
18 Caniglia?

19 A Sam called me and said that he was working on a
20 project, and he wanted to have Hale Lane do some technical
21 revisions to an AIA formal contract. And somewhere in
22 that process, we had a meeting.

23 And actually, I did that meeting. I introduced
24 myself; we talked real briefly; and I introduced him to
25 associate, Sarah Class. So I did not stay in the meeting,

1 I was more or less introducing her.

2 Q It was a meeting -- there was an event at the
3 Hale Lane office where Sam Caniglia came to the office,
4 you spoke to him briefly, introduced him to Sarah Class --

5 A Yes.

6 Q -- and then you left?

7 A Yes.

8 Q And your best recollection of that -- we'll get
9 to the bills in a minute -- is about what time?

10 A In November, mid November.

11 Q 2005?

12 A Yes.

13 Q Okay. What's your understanding of how it came
14 about that Sam Caniglia called or otherwise contacted you
15 and asked for legal services?

16 A He said he was working with Calvin Baty on a
17 project, and that's all he said. And he said he wanted --
18 he had a lot of familiarity with the AIA contracts, but he
19 had some modifications he wanted done. And he said -- he
20 was a humorous guy, and he says: I would like one of your
21 talented, you know, someone with skill sets, associates.
22 Translated, I think he was sensitive to billing rates.

23 Q You weren't offended that he didn't want you?

24 A No. I understand that type of description
25 perfectly. He had experience, he's sophisticated, and we

1 had somebody that could fit the bill.

2 Q Prior to this first contact that you just
3 described, had you ever spoken to Sam Caniglia before?

4 A I could have, but I don't recall. He -- most
5 of our discussions were about old memories and -- not with
6 me, but he had known the Hale of Hale Lane, which was
7 Edward Hale.

8 Q All right.

9 A And so, really, that was 90 percent of the
10 discussion when I introduced him to Sarah.

11 Q Did you gain an understanding that Sam Caniglia
12 had retained Hale Lane in prior years for other work?

13 A No. Well, he might -- he said he worked with
14 Edward, but he -- or he met Edward. It was really a met.
15 This is a description of a person, not anything to do with
16 legal work.

17 Q After that first meeting with Sam Caniglia, how
18 many other times had you met him?

19 A I believe he may have been there the day
20 before. We thought we were in a position to close the
21 purchase on the property.

22 Q And during the course of this deposition, we
23 might as well use a nomenclature for the property. Should
24 we call that "Court Street"?

25 A That's fine.

1 not opening files, but 14 different numbers, we just have
2 the billing -- that's the billing customer, and it's -- it
3 was BSC is my understanding.

4 Q When you say "customer," do you also mean
5 client?

6 A Yes.

7 Q All right. I'll use "client."

8 A I know, I just saw the word "customer," and it
9 came out "customers."

10 Q All right. As of November 2005 was BSC -- and
11 by that I mean BSC Financial, LLC, an Oregon limited
12 liability company -- a client of Hale Lane?

13 A They were when they opened this file. And we
14 saw that they entered into the -- they didn't enter into,
15 but BSC was the party that Sam Caniglia was asking for the
16 review of the AIA contract.

17 I would say that the day that the file opened,
18 we probably didn't know that, we didn't have -- but we
19 opened up under "DeCal" instead of "BSC."

20 But that goes back to my explanation before:
21 We didn't always run back and change it. But Calvin Baty
22 was sort of the main player on that -- not Calvin, but
23 DeCal.

24 Q Was DeCal Custom Homes, which appears at the
25 top of Bates 2505, a client of Hale Lane in November of

1 2005?

2 A Yes.

3 Q All right. Was DeCal, Inc., which also appears
4 after a slash mark at the top of 2505, also a client of
5 Hale Lane as of November 2005?

6 A If we've got the nomenclature right, yes.

7 Q Sitting here today, can you tell me the
8 difference between DeCal Custom Homes and DeCal, Inc.?

9 A No.

10 Q When you use the term "DeCal," to which entity
11 or entities do you refer?

12 A Do you mean as between DeCal Custom Homes and
13 DeCal, Inc.?

14 Q Yes.

15 A I didn't know -- at the time we would start
16 something, we just used both of those, until we found --
17 in this one, it turned out to be BSC.

18 Q When you say "we," do you mean Hale Lane?

19 A Yes.

20 Q In this deposition, when you or I use the term
21 "DeCal," should we understand that we're referring to
22 DeCal Custom Homes and DeCal, Inc.?

23 A That would be good with me.

24 Q All right. And that's because that has been
25 your understanding?

1 with Calvin Baty?

2 A Not synonymous, no. That he was the major
3 developer in DeCal. I didn't know anything more. He was
4 a major builder up in Oregon, but I didn't know any of the
5 specifics. But it's the first name we had, so we -- we
6 often open it up under that, the one we were first
7 introduced to. And when these single-purpose entities
8 came up, we understood the relationship.

9 Q The person that is the human being that Hale
10 Lane took direction from to do legal work regarding DeCal,
11 was Calvin Baty?

12 A That's correct.

13 Q We're looking at Exhibit 14, Bates 2505, and
14 the first time entry, sir, is November 9, 2005, and it
15 reflects, "Meeting with Attorney R. Craig Howard to
16 discuss research/AIA contract issues." Do you see that?

17 A Yes.

18 Q In your meeting with Sarah Class that's
19 reflected on the time sheet on November 9th, did you relay
20 to Sarah Class, the request for services made earlier to
21 you by Sam Caniglia?

22 A I did.

23 Q Was this also the date where you passed off Sam
24 Caniglia's assignment to Sarah?

25 A Yes, that is.

1 Q Did Sam Caniglia meet with Sarah Class and you
2 that date?

3 A I don't know if it was that date or a later
4 date, which is reflected -- it's been some time ago --
5 reflected later on in a separate invoice.

6 Q And we'll get to that.

7 Was it your understanding, then, that when Sam
8 Caniglia came and asked you to perform legal services
9 regarding an AIA contract, he did that on behalf of Calvin
10 Baty?

11 A On behalf of BSC. He didn't make it clear, but
12 when we started the process, that's the entity that he was
13 talking about, and he was -- he was not a member of DeCal,
14 Sam Caniglia. He was a member of BSC through Consolidated
15 Pacific.

16 Q Did you understand, then, that Sam Caniglia was
17 authorized to have Hale Lane perform legal services to be
18 billed to DeCal?

19 A That's my understanding.

20 Q All right. And is that what he told you in
21 November 2005?

22 A It must have been.

23 Q All right. And when you say "must have been,"
24 do I understand that to mean you have no present
25 recollection of that?

1 You told me you didn't know that Karen Dennison
2 was working for Dr. Iliescu in October of 2005.

3 A That's correct.

4 Q When did you find out that Karen Dennison, in
5 fact, in October 2005, was working for Dr. Iliescu?

6 A I don't recall specifically, because there was
7 no event or disclosures, so I don't recall. I would say
8 November/December of that year.

9 MR. GRUNDY: I'm sorry, you said
10 November/December of what?

11 THE WITNESS: Of that year, 2005.

12 MR. GRUNDY: 2005.

13 BY MR. WILSON:

14 Q And as best you recall, sir, tell us how it
15 came about that you came to understand that Karen Dennison
16 was working for Dr. Iliescu at that time.

17 A I -- I don't recall the specifics, but I think
18 it was probably some discussion in -- in the office that
19 I -- that was made, that I heard that. It was informal,
20 so I didn't -- don't recall.

21 Q Do you remember anything that was said among
22 Karen Dennison, Dr. Iliescu and you, at a time when you
23 were introduced to Dr. Iliescu by Karen Dennison at the
24 Hale Lane office?

25 A Not at all, other than pleasantries.

1 ever talk to Sarah Class about the fact that Karen
2 Dennison of Hale Lane was representing Dr. Iliescu on
3 Court Street?

4 A No, none that I can recall.

5 Q The same question as to Doug Flowers.

6 A I think I did discuss it with Doug, yes.

7 Q And tell me what you said to him and what he
8 said to you on that subject.

9 A I think the subject was that it came to our
10 attention that Karen was representing Dr. Iliescu and his
11 wife, and that was on the same property that -- that the
12 BSC contract was about, the AIA. And I think that was
13 just the revelation of that, yes.

14 MR. MOLLATH: Excuse me. What was the date of
15 that?

16 MR. WILSON: The question is October/
17 November/December 2005.

18 MR. MOLLATH: Okay.

19 THE WITNESS: And I was responding to like
20 December '05.

21 BY MR. WILSON:

22 Q That's all right. The follow-up question is
23 going to be: When within that time frame do you best
24 recall you had that discussion with Doug Flowers?

25 A I believe that was in December of '05, to the

1 best of my recollection.

2 Q Between Doug Flowers and you, who brought the
3 matter up? That is, did you discover this matter and tell
4 Doug, or vice versa?

5 A I do not recall.

6 Q And what, if anything, did you do when you had
7 that discussion with Doug and found out that Karen
8 Dennison was representing Dr. Iliescu on Court Street?

9 A Discussed -- excuse me.

10 Q Go ahead.

11 A Discussed it with Karen Dennison.

12 Q What did Karen Dennison say to you and what did
13 you say to her on that subject?

14 A I don't recall the particulars. That's -- I
15 just don't recall the particulars.

16 Q Do you recall anything about that discussion?

17 A Just what I had said before, that sort of a
18 revelation that we were on the same property. And I think
19 we also discussed the future work, if we were going to do
20 something, that we get a conflict letter for any
21 entitlement work, if we were going to do that.

22 MR. WILSON: Can you read that back?

23 (Answer read.)

24 BY MR. WILSON:

25 Q Prior to your discussion with Karen Dennison

1 A Yes.

2 Q Does Hale Lane have a conflicts manual, memo,
3 or other written document that recites when a conflict
4 letter needs to be prepared?

5 A No, just the Nevada Rules of Professional
6 Conduct.

7 Q Has it ever had such a memo or internal
8 document?

9 A I don't believe so. None that I can recall.

10 Q Would you look at Exhibit 20, sir. That's the
11 next tab.

12 MR. LUKAS: 21?

13 MR. WILSON: 20.

14 MR. LUKAS: 20.

15 BY MR. WILSON:

16 Q I can't reach anymore, so I am going to have
17 you turn it.

18 Looking at Exhibit 20, sir, this is a letter
19 dated December 14, 2005, Bates HL 83 through 87. Have you
20 ever seen the original or a copy of this before?

21 A Yes.

22 Q When was the first time you saw it?

23 A I don't recall the first time I saw it.

24 Q Before its date, December 14, 2005, did you
25 have a discussion with Sarah Class or Karen Dennison or

1 anyone at Hale Lane about the sending of such a letter?

2 A That was what I was responding to in a prior
3 question, that we had a general informal conversation --

4 Q All right.

5 A -- with Karen Dennison and Craig Howard, and I
6 believe Doug Flowers.

7 Q All right. Other than the informal
8 conversation that you discussed or testified to, you had
9 no other discussion with Karen Dennison or Sarah Class
10 about the subject matter of the December 14, 2005 letter?
11 In other words, you weren't given prior notice, "We're
12 doing a conflict letter, it's going out," et cetera?

13 A That's correct.

14 Q All right. Did they copy you on the letter?

15 A I don't recall.

16 Q All right. Is it true that the first time you
17 saw it was in preparation for your deposition?

18 A I don't recall that. I think I saw it earlier,
19 but I don't recall.

20 Q Sir, looking at Exhibit 20, the second
21 paragraph on the first page, it recites in part: "We will
22 represent Calvin Baty, an individual, and Consolidated
23 Pacific Development, Inc., a Nevada corporation." Do you
24 see that?

25 A Yes.

EXHIBIT “4”

JA2146

HALE LANE

ATTORNEYS AT LAW

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

FILE / COPY

MEMORANDUM

RECEIVED
NOV 30 2005
FISHER FRIEDMAN ASSOCIATES

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

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

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

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

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

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

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

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