

IN THE SUPREME COURT OF THE STATE OF NEVADA

TKNR, INC., a California corporation,	Supreme Court Case No. 85620
Appellant,	District Court Case No. A-18-785917-C
vs.	
WLAB INVESTMENT, LLC,	
Respondent.	

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Electronically Filed  
Aug 03 2023 05:18 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court  
District Court Case No. A-18-785917-C  
Adriana Escobar, District Judge

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**RESPONDENT APPENDIX – Volume 1 of 10**

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## CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I electronically filed the foregoing **RESPONDENT APPENDIX** with the Clerk of the Court for the Supreme Court of the State of Nevada by using the electronic filing system to be delivered to the following registered user:

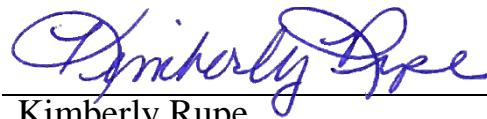
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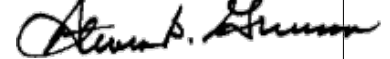
Settlement Judge

DATED August 3, 2023



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**IN THE EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

W L A B INVESTMENT, LLC,  
  
Plaintiff,  
  
vs.

CASE NO.: A-18-785917-C  
DEPT. NO.: XII

**DEFENDANTS' MOTION FOR  
ATTORNEY'S FEES**

TKNR INC., a California Corporation, and  
CHI ON WONG aka CHI KUEN WONG, an  
individual, and KENNY ZHONG LIN, aka  
KEN ZHONG LIN aka KENNETH ZHONG  
LIN aka WHONG K. LIN aka CHONG  
KENNY LIN aka ZHONG LIN, an  
individual, and LIWE HELEN CHEN aka  
HELEN CHEN, an individual and YAN QIU  
ZHANG, an individual, and INVESTPRO  
LLC dba INVESTPRO REALTY, a Nevada  
Limited Liability Company, and MAN  
CHAU CHENG, an individual, and JOYCE  
A. NICKRANDT, an individual, and  
INVESTPRO INVESTMENTS LLC, a  
Nevada Limited Liability Company, and  
INVESTPRO MANAGER LLC, a Nevada  
Limited Liability Company and JOYCE A.  
NICKRANDT, an individual and Does 1  
through 15 and Roe Corporation I - XXX,

Date of Hearing: September 12, 2022  
Time of Hearing: 9:00 a.m.

Defendants.

Defendants TKNR INC. ("TKNR"), CHI ON WONG ("WONG"), KENNY ZHONG  
LIN ("LIN"), LIWE HELEN CHEN ("CHEN"), YAN QIU ZHANG ("ZHANG"), INVESTPRO  
LLC ("INVESTPRO"), MAN CHAU CHENG ("CHENG"), JOYCE A. NICKRANDT  
("NICKRANDT"), INVESTPRO INVESTMENTS, LLC ("Investments"), and INVESTPRO  
MANAGER LLC (hereinafter collectively referred to as the "Defendants"), by and through their  
counsel of record, MICHAEL B. LEE, P.C., hereby files this Motion for Attorneys' Fees  
("Motion"). This Motion is made on the following Memorandum of Points and Authorities, any



1 affidavits, declarations or exhibits attached hereto, and any oral arguments accepted at the time  
2 of the hearing of this matter. Plaintiff W L A B INVESTMENT, LLC is hereinafter referred to  
3 as "Plaintiff" or "WLAB".

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 **A. Overview**

7 Defendants seek an award of attorney's fees and costs pursuant to the entry of summary  
8 judgment and the Court's affirmation of this Honorable Court's order granting summary  
9 judgment in favor of Defendants on all claims brought by Plaintiff and the counterclaims brought  
10 by Defendants. Although the portion of the Judgment awarding attorney's fees to Defendant was  
11 reversed, it was done so based on a procedural defect not caused by Defendants. Additionally,  
12 Defendants believe that attorneys' fees under Rule 11 are appropriate and can be awarded  
13 following an order to show cause, which will provide Plaintiff sufficient notice and ability to  
14 respond before Rule 11 sanctions are imposed.

15 Alternatively, Defendants believe that they are entitled to attorneys' fees and costs  
16 pursuant to Nevada Revised Statutes ("NRS") §§ 18.010 and 18.020; NRS § 17.117 and Nevada  
17 Rule of Civil Procedure ("NRCPP") § 68. Here, Defendants offered to allow judgment to be taken  
18 against them as provided in NRS § 17.117 and NRCPP §68(b) in the amount of Five Thousand  
19 Dollars (\$5,000), which included a detailed recitation of the facts and circumstances illustrating  
20 the reasonableness of the offer. However, Plaintiff rejected the offer and proceeded to litigate  
21 the case, forcing Defendants to incur fees and costs defending against Plaintiff's claims.  
22 Defendants ultimately prevailed in this litigation and summary judgment was granted in their  
23 favor on all claims brought by Plaintiff. As such, Defendants are entitled to attorneys' fees  
24 pursuant to the rejected offer and as the prevailing party pursuant to NRS § 18.010.

25 Finally, Defendants believe they are entitled to attorney's fees and costs pursuant to their  
26 counterclaim for abuse of process. Here, Plaintiff had express knowledge that there was no  
27 legitimate legal or factual basis for the claims alleged against Defendants. However, Plaintiff  
28 continued the action to harass Defendants, illustrating the basis for an award of fees and costs.

1           **B.     Statement of Relevant Facts and Procedure**

2           On December 11, 2018, Plaintiff initiated this action by filing the complaint against  
3 Defendants TKNR, Wong, Lin, Investpro, and Nickrandt for: (1) Recovery under NRS Chapter  
4 113 [Defendants TKNR and WONG]; (2) Constructive Fraud [Defendants Investpro and  
5 Nickrandt]; (3) Common Law Fraud [Defendants Investpro, Nickrandt, and Lin]; and (4)  
6 Fraudulent Inducement [All Defendants].

7           On March 4, 2019, Plaintiff filed the Amended Complaint to include all Defendants  
8 identified in the caption of this pleading, also adding causes of action for: (5) Fraudulent  
9 Concealment [Defendants TKNR, Wong, Investpro, Investpro Manager LLC, and Lin]; (6)  
10 Breach Of Fiduciary Duty [Defendants Investpro and Nickrandt and Chen]; (7) RICO  
11 [Defendants Lin, Cheng, Investpro Manager LLC and Investpro Investments I LLC]; (8)  
12 Damages Under NRS 645.257(1) [Defendant Chen, Lin, Investpro and Nickrandt]; (9) Failure  
13 To Supervise, Inadequate training and Education [Defendant Investpro, Zhang, and Nickrandt];  
14 (10) Fraudulent Conveyance [TKNR]; (11) Fraudulent Conveyance [Investpro Investments I  
15 LLC]; (12) Civil Conspiracy [As To Defendant Man Chau Cheng, Lin, Investpro, Wong, TKNR,  
16 Investpro Investments I LLC and Investpro Manager LLC]; (13) Breach Of Contract [As To  
17 Defendant Investpro]; and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing [As  
18 To Defendant Investpro].

19           On November 19, 2020, Defendants served an Offer of Judgment on Plaintiff that offered  
20 to allow judgment to be taken against Defendants in the amount of \$5,000. See Offer of  
21 Judgment attached hereto as **Exhibit A** [0001-0006]. Notably, the Offer of Judgment included a  
22 detailed recitation of the relevant facts and circumstances illustrating the reasonableness of the  
23 offer.

24           On November 23, 2020, Plaintiff filed its second amended complaint (“SAC”) to include  
25 an additional cause of action for: (15) Abuse of Process [All Defendants]. Notably, the  
26 amendment seemed not to be based in law or fact, but as retaliation following Defendants  
27 inclusion of the counterclaim for abuse of process against Plaintiff. In large part, the SAC  
28 completely failed to acknowledge the waivers by Ms. Zhu related to the inspection of the

1 Property and/or the open and obvious nature of the alleged defects in the then 63-year-old  
2 Property at the time of purchase.

3 On December 15, 2020, Defendants filed their Motion for Summary Judgment, or in the  
4 Alternative, Partial Summary Judgment ("MSJ"), which was originally set for hearing on  
5 January 28, 2021, but was eventually continued to March 11, 2021. Plaintiff filed its Opposition  
6 to Defendant's Motion for Summary Judgment Countermotion for Continuance Based on NRC  
7 56(f) and Countermotion for Imposition of Monetary Sanctions ("Opposition"). On January 21,  
8 2021, Defendants filed a Reply to the Opposition ("Reply") and, on January 29, 2021, provided a  
9 Supplement to the MSJ ("Supplement") on January 29, 2021.

10 On March 11, 2021, a hearing was held on Defendant's MSJ and the Opposition. See  
11 Minute Order attached hereto as **Exhibit B** [0007-0009]. This Honorable Court determined that  
12 summary judgment was appropriate and granted the MSJ "as to all claims and attorney's fees[.]"  
13 *Id.* at 0009; see also Amended Order Granting Defendants' MSJ ("Amended Order") attached as  
14 **Exhibit C** [0010-0053]. Notably, the original order that was proposed filed on March 30, 2021,  
15 as proposed by Defendants, included a provision related to the filing of an Order to Show Cause  
16 pursuant to NRC §11(c)(3). See March 30, 2021, Order attached as **Exhibit D** [0054-0100].  
17 However, that language was removed unilaterally by Honorable Judge Escobar, who then filed  
18 the Amended Order.

19 On April 6, 2021, Defendants filed an Affidavit in Support of Attorneys' Fees requested  
20 in the MSJ and granted by the March 30, 2021, Order.

21 On April 7, 2021, Honorable Judge Escobar filed the Amended Order, which removed  
22 the order to show cause language that was included in the March 30, 2021, Order pursuant to  
23 NRC 11(c)(3).

24 On March 16, 2021, Plaintiff filed a Motion to Reconsider the Amended Order.  
25 Defendants filed an Opposition to the Motion for Reconsideration on April 30, 2021. Plaintiff  
26 filed its reply to that opposition on May 11, 2021, and the hearing was held on May 17, 2021, in  
27 chambers. See May 17, 2021, Minute Order attached as **Exhibit E** [0101-0104]; see also Order  
28 Granting, in part, and Denying, in part, Plaintiff's Motion to Reconsider and Judgment against

1 Plaintiff and Previous Counsel (“Judgment”) as **Exhibit F** [0105-0115]. Notice of Entry of the  
2 Judgment was entered on May 25, 2022.

3 Notably, Plaintiff never opposed the specific amounts requested in the Affidavit in  
4 Support of Attorneys’ Fees filed by Defendants on April 6, 2021. *Id.* at 0110, ¶ 14.

5 On April 26, 2021, Plaintiff filed its first Notice of Appeal, appealing the Amended Order  
6 granting summary judgment in favor of Defendants and the awarding attorneys’ fees.

7 On June 8, 2021, Plaintiff filed its second Notice of Appeal, appealing the Judgment  
8 related to the Amended Order and Plaintiff’s Affidavit in support of Attorneys’ Fees.

9 On December 21, 2021, following the Court’s approval of the Petition for Writ of  
10 Mandamus, this Honorable Court entered an Order indicating that the Judgment is amended to  
11 vacate the portion of the Judgment that imposed sanctions against Plaintiff’s former counsel,  
12 Benjamin Childs, Esq. See Order Granting Defendants’ Motion for Reconsideration Vacating the  
13 Court’s Order Entered 12/1/21; and Vacating a Portion of the 5/25/21 Order (“Order Amending  
14 Judgment”) attached hereto as **Exhibit G** [0116-0124]. Notably, there were some other  
15 procedural hurdles leading to the Order Amending the Judgment, but the facts and circumstances  
16 related thereto are not relevant to this Motion.

17 On May 12, 2022, the Court entered its decision affirming this Honorable Court’s  
18 decision to grant summary judgment in favor of Defendants on all of Plaintiff’s claims and  
19 Defendants’ counterclaims, but reversing the Judgment based on procedural concerns. See Order  
20 Affirming and Reversing attached hereto as **Exhibit H** [0125-0133]. The Court concluded that,  
21 “the district court correctly found that no genuine issue of material fact existed to justify denying  
22 summary judgment.” *Id.* at 0132. However, the Court did note that the district court-imposed  
23 sanctions without first giving the offending party “notice and reasonable opportunity to  
24 respond.” *Id.* at 0133, citing Nev. R. Civ. Pro. § 11(c)(1). As such, the Court reversed the award  
25 of Defendants’ attorney’s fees. *Id.*

26 On June 14, 2022, Plaintiff petitioned the Court for rehearing of the Appeal, which was  
27 subsequently denied by the Court on June 29, 2022. See Order Denying Rehearing attached  
28 hereto as **Exhibit I** [0134-0136].

1 On July 26, 2022, the Nevada Supreme Court Clerk’s Certificate/Remittitur Judgment  
2 was filed with this Honorable Court.

3 **II. DISCUSSION**

4 The following Discussion is organized into six (6) separate parts in support of the  
5 Motion’s request for attorneys’ fees and costs. Part A sets forth the case law and statutes  
6 allowing for recovery of attorneys’ fees and costs. Part B illustrates that Rule 11 sanctions are  
7 appropriate and can be awarded following an order to show cause, which will allow Plaintiff  
8 sufficient notice and opportunity to be heard on the matter. Part C provides the legal and factual  
9 basis for an award of attorneys’ fees and costs pursuant to NRS §§ 18.010 and 18.020. Part D  
10 establishes that the offer of judgment provided by Defendants was reasonable in both its timing  
11 and amount to allow for recovery of attorneys’ fees and costs pursuant to NRS § 17.117 and  
12 NRCP § 68. Part E requests fees and costs related to Defendants prevailing on the competing  
13 claims for abuse of process alleged by the parties. Finally, Part F provides the affidavit of  
14 counsel in support of the Motion’s request for attorneys’ fees.

15 **A. Legal Standards**

16 1. Motion for Attorneys’ Fees

17 A court may not award fees unless authorized by statute, rule, or contract. *Frank*  
18 *Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1219, 197 P.3d 1051, 1059  
19 (2008). When awarding fees in a civil pursuant to a statute or rule, the court must consider  
20 various factors, including: the quality of the advocate; the character and difficulty of the work  
21 performed; the work actually performed by the attorney; and the result obtained. *Miller v.*  
22 *Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005) (citing *Brunzell v. Golden Gate Nat.*  
23 *Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969)).

24 2. Rule 11

25 Pursuant to Nevada Rule of Civil Procedure 11(c), the court may order a party to show  
26 cause why it has not violated the mandates of Rule 11. Rule 11 prevents a party from bringing a  
27 lawsuit for an improper purpose, which includes: (1) harassment, causing unnecessary delay, or  
28 needless increasing the cost of litigation; or (2) making frivolous claims. NEV. R. CIV. PRO.

1 11(b)(1)-(2). Rule 11 sanctions should be imposed for frivolous actions. *Marshall v. District*  
2 *Court*, 108 Nev. 459, 465, 836 P.2d 47, 52.

3 A frivolous claim is one that is “both baseless and made without a reasonable and  
4 competent inquiry.” *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (quoting  
5 *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir.1990); *Golden Eagle*  
6 *Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537 (9th Cir.1986)). A determination of  
7 whether a claim is frivolous involves a two-pronged analysis: (1) the court must determine  
8 whether the pleading is “well grounded in fact and is warranted by existing law or a good faith  
9 argument for the extension, modification or reversal of existing law”; and (2) whether the  
10 attorney made a reasonable and competent inquiry. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564.  
11 A sanction imposed for violation of Rule 11 shall be limited to what is sufficient to deter  
12 repetition of such conduct or comparable conduct by others similarly situated. *Id.* at 11(c)(2).

13 “A claim is groundless if ‘the allegations in the complaint . . . are not supported by any  
14 credible evidence at trial.’” *Barozzi v. Benna*, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996)  
15 (quoting *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo.1984)).

16 3. NRS §§ 18.010 and 18.020

17 “[T]he court may make an allowance of attorney’s fees to a prevailing party[, w]hen the  
18 prevailing party has not recovered more than \$20,000.” See NEV. REV. STAT. 18.010(2)(a).

19 Also, a court may award attorneys’ fees to a prevailing party when it finds that the claim  
20 was brought or maintained without reasonable ground or to harass the prevailing party. See NEV.  
21 REV. STAT. § 18.010(2)(b); see also *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800  
22 (Nev. 2009). “The court shall liberally construe the provisions of this paragraph in favor of  
23 awarding attorney's fees in all appropriate situations.” *Id.* The Nevada Legislature explained  
24 that:

25 [i]t is the intent of the Legislature that the court award attorney's  
26 fees pursuant to this paragraph and impose sanctions pursuant to  
27 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
28 situations to punish for and deter frivolous or vexatious claims and  
defenses because such claims and defenses overburden limited  
judicial resources, hinder the timely resolution of meritorious  
claims and increase the costs of engaging in business and

providing professional services to the public.

*Id.*

“Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered [...] in an action for the recovery of money damages, where the plaintiff seeks to recover more than \$2,500.” See NEV. REV. STAT. 18.020(3).

“[T]he term ‘prevailing party’ is broadly construed so as to encompass plaintiffs, counterclaimants, and defendants.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (citing *Smith v. Crown Financial Services*, 111 Nev. 277, 284, 890 P.2d 769, 773 (1995)). “To be a prevailing party, a party need not succeed on every issue.” *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), reh’g denied (May 29, 2015), reconsideration en banc denied (July 6, 2015) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (observing that “a plaintiff [can be] deemed ‘prevailing’ even though he succeeded on only some of his claims for relief”)).

#### 4. Offer of Judgment

“At any time more than 10 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions.” Nev. R. Civ. Pro 68(a). “If the offer is not accepted within 10 days after service, it shall be considered rejected by the offeree and deemed withdrawn by the offeror.” *Id.* at § 68(e). “If the offeree rejects an offer and fails to obtain a more favorable judgment,”

(2) “the offeree shall pay the offeror’s post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney’s fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror’s attorney is collecting a contingent fee, the amount of any attorney’s fees awarded to the party for whom the offer is made must be deducted from that contingent fee.”

*Id.* at § 68(f)(2)

In exercising its discretion to award attorneys’ fees under NRCP 68, the Court must evaluate the following factors: (1) whether the plaintiff’s claim was brought in good faith; (2) whether the offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the offeree’s decision to reject the offer and proceed to trial was grossly

unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount. *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001) (citing *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)).

**B. Attorneys' Fees and Costs Pursuant to Rule 11**

At this point it cannot be disputed that this action was frivolously maintained by Plaintiff. This Honorable Court made that fact as clear as possible when granting Defendants' MSJ. See Ex. B at 0009 ("motion granted as to all claims and attorney's fees"); see also Ex. C at 0050, ¶ 77 ("The overwhelming facts and law illustrate that Plaintiff's claim is frivolous. The findings of fact are incorporated by reference"). Not only did Plaintiff intentionally omit the waiver of inspections from the pleadings, they also egregiously claimed damages in excess of \$16.25 Million related to the Property. See Transcript from MSJ Proceedings attached hereto as **Exhibit J** [0137-0176] at 0166, lines 2-6 ("I don't see in good faith how this can be brought – this can be brought by the plaintiffs in good faith when they've waived everything. And in addition, they refused to conduct an inspection knowing that they were purchasing a 63-year-old property. I mean it's just absurd."). In fact, this Honorable Court advised that, "this is one of the clearest cut cases [for summary judgment] I've seen." *Id.* at 0167, line 5. Further determining that, "when you're looking at the residential purchase agreement and signed disclosure, it's clear in my view that this is a baseless lawsuit, and I will grant attorneys' fees under NRCP 11." *Id.* at 0167, lines 11-14.

Additionally, Plaintiff challenged the Amended Order granting summary judgment and Rule 11 sanctions by filing a Motion to Reconsider; however, that motion was unsuccessful. See Exs. E-F. In denying Plaintiff's motion to reconsider, in part, this Honorable Court determined that, "Plaintiff has not demonstrated that this Court's decision to grant Rule 11 sanctions was clearly erroneous." See Ex. E at 0103; see also Ex. F at 0110, ¶ 13.

Moreover, the Court was very clear in its Decision "that the district court correctly found that no genuine issue of material fact existed to justify denying summary judgment." See Ex. H at 0132. As such, summary judgment was affirmed. *Id.* Notably, although the portion of the Judgment awarding attorneys' fees pursuant to Rule 11 was reversed, the reversal was based



1 solely on a procedural defect. *Id.* at 0132-0133. As such, the fact that Plaintiff frivolously  
2 maintained this action has been unequivocally established, which should result in the imposition  
3 of monetary sanctions against Plaintiff pursuant to the purpose and intent behind Rule 11. See  
4 NEV. REV. STAT. § 18.010(2)(b) (“It is the intent of the Legislature that the court award  
5 attorney’s fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the  
6 Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or  
7 vexatious claims[.]”).

8 Plaintiff should not escape sanctions because of a procedural defect not caused by  
9 Defendants. See Ex. H at 0132, fn. 6. The overwhelming facts and law also show that Plaintiff  
10 brought or maintained this claim without reasonable grounds, which justifies an award of  
11 attorneys’ fees. *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009).  
12 Unfortunately, the order to show cause language was removed in the Amended Order, which  
13 created the issue that Plaintiff was not given “notice and reasonable opportunity to respond”  
14 under Rule 11. See NRCP § 11(c)(1). This Honorable Court has the authority to unilaterally set  
15 an order to show cause why the conduct described in the Amended Order has not violated Rule  
16 11(b), which would alleviate the concerns raised by the Court in reversing the attorney’s fees  
17 portion of the Judgment. *Id.* at § 11(c)(3); see also Ex. H. Additionally, an order to show cause  
18 will further the intent of Rule 11, which is to punish and deter frivolous claims. For these  
19 reasons, this Honorable Court should exercise its authority under Rule 11(c)(3) and issue an  
20 order to show cause.

21 **C. Attorneys’ Fees and Costs Pursuant to NRS §§ 18.010 and 18.020**

22 Here, Defendants are also entitled to recovery of attorneys’ fees and costs as the  
23 prevailing party in this litigation. Similar to the preceding section, it cannot be disputed that  
24 Defendants are the prevailing party in this litigation. See Exs. B-I. Defendants were granted  
25 summary judgment on each one of the claims brought by Plaintiff, as well as their own  
26 counterclaim for abuse of process. *Id.* Notably, Defendants, as the prevailing party, has not  
27 recovered more than \$20,000, which triggers the attorneys’ fees provision of NRS 18.010(2)(a).  
28 Moreover, because Plaintiff sought recovery over \$2,500, Defendants are also entitled to

1 reimbursement of costs pursuant to NRS 18.020(3).

2 Alternatively, this Honorable Court may award Defendants attorneys' fee under NRS §  
3 18.010(2)(b) for the frivolous nature of the action brought by Plaintiff. Again, the overwhelming  
4 facts and law establish that Plaintiffs brought and maintained this action frivolously, for which  
5 they should be sanctioned. This statute does not have the same order to show cause requirement  
6 as Rule 11 and allows for imposition of attorneys' fees as a sanction "when the court finds that  
7 the claim [...] was brought or maintained without reasonable ground or to harass the prevailing  
8 party." Here, this Honorable Court has already found that the action was frivolously maintained,  
9 allowing for the award of attorneys' fees to Defendants as the prevailing party. Again, the  
10 statute advises that the legislative intent is to "liberally construe the provisions of this paragraph  
11 in favor of awarding attorneys' fees in all appropriate situations." See NRS § 18.010(2)(b).  
12 Moreover, the purpose behind the statute is "to punish for and deter frivolous or vexatious claims  
13 and defenses because such claims and defenses overburden limited judicial resources, hinder the  
14 timely resolution of meritorious claims and increase the costs of engaging in business and  
15 providing professional services to the public." *Id.*

16 For these reasons, Defendants respectfully request recovery of attorneys' fees and costs  
17 pursuant to their successful defense of the frivolous claims brought by Plaintiff. Defendants  
18 were forced to expend significant resources defending against this baseless litigation and,  
19 although Defendants are unequivocally the prevailing party in this matter, they have nothing to  
20 show for it other than a massive litigation bill. This is the exact scenario in which NRS §  
21 18.020(2) was implemented to redress.

22 **D. Attorneys' Fees and Costs Pursuant to NRCP § 68 and NRS § 17.117**

23 Defendants are also entitled to attorneys' fees and costs pursuant to NRCP § 68 and NRS  
24 § 17.117 based on offer of judgment served on Plaintiff, which was ultimately rejected. See Ex.  
25 A. After evaluating the *Beattie* factors, it is clear that Plaintiff's decision to reject the offer and  
26 proceed with litigation was grossly unreasonable, allowing for recovery of attorneys' fees and  
27 costs by Defendants.

28 ///

1 First, the preceding sections illustrate that Plaintiff's claims were not brought in good  
2 faith. See Ex. J at 0166, lines 2-6 ("I don't see in good faith how this can be brought – this can  
3 be brought by the plaintiffs in good faith when they've waived everything. And in addition, they  
4 refused to conduct an inspection knowing that they were purchasing a 63-year-old property. I  
5 mean it's just absurd."). In fact, this Honorable Court advised that, "this is one of the clearest cut  
6 cases [for summary judgment] I've seen." *Id.* at 0167, line 5. Further determining that, "when  
7 you're looking at the residential purchase agreement and signed disclosure, it's clear in my view  
8 that this is a baseless lawsuit, and I will grant attorneys' fees under NRCP 11." *Id.* at 0167, lines  
9 11-14.

10 Second, the offer was reasonable in both its timing and amount based on the facts known  
11 by the parties at the time the offer was made. See Ex. A. The offer includes a detailed recitation  
12 of the facts and circumstances related to Plaintiff's waiver of inspections and an analysis of those  
13 facts in relation to the statutes supporting the defenses raised by Defendants. *Id.* at 0003-0005.  
14 Defendants' analysis alluded to all of the same points and issues addresses by this Honorable  
15 Court in granting summary judgment, further illustrating the reasonableness of the offer.  
16 Additionally, the amount of the offer was objectively reasonable considering the lack of factual  
17 or legal support for Plaintiff's claims, as illustrated by the summary judgment determination in  
18 favor of Defendants.

19 Third, and similar to the points made above, Plaintiff's decision to reject the offer was  
20 not reasonable in light of the aforementioned defects surrounding Plaintiff's claims. Again,  
21 Defendants provided a very clear analysis that illustrated the likelihood that Plaintiff would not  
22 be successful in this action. Plaintiff not only chose to be remiss in its duty to make a competent  
23 inquiry, but even doubled down and filed an amended complaint including additional causes of  
24 actions and additional parties.

25 Finally, the fees sought are reasonable in light of the work required and actually  
26 completed. The fees requested are supported by affidavit of counsel [subsection F of this brief],  
27 which includes analysis of the *Brunzell* factors.

28 ///

1           **E. Attorneys' Fees related to Abuse of Process**

2           Defendants have already prevailed on the competing claims for abuse of process. See Ex.  
3 B ("motion granted as to all claims"); see also Ex. C at 0047-0048, ¶¶ 53-54 (advising that  
4 Plaintiff did not oppose Defendants arguments related to abuse of process leading to granting of  
5 summary judgment in Defendants favor on those claims); also Ex. C. at 0051, lines 10-12 ("It is  
6 further ordered, adjudicated, and decreed that this is a final order related to the claims and  
7 counterclaim. This Court directs entry of a final judgment of all claims."); and Ex. H (affirming  
8 summary judgment). As such, Defendants believe they are entitled to recovery of compensatory  
9 damages, which would include attorneys' fees. See *Bull v. McCuskey*, 96 Nev. 706, 710, 615  
10 P.2d 957, 960 (1980), abrogated on other grounds by *Ace Truck & Equip. Rentals, Inc. v. Kahn*,  
11 103 Nev. 503, 746 P.2d 132 (1987) ("The compensatory damages recoverable in an action for  
12 abuse of process are the same as in an action for malicious prosecution, Prosser, Law of Torts at  
13 858 (4th ed. 1971), and include compensation for fears, anxiety, mental and emotional  
14 distress.").

15           **F. Affidavit of Michael B. Lee, Esq.**

16 STATE OF NEVADA            )  
17 COUNTY OF CLARK            ) ss.

18           MICHAEL B. LEE, ESQ., being first duly sworn, deposes and says:

19           1. I, MICHAEL B. LEE, being first duly sworn, deposed, and said, that I have  
20 personal knowledge and am competent to testify to the facts below, and that this Declaration is  
21 submitted in support of the pleading referenced in the above-matter. The facts stated herein are  
22 true to the best of my own personal knowledge, except for those facts stated upon information  
23 and belief, and as to those facts, I believe them to be true.

24           2. This Declaration is made in support of the attorneys' fees and costs requested in  
25 the foregoing Motion. I am an attorney with the law firm of MICHAEL B. LEE, P.C. This law  
26 firm represents Defendants.

27           3. To date, Defendants incurred attorneys' fees in the total amount of \$160,320.14  
28 from the office of Michael B. Lee, P.C. A true and correct copy of the Invoices are attached as

1 **Exhibit K** [0177-0195]. The Firm charged Defendants an hourly rate of \$425.00 per hour. This  
2 is a reasonable rate giving that the Firm charges \$475 per hour for business law cases, and was  
3 just approved at that rate related to a fee award in business court for an evidentiary hearing. A  
4 true and correct copy of the Minute Order is attached as **Exhibit L** [0196-0197].

5 4. I anticipate an additional twenty hours of work related to this Application, which  
6 would be an estimated fee of \$8,500.

7 5. To date, Defendants incurred attorneys' fees in the total amount of \$10,187.50  
8 from the office of Burdick Law, PLLC. A true and correct copy of the Invoices are attached as  
9 **Exhibit M** [0198-0201].

10 6. Further illustrating the reasonableness of the rate, Plaintiff's counsel, Benjamin  
11 Childs, charged Plaintiff \$400 per hour for his representation. A true and correct copy of Childs  
12 Retainer Agreement is attached as **Exhibit N** [0202-0204].

13 7. Defendants are seeking reimbursement of **\$179,007.64** for their attorneys' fees.

14 Michael B. Lee, P.C.

15 8. I graduated in the top 25% of my law school class, was on the Dean's List, and  
16 achieved a CALI Award. I also did an externship with the Clark County Public Defender's  
17 Office and one with the United States District Court, District of Nevada with (then) Chief Judge  
18 Phillip M. Pro.

19 9. I have been practicing law since 2006. I am an AV rated attorney and have been  
20 AV rated since 2012. I have several industry awards and recognitions based on peer reviews for  
21 being a top lawyer in Southern Nevada from Super Lawyers Magazine, AVVO, Nevada  
22 Business Magazine, Desert Companion, and various other publications. Additionally, I have also  
23 argued before the Nevada Supreme Court and the Ninth Circuit and have three published  
24 opinions in the favor of my clients, and several unpublished opinions. I am licensed in Nevada,  
25 California, the United States District Court, District of Nevada, the United States Court of  
26 Appeals for the Ninth Circuit, and the Supreme Court of the United States. I have sat on the  
27 Executive Council for the Young Lawyers Section of the State Bar of Nevada, the Fee Dispute  
28 Arbitration Committee for the State Bar of Nevada, and currently sit on the Discipline Panel for

1 the State Bar of Nevada. I am also a vice-chair of the Business Law Committee, SOLO Law  
2 Firms, and Plaintiff's Task Force for the Tort Insurance Practice Section of the America Bar  
3 Association, and was previously a vice-chair for the Trial Techniques and Corporate Counsel  
4 committees.

5 10. I have the highest level of professional standing and skill. Based on my qualities,  
6 ability, training, experience, and professional standing with the Nevada Bar Association, the rate  
7 and fees charges by Michael B. Lee, P.C. are reasonable according to the *Brunzell* factors.

8 *Burdick Law, PLLC*

9 11. Mrs. Burdick served as a research assistant for Professor Goodman teaching  
10 California Evidence, and student articles editor for the Dispute Resolution Law Journal, and  
11 finally as a judicial extern to the Honorable Mark R. Denton. She served as a law clerk to the  
12 Honorable Mark R. Denton. During this clerkship, Mrs. Burdick gained extensive exposure to a  
13 docket of over 800 complex business litigation cases from both the litigator's perspective and the  
14 judge. After her clerkship, Mrs. Burdick joined several prestigious law firms in Las Vegas,  
15 Nevada prior to opening Burdick Law, PLLC. Her rate of \$200 per hour is reasonable according  
16 to the *Brunzell* factors.

17 *Character of the Work Done*

18 12. The work performed in this matter was reasonably suited to the nature of this  
19 dispute. Defendants had to defend a frivolous lawsuit from Plaintiff. To illustrate the frivolous  
20 nature of the lawsuit, Plaintiff submitted false, misleading representations to defend the initial  
21 motion to dismiss by Defendants. The court minutes demonstrate that Mr. Childs falsely argued  
22 that there were issues not disclosed by Defendants, a true and correct copy of Minutes is attached  
23 as **Exhibit O** [0205-0207], which the underlying Order denoted as false, misleading.

24 13. After this Honorable Court permitted Plaintiff leave to amend its pleadings,  
25 Plaintiff amended the initial complaint's three causes of action ((1) RECOVERY UNDER NRS  
26 CHAPTER 113 [Defendants TKNR and Wong]; (2) CONSTRUCTIVE FRAUD [Defendants  
27 Investpro and Nickrandt]; (3) COMMON LAW FRAUD [Defendants Investpro and Nickrandt  
28 and Lin]; and (4) FRAUDULENT INDUCEMENT [All Defendants]) to fifteen baseless causes

of action: (1) Recovery Under NRS Chapter 113 [Defendants TKNR, Wong, and Investpro Manager LLC]; (2) Constructive Fraud [Defendants Investpro, Nickrandt, and Chen]; (3) Common Law Fraud [Defendants Investpro, Investpro Manager LLC , TKNR, Wong and Lin]; (4) Fraudulent Inducement [Defendants TKNR, Investpro Manager LLC , Wong, Investpro and Lin]; (5) Fraudulent Concealment [Defendants TKNR, Wong, Investpro, Investpro Manager LLC, and Lin]; (6) Breach Of Fiduciary Duty [Defendants Investpro and Nickrandt and Chen]; (7) RICO [Defendants Lin, Cheng, Investpro Manager LLC and Investpro Investments I LLC]; (8) Damages Under NRS 645.257(1) [Defendant Chen, Lin, Investpro and Nickrandt]; (9) Failure To Supervise, Inadequate training and Education [Defendant Investpro, Zhang, and Nickrandt]; (10) Fraudulent Conveyance [TKNR]; (11) Fraudulent Conveyance [Investpro Investments I LLC]; (12) Civil Conspiracy [As To Defendant Man Chau Cheng, Lin, Investpro, Wong, TKNR, Investpro Investments I LLC and Investpro Manager LLC]; (13) Breach Of Contract [As To Defendant Investpro]; (14) Breach Of Implied Covenant of Good Faith and Fair Dealing [As To Defendant Investpro]; and (15) Abuse of Process [As To All Defendants].

14. On November 19, 2020, Defendants proffered an offer of judgment on Plaintiff that illustrated the overall frivolous nature of Plaintiff's case. See Ex. A. In Response, Plaintiff propounded frivolous discovery requests on Cheng, Investments, Management, Realty, Wong, Manager, and TKNR on November 26, 2020, with actual knowledge that there was no basis for the alleged discovery. This action substantially increased Defendants' cost of defense.

15. More illustrating the improper actions by Plaintiff, on February 4, 2021, counsel responded to an e-mail inquiry from Ariana Reed. I sent a simple response. A true and correct copy of the Email chain is attached as **Exhibit P** [0208-0210]. Thereafter, Mr. Childs responded with misleading information, which I had to correct and provide the corroborating documentation. A true and correct copy of the Email chain is attached as **Exhibit Q** [0211-0216]. As noted in Mr. Childs' e-mail, Plaintiff used discovery to directly try to circumvent the frivolous nature of the lawsuit. *Id.* at 0212 ("Defendants' Summary Judgment motion is highly unlikely to be granted given the state of outstanding discovery and Plaintiff has filed an extensive opposition and countermotion").

Actual Work Done

16. The actual work performed in this matter required expertise and significant time and attention to the work. As noted by the preceding exhibits, counsel had to create an exacting plan to demonstrate the frivolous nature of this lawsuit. After extensive preparation for Frank Miao's ("Miao") deposition, the person most knowledgeable, counsel successfully obtained testimony related to the frivolous nature of this lawsuit. Moreover, this testimony also illustrated that this lawsuit was frivolous from the commencement of the action based on the disclosures made prior to the purchase of the property, Mr. Miao's actual knowledge prior to the purchase, and Mr. Miao's actual knowledge of what due diligence required of him.

17. Additionally, counsel had to expend significant time and effort in responding to the appeals filed by Plaintiff.

Work Performed

18. I actually performed all the work on the case with the requisite skill, time and attention required for the work, other than the work performed by Mrs. Burdick.

The Result

19. Defendants successfully obtained, *inter alia*, orders for summary judgment, an order finding that Plaintiff's case was frivolous and violated Rule 11, and an order granting attorneys' fees under either Rule 11 or for abuse of process.

20. Additionally, this Honorable Court's decision to grant summary judgment in favor of Defendants on all claims was affirmed by the Court. While the Judgment was reversed, it was done so because of a procedural defect not caused by Defendants.

21. Ultimately, Defendants succeeded on every aspect of their Motion for Summary Judgment, leading to a ruling in favor of Defendants on all claims. That decision survived Plaintiff's Motion for reconsideration and the subsequent appeal.

22. This Application is not made or based to cause any undue harassment, delay, or annoyance.

23. Defendants are seeking reimbursement of \$179,007.64 for their attorneys' fees.

///



Memo of Costs

24. Michael Lee, Esq., being duly sworn, states: he has personal knowledge of the costs and disbursements expended below; that the items contained in the memorandum are true and correct to the best of this declarant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

1. Odyssey Record attached as **Exhibit R** [0217-0218]. The Fees only show the filing fee, but do not show the additional electronic filing fees of \$3.50, the merchant fee for the original filing, etc.
2. Transcript invoices attached as **Exhibit S** [0219-0225].
3. Expert Fee attached as **Exhibit T** [0226-0227].
4. Invoice for Copying Costs is attached as **Exhibit U** [0228-0229].

Pursuant to NRS 18.005, 18.010, and 18.020, Defendants hereby claim the following costs:

Filing Fees:	\$766.00
Photographs:	\$12.97
Transcripts:	\$3,934.14
Expert:	\$5,000
Copies:	\$501.66

**TOTAL:** **\$10,214.77**

Summary

25. Defendants previously submitted an Affidavit in Support of Attorneys' Fees on April 6, 2021, as a result of this Honorable Court granting the MSJ. See Ex. C at 0051, lines 8-9 ("Defendants may file an affidavit in support of requested attorneys' fees and costs within 10 days of the entry of Order.").

26. However, although Plaintiff filed the Motion to Reconsider the Amended Order that included request for clarification as to who was subject to pay the attorneys' fees award, Plaintiff never provided any opposition or argument challenging the specific amount requested by Plaintiff in the Affidavit in Support of Attorneys' Fees filed on April 6, 2021. See Ex. F at 0110, lines 22-23.

///

27. As such, the **\$128,166.78** [0178-0192] in attorneys’ fees and costs requested by the April 6, 2021, Affidavit in Support of Attorneys’ Fees, and subsequently granted by this Honorable Court, is undisputed.

28. Defendants request an additional **\$60,052.50** [0193-0195] in attorneys’ fees and **\$1,003.13** in costs that were incurred after the filing of the April 6, 2021, Affidavit in Support of Attorneys’ fees.

29. The additional fees and costs were all reasonably and necessarily incurred by Defendants in their successful defense of this action and should be awarded in addition to the undisputed attorneys’ fees and costs provided in the previous Affidavit in support of Attorneys’ Fees.

30. As such, Defendants are seeking \$179,007.64 for attorneys’ fees, and \$10,214.77 in costs for a total of **\$189,222.41**.

31. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 10th day of August, 2022.

/s/ Michael Lee  
MICHAEL B. LEE

### III. CONCLUSION

For the aforementioned reasons, this Honorable Court should grant the Motion and award attorneys’ fees in the amount of **\$179,007.64** and costs of **\$10,214.77**, for a total award of **\$189,222.41** to Defendants.

DATED this 10th day of August, 2022.

MICHAEL B. LEE, P.C.

/s/ Michael Lee  
MICHAEL B. LEE, ESQ. (NSB No.: 10122)  
1820 East Sahara Avenue, Suite 110  
Las Vegas, Nevada 89104  
Telephone: (702) 477.7030  
Facsimile: (702) 477.0096  
[mike@mblnv.com](mailto:mike@mblnv.com)  
Attorney for Defendants

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 22nd day of August, 2022, I placed a copy of the **DEFENDANTS’ MOTION FOR ATTORNEYS’ FEES AND COSTS** as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing by United States mail it to the last known address of the parties listed below, facsimile transmission to the number listed, and/or electronic transmission through the Court’s electronic filing system to the e-mail address listed below:

BENJAMIN B. CHILDS, ESQ.  
Nevada State Bar No. 3946  
318 S. Maryland Parkway  
Las Vegas, Nevada 89101  
Telephone: (702) 251-0000  
Email: [ben@benchilds.com](mailto:ben@benchilds.com)  
Attorneys for *Plaintiff*

/s/Mindy Pallares  
An employee of MICHAEL B. LEE, P.C.

IN THE SUPREME COURT OF THE STATE OF NEVADA

WLAB INVESTMENT, LLC,

Appellant,

vs.

TKNR, INC., A CALIFORNIA CORPORATION; CHI ON WONG, A/K/A CHI KUEN WONG, AN INDIVIDUAL; KENNY ZHONG LIN, A/K/A KEN ZHONG LIN, A/K/A KENNETH ZHONG LIN, A/K/A WHONG K. LIN, A/K/A CHONG KENNY LIN, A/K/A ZHONG LIN, AN INDIVIDUAL; LIWE HELEN CHEN, A/K/A HELEN CHEN, AN INDIVIDUAL; YAN QUI ZHANG, AN INDIVIDUAL; INVESTPRO LLC, D/B/A INVESTPRO REALTY, A NEVADA LIMITED LIABILITY COMPANY; MAN CHAU CHENG, AN INDIVIDUAL; JOYCE A. NICKRANDT, AN INDIVIDUAL; INVESTPRO INVESTMENTS LLC, A NEVADA LIMITED LIABILITY COMPANY; AND INVESTPRO MANAGER LLC, A NEVADA LIMITED LIABILITY COMPANY,

Respondents.

WLAB INVESTMENT, LLC,

Appellant,

vs.

TKNR, INC., A CALIFORNIA CORPORATION; CHI ON WONG, A/K/A CHI KUEN WONG, AN INDIVIDUAL; KENNY ZHONG LIN, A/K/A KEN ZHONG LIN, A/K/A KENNETH ZHONG LIN, A/K/A WHONG K. LIN, A/K/A CHONG KENNY LIN, A/K/A ZHONG LIN, AN INDIVIDUAL; LIWE HELEN CHEN, A/K/A HELEN CHEN, AN INDIVIDUAL; YAN QUI ZHANG, AN

No. 82835

**FILED**

**MAY 12 2022**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

No. 83051

INDIVIDUAL; INVESTPRO LLC, D/B/A  
INVESTPRO REALTY, A NEVADA  
LIMITED LIABILITY COMPANY; MAN  
CHAU CHENG, AN INDIVIDUAL;  
JOYCE A. NICKRANDT, AN  
INDIVIDUAL; INVESTPRO  
INVESTMENTS LLC, A NEVADA  
LIMITED LIABILITY COMPANY; AND  
INVESTPRO MANAGER LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,  
Respondents.

*ORDER AFFIRMING (DOCKET NO. 82835)  
AND REVERSING (DOCKET NO. 83051)*

These are consolidated appeals from a district court order granting summary judgment in a real property matter (Docket No. 82835) and from an order awarding attorney fees (Docket No. 83051). Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.<sup>1</sup>

Appellant filed the underlying action, alleging generally that respondents had fraudulently induced appellant into purchasing an apartment building that contained numerous defects. Generally speaking, appellant's complaint alleged that respondents concealed the defects and that appellant could not have discovered those defects with due diligence before the purchase was completed. The district court granted summary judgment for respondents, reasoning, among other things, that (1) appellant failed to introduce evidence that respondents were aware of any particular defect that they failed to disclose; and (2) appellant failed to introduce evidence showing that a professionally conducted inspection would not have

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

discovered the complained-of defects. Consequently, the district court granted summary judgment on all 15 of appellant's claims, including its claim for violation of NRS Chapter 113 (Sales of Real Property—Required Disclosures). Appellant then appealed that order (Docket No. 82835). Thereafter, the district court awarded respondents roughly \$128,000 in attorney fees under NRCP 11 based on its perception that appellant's action was frivolous. Appellant then appealed that order (Docket No. 83051), and the appeals were consolidated.

*Summary judgment (Docket No. 82835)*

Appellant contends that summary judgment was improper because it introduced evidence sufficient to create questions of material fact. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing de novo a district court's decision to grant summary judgment and recognizing that summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law" (internal quotation marks and alterations omitted)). In particular, appellant appears to be contending that there are genuine issues of material fact regarding (1) whether respondents were aware of the complained-of defects, and (2) whether appellant was required to conduct a "professional" inspection to satisfy its due diligence.<sup>2</sup>

We disagree. With respect to appellant's first argument, appellant's opening brief simply reiterates its belief that "[n]umerous issues of fact exist as to what Defendants knew, what they disclosed and what they

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<sup>2</sup>To the extent that appellant has raised other arguments challenging the district court's summary judgment, we are not persuaded that those arguments warrant reversal.

covered up.” But beyond this statement, appellant’s opening brief fails to cite to any evidence in the record that might raise an inference that respondents were aware of a particular complained-of defect, such that a genuine issue of material fact existed regarding the viability of appellant’s NRS Chapter 113 claim or any of the related claims. *See Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007) (holding that for purposes of a claim under NRS Chapter 113, in order for a seller to be “aware” of a defect such that the seller is obligated to disclose it, the seller must be able to “realize, perceive, or have knowledge of that defect or condition”); *Land Baron Invs. Inc. v. Bonnie Springs Fam. LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015) (“[Common law] [n]ondisclosure arises *where a seller is aware of materially adverse facts* that could not be discovered by the buyer after diligent inquiry.” (Emphasis added and internal quotation marks omitted)). Similarly, appellant’s summary judgment opposition failed to identify any evidence that might raise such an inference. Based on this appellate argument and lack of identifiable record evidence, we are unable to conclude that the district court erred in finding that no genuine issue of material fact existed regarding respondents’ awareness of the complained-of defects. *See* NRAP 28(a)(10)(A) (requiring briefs to cite to relevant portions of the record)<sup>3</sup>; *Schuck v. Signature Flight Support of Nev., Inc.*,

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<sup>3</sup>Appellant’s opening brief *does* cite to an affidavit from appellant’s manager that was submitted in conjunction with appellant’s motion to reconsider the district court’s summary judgment. However, the manager’s affidavit submitted in conjunction with appellant’s summary judgment opposition did not include the statements upon which appellant relies on appeal, and appellant has not argued that the district court improperly denied its motion for reconsideration. Relatedly, although appellant’s reply brief attempts for the first time to identify specific defects of which respondents were aware, we decline to specifically address those



126 Nev. 434, 438, 245 P.3d 542, 545 (2010) (“[A] district court is not obligated to wade through and search the entire record for some specific facts which might support the nonmoving party’s claim.”); *see also Johnson v. Cambridge Indus., Inc.*, 325 F.3d 892, 901 (7th Cir. 2003) (“[S]ummary judgment is the ‘put up or shut up’ moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events.”).

With respect to appellant’s second argument, appellant appears to be contending that its manager’s own inspection was sufficient to satisfy the due diligence requirement in the parties’ Residential Purchase Agreement, such that any defect he did not discover was not “within the reach of the diligent attention and observation of the buyer.”<sup>4</sup> *Cf. Frederic*

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arguments. *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011) (explaining why this court generally declines to consider arguments raised for the first time in a reply brief).

<sup>4</sup>With the possible exception of its claim for violation of NRS Chapter 645, all the claims in appellant’s operative complaint appear to be based on the allegation that respondents *knowingly* did not disclose the complained-of defects. If so, appellant’s second argument appears to be moot in light of our rejection of appellant’s first argument. *See Wood*, 121 Nev. at 731, 121 P.3d at 1031 (“The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.”); *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992) (observing that “[w]here an essential element of a claim for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and summary judgment is proper.”). Nonetheless, in the event we are misconstruing appellant’s claims and arguments, we address appellant’s second argument.

As for appellant’s NRS Chapter 645 claim, we affirm the district court’s summary judgment based on its finding that appellant did not rely on any representations from the broker respondents, which is a finding that



*& Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 578-79, 427 P.3d 104, 111 (2018) (observing that a seller is not liable for nondisclosure of a known condition materially affecting the property's value if the condition is also "within the reach of the diligent attention and observation of the buyer"). Admittedly, this court has not expanded on the meaning of "within the reach of the diligent attention and observation of the buyer." *Id.* However, appellant's manager acknowledged in his deposition that before appellant purchased the building, the manager had access to the same parts of the building that appellant's own expert had when the expert conducted his own inspection as part of this litigation, with the implication being that a "professional" pre-purchase inspection would have discovered the complained-of defects alleged in appellant's complaint. Thus, absent any authority suggesting that "diligent attention and observation of the buyer" would encompass a non-professional or unlicensed inspection, we are unable to conclude that the "inspection" conducted by appellant's manager—and his failure to discover the complained-of defects—provides a basis for holding respondents liable for nondisclosure of those alleged defects.<sup>5</sup>

Accordingly, and to the extent that appellant's second argument implicates an issue of "material" fact, *Wood*, 121 Nev. at 731, 121 P.3d at 1031 ("The substantive law controls which factual disputes are material and

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appellant does not meaningfully contest on appeal. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised by a party on appeal are deemed waived).

<sup>5</sup>In this, we note that the subject property was a 63-year-old apartment building that, by appellant's own admission, "should have been condemned" before appellant purchased it.

will preclude summary judgment . . .”), we conclude that the district court correctly found that no genuine issue of material fact existed to justify denying summary judgment. We therefore affirm the district court’s summary judgment in Docket No. 82835.

*Attorney fee award (Docket No. 83051)*

Appellant contends that the district court’s award of attorney fees as a sanction under NRCP 11 must be reversed because the district court imposed that sanction in contravention of NRCP 11’s explicit and mandatory procedural requirements. We agree. In particular, respondents did not serve notice of their motion at least 21 days before they filed the motion with the district court and the motion was not made separately from their summary judgment motion as required by NRCP 11(c)(2). The purpose of that provision is to allow the offending party to correct or withdraw a problematic pleading, and appellant was not afforded the benefit of that provision, which would have allowed appellant to avoid sanctions under that rule.<sup>6</sup> *Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 789 (9th Cir. 2001) (concluding that a defendant did not comply with the federal analog to NRCP 11 when it sought Rule 11 sanctions as part of a motion for summary judgment and did not serve the motion on the plaintiffs within Rule 11’s 21-day advance service provision); *see also Barber v. Miller*, 146 F.3d 707, 710-11 (9th Cir. 1998) (“[W]arnings [are] not motions . . . , and


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<sup>6</sup>Although the summary judgment originally entered by the district court directed respondents to prepare an order to show cause, the district court’s amended summary judgment removed that provision such that the district court did not order appellant to show cause why it should not be sanctioned. *See* NRCP 11(c)(3) (providing that the court, on its own, may order a party to “show cause why conduct specifically described in the order has not violated Rule 11(b)”).

[Rule 11] requires service of a motion.”). Thus, before sanctions may be imposed against an offending party, that party must be given “notice and a reasonable opportunity to respond.” NRCP 11(c)(1). Here, respondents failed to comply with the mandatory procedural requirements of NRCP 11(c), which precludes the imposition of sanctions under NRCP 11.<sup>7</sup> We therefore reverse the district court’s May 25, 2021, order in Docket No. 83051 insofar as that order awarded respondents attorney fees.

It is so ORDERED.<sup>8</sup>

  
Parraguirre, C.J.

  
Herndon, J.

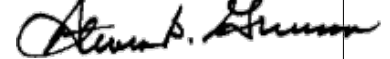
  
Gibbons, Sr. J.

cc: Hon. Adriana Escobar, District Judge  
James A. Kohl, Settlement Judge  
Day & Nance  
Michael B. Lee, P.C.  
Eighth District Court Clerk

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<sup>7</sup>Respondents contend that the district court could have awarded the same sanctions under NRS 7.085 or NRS 18.010(2)(b). However, the district court expressly granted “attorneys’ fees and costs pursuant to Rule 11,” which required respondents to follow the appropriate procedures for the award to have been appropriate.

<sup>8</sup>The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.



MICHAEL B. LEE, ESQ. (NSB 10122)  
MICHAEL MATTHIS, ESQ. (NSB 14582)  
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Attorneys for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,  
  
Plaintiff,

CASE NO.: A-18-785917-C  
DEPT. NO.: XIV

vs.

**SUPPLEMENT TO DEFENDANTS'  
MOTION FOR ATTORNEY'S FEES**

TKNR INC., a California Corporation, and  
CHI ON WONG aka CHI KUEN WONG, an  
individual, and KENNY ZHONG LIN, aka  
KEN ZHONG LIN aka KENNETH ZHONG  
LIN aka WHONG K. LIN aka CHONG  
KENNY LIN aka ZHONG LIN, an individual,  
and LIWE HELEN CHEN aka HELEN  
CHEN, an individual and YAN QIU ZHANG,  
an individual, and INVESTPRO LLC dba  
INVESTPRO REALTY, a Nevada Limited  
Liability Company, and MAN CHAU  
CHENG, an individual, and JOYCE A.  
NICKRANDT, an individual, and  
INVESTPRO INVESTMENTS LLC, a  
Nevada Limited Liability Company, and  
INVESTPRO MANAGER LLC, a Nevada  
Limited Liability Company and JOYCE A.  
NICKRANDT, an individual and Does 1  
through 15 and Roe Corporation I - XXX,

Defendants.

Defendants TKNR INC. ("TKNR"), CHI ON WONG ("WONG"), KENNY ZHONG  
LIN ("LIN"), LIWE HELEN CHEN ("CHEN"), YAN QIU ZHANG ("ZHANG"), INVESTPRO  
LLC ("INVESTPRO"), MAN CHAU CHENG ("CHENG"), JOYCE A. NICKRANDT  
("NICKRANDT"), INVESTPRO INVESTMENTS, LLC ("Investments"), and INVESTPRO  
MANAGER LLC ("Manager") (hereinafter collectively referred to as the "Defendants"), by and

1 through their counsel of record, Michael B. Lee, P.C., hereby files this Supplement  
2 (“Supplement”) to Defendants’ Motion for Attorneys’ Fees (“Motion”).

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 **A. Overview**

6 This Supplement provides additional basis for Defendants’ request for attorneys’ fees by  
7 virtue of the terms and provisions included in the Residential Purchase Agreement.

8 **B. Undisputed Facts as Provided by Mr. Miao**

9 Please see the statement of facts / procedure included in the Motion.

10 **II. DISCUSSION**

11 A court may not award fees unless authorized by statute, rule, or contract. *Frank*  
12 *Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1219, 197 P.3d 1051, 1059  
13 (2008). “Parties are free to provide for attorney fees by express contractual provisions.” *Davis*  
14 *v. Beling*, 128 Nev. Adv. Op. 28, 278 P.3d 501, 515 (2012) (*citing Musso v. Binick*, 104 Nev.  
15 613, 614, 764 P.2d 477, 477 (1988)). “The objective in interpreting an attorney fees provision,  
16 as with all contracts, ‘is to discern the intent of the contracting parties.’ ” *Id.* (*quoting Cline v.*  
17 *Rocky Mountain, Inc.*, 998 P.2d 946, 949 (Wyo. 2000)). “ ‘[T]raditional rules of contract  
18 interpretation [are employed] to accomplish that result.’ ” *Id.*

19 “[T]he term ‘prevailing party’ is broadly construed so as to encompass plaintiffs,  
20 counterclaimants, and defendants.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d  
21 1198, 1200 (2005) (*citing Smith v. Crown Financial Services*, 111 Nev. 277, 284, 890 P.2d 769,  
22 773 (1995)). “To be a prevailing party, a party need not succeed on every issue.” *LVMPD v.*  
23 *Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), reh’g denied (May 29,  
24 2015), reconsideration en banc denied (July 6, 2015) (*citing Hensley v. Eckerhart*, 461 U.S. 424,  
25 434, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (observing that “a plaintiff [can be] deemed  
26 ‘prevailing’ even though he succeeded on only some of his claims for relief”)).

27 Additionally, a plaintiff may be the prevailing party “if it succeeds on any significant  
28 issue in litigation which achieves some of the benefit it sought in bringing the suit.” *Women’s*

1 *Fed. Sav. & Loan Ass'n v. Nevada Nat'l Bank*, 623 F. Supp. 469, 470 (D. Nev. 1985); *see also*  
2 *Chowdhry v. NLVH, Inc.*, 851 P.2d 459, 464 (Nev. 1993). This includes litigation involving  
3 claims and counterclaims, where the “net winner” is considered to be the prevailing party.  
4 *Parodi v. Budetti*, 115 Nev. 236, 984 P.2d 172, 1999 Nev. LEXIS 48 (Nev. Aug. 27, 1999).

5 Moreover, if a party successfully defended against a breach of contract actions, the  
6 successful party is entitled to recover reasonable attorney fees incurred in defense of those  
7 particular claims pursuant to the clear language of agreement. *Davis*, 278 P.3d at 515–16 (2012)  
8 (citing *Valley Elec. Ass'n*, 121 Nev. at 10, 106 P.3d at 1200 (explaining that parties “prevail” if  
9 they succeed on any substantial aspect of the case and noting that the term “prevailing party” “is  
10 broadly construed so as to encompass plaintiffs, counterclaimants, and defendants”)).

11 Here, the Residential Purchase Agreement for the Subject Property giving rise to this  
12 litigation included a provision that allowed the prevailing party to recover attorneys’ fees and  
13 costs for any litigation related to the terms of the Residential Purchase Agreement.

14 **26. OTHER ESSENTIAL TERMS:** Time is of the essence. No  
15 change, modification or amendment of this Agreement shall be  
16 valid or binding unless such change, modification or amendment  
17 shall be in writing and signed by each party. This Agreement will  
18 be binding upon the heirs, beneficiaries and devisees of the parties  
19 hereto. This Agreement is executed and intended to be performed  
20 in the State of Nevada, and the laws of that state shall govern its  
21 interpretation and effect. The parties agree that the county and state  
22 in which the Property is located is the appropriate forum for any  
23 action relating to this Agreement. Should any party hereto retain  
24 counsel for the purpose of initiating litigation to enforce or prevent  
25 the breach of any provision hereof, or for any other judicial  
26 remedy, then the prevailing party shall be entitled to be reimbursed  
27 by the losing party for all costs and expenses incurred thereby,  
28 including, but not limited to, reasonable attorney’s fees and costs  
incurred by such prevailing party.

23 See Residential Purchase Agreement attached as **Exhibit A**, at pp. 8-9.

24 It is undisputed that Defendants are the prevailing party in this litigation. Defendants  
25 were granted summary judgment on all claims. See Appendix to Motion at Exhibits B and C.  
26 Plaintiff’s motion for reconsideration was denied, and summary judgment upheld. See Appendix  
27 to Motion at Exhibits F. Despite Plaintiff’s appeal, the Court affirmed the order granting  
28 summary judgment in favor of Defendants on all claims. See Appendix to Motion at Exhibit H.



Moreover, Plaintiff's request for rehearing of the appeal was denied. See Appendix to Motion at Exhibit I. As such, there can be no argument that Defendants have prevailed in this litigation and are entitled to an award of attorneys' fees and costs pursuant to the express terms of the Residential Purchase Agreement.

### **III. CONCLUSION**

Based on the foregoing, Defendants are entitled to attorneys' fees and costs pursuant to the terms of the Residential Purchase Agreement. As such, Defendants respectfully request that Defendants be awarded fees and costs as requested in the Motion.

Dated this 25 day of August, 2022.

MICHAEL B. LEE, P.C.

/s/ Michael Lee  
MICHAEL B. LEE, ESQ. (NSB 10122)  
MICHAEL MATTHIS, ESQ. (NSB 14582)  
1820 E. Sahara Avenue, Suite 110  
Las Vegas, Nevada 89104  
Telephone: (702) 477.7030  
Facsimile: (702) 477.0096  
[mike@mblnv.com](mailto:mike@mblnv.com)  
Attorney for Defendants

MICHAEL B. LEE, P.C.  
1820 E. SAHARA AVENUE, SUITE 110  
LAS VEGAS, NEVADA 89104  
TEL -- (702) 546-7055; FAX -- (702) 825-4734

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of  
MICHAEL B. LEE, and that on the 25th day of August, 2022, the foregoing **SUPPLEMENT**  
**TO DEFENDANTS' MOTION FOR ATTORNEYS' FEES** was served via the Court's  
electronic filing and/or service system and/or via facsimile and/or U.S. Mail first class postage  
pre-paid to all parties addressed as follows:

STEVEN L. DAY, ESQ.  
Nevada State Bar No. 3708  
**DAY & NANCE**  
1060 Wigwam Parkway  
Henderson, NV 89074  
Email: [sday@daynance.com](mailto:sday@daynance.com)  
Attorneys for *Plaintiff*

/s/ Mindy Pallares  
An employee of Michael B. Lee PC



# EXHIBIT A



## RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 09/05/17

Marie Zhu ("Buyer"), hereby offers to purchase  
2132 HOUSTON DR ("Property"), within the  
city or unincorporated area of LAS VEGAS, County of CLARK, State of Nevada,  
Zip 89104, A.P.N. # 162-01-110-017 for the purchase price of \$ 200,000.00  
( Two Hundred Thousand dollars) ("Purchase Price") on the terms and conditions  
contained herein: BUYER ☐ does -OR- ☒ does not intend to occupy the Property as a residence.

### Buyer's Offer

#### 1. FINANCIAL TERMS & CONDITIONS:

\$ 500.00 A. **EARNEST MONEY DEPOSIT ("EMD")** is ☐ presented with this offer -OR- ☒ will wire to  
escrow upon acceptance. Upon Acceptance, Earnest Money to be  
deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2  
business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, -OR- ☐ Seller's Broker's  
Trust Account. (NOTE: It is a felony in the State of Nevada—punishable by up to four years in prison and a \$5,000  
fine—to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

\$ 0.00 B. **ADDITIONAL DEPOSIT** to be placed in escrow on or before (date) \_\_\_\_\_. The  
additional deposit ☐ will -OR- ☐ will not be considered part of the EMD. (Any conditions on the additional  
deposit should be set forth in Section 28 herein.)

\$ 150,000.00 C. **THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:**  
☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) \_\_\_\_\_.

\$ 0.00 D. **THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE  
FOLLOWING EXISTING LOAN(S):**  
☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) \_\_\_\_\_.  
Interest: ☐ Fixed rate, \_\_\_\_\_ years - OR - ☐ Adjustable Rate, \_\_\_\_\_ years. Seller further agrees to  
provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer  
within FIVE (5) calendar days of acceptance of offer.

\$ 0.00 E. **BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS  
IN "FINANCING ADDENDUM" which is attached hereto.**

\$ 49,500.00 F. **BALANCE OF PURCHASE PRICE** (Balance of Down Payment) in Good Funds to be paid prior to  
Close of Escrow ("COE").

\$ 200,000.00 G. **TOTAL PURCHASE PRICE.** (This price DOES NOT include closing costs, prorations, or other fees  
and costs associated with the purchase of the Property as defined herein.)

#### 2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. **NEW LOAN APPLICATION:** Within 2 business days of Acceptance, Buyer agrees to (1) submit a

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is  
otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

BUYER(S) INITIALS: MZ

Property Address: 2132 HOUSTON DR

SELLER(S) INITIALS: CN

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completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

**B. APPRAISAL CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than 7 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.**

**C. LOAN CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 0 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.**

**D. CASH PURCHASE:** Within n/a business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

**3. SALE OF OTHER PROPERTY:** This Agreement ☒ is not **OR** ☐ is contingent upon the sale (and closing) of another property which address is \_\_\_\_\_.  
Said Property ☐ is ☒ is not currently listed **OR** ☐ is presently in escrow with \_\_\_\_\_.  
Escrow Number: \_\_\_\_\_ Proposed Closing Date: \_\_\_\_\_

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) calendar days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

**4. FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(F) of this Agreement, all items are transferred in an "AS IS" condition. All EXISTING fixtures and fittings including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s);

The following additional items of personal property: \_\_\_\_\_

## 5. ESCROW:

**A. OPENING OF ESCROW:** The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

BUYER(S) INITIALS: MZ

Property Address: 2132 HOUSTON DR

SELLER(S) INITIALS: CW

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("Opening of Escrow"), at National Title title or escrow company ("Escrow Company" or "ESCROW HOLDER") with Lynnette Marrujo ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and the Escrow Number.

**B. EARNEST MONEY:** Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

**C. CLOSE OF ESCROW:** Close of Escrow ("COE") shall be on or before: 09/22/17 (date). If the designated date falls on a weekend or holiday, COE shall be the next business day.

**D. IRS DISCLOSURE:** Seller is hereby made aware that there is a regulation that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

**6. TITLE INSURANCE:** This Purchase Agreement is contingent upon the Seller's ability to deliver, good and marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

**7. BUYER'S DUE DILIGENCE:** Buyer's obligation is is not MZ conditioned on the Buyer's Due Diligence as defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative, Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 0 calendar days from Acceptance (as defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence. **Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's investigations and through the close of escrow.**

**A. PROPERTY INSPECTION/CONDITION:** During the Due Diligence Period, Buyer shall take such action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to, whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development; noise or odor from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone number of the inspector.

**B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller, whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MZ

SELLER(S) INITIALS: CN

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writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

**C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer fails to cancel the Residential Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 7, **Buyer shall be deemed to have waived the Due Diligence Condition.**

**D. INSPECTIONS:** Acceptance of this offer is subject to the following reserved right. Buyer may have the

Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.* If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
Energy Audit	Waived	Fungal Contaminant Inspection	Waived	Well Inspection (Quantity)	N/A
Home Inspection	Buyer	Mechanical Inspection	Waived	Well Inspection (Quality)	N/A
Termite/Pest Inspection	Waived	Pool/Spa Inspection	N/A	Wood-Burning Device/Chimney Inspection	N/A
Roof Inspection	Waived	Soils Inspection	Waived	Septic Inspection	N/A
Septic Lid Removal	Waived	Septic Pumping	N/A	Structural Inspection	Waived
Survey (type):	N/A	Other:		Other:	

**E. CERTIFICATIONS:** In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

**F. BUYER'S REQUEST FOR REPAIRS:** It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

**8. FEES, AND PRORATIONS** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

**A. TITLE, ESCROW & APPRAISAL FEES:**

Type	Paid By	Type	Paid By	Type	Paid By
Escrow Fees	50/50	Lender's Title Policy	Buyer	Owner's Title Policy	Seller
Real Property Transfer Tax	Seller	Appraisal	Buyer	Other:	

**B. PRORATIONS:** Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MZ

SELLER(S) INITIALS: CW

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credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

**C. PRELIMINARY TITLE REPORT:** Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

**D. LENDER AND CLOSING FEES:** In addition to Seller's expenses identified herein, Seller will contribute \$ 5000 to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☒ including ~~OR~~ ☐ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

**E. HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☒ waives ~~OR~~ ☐ requires a Home Protection Plan with N/A. ☒ Seller ~~OR~~ ☐ Buyer will pay for the Home Protection Plan at a price not to exceed \$ 0. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans.

**9. TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

**10. COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"), Seller shall provide AT SELLER'S EXPENSE the CIC documents as required by NRS 116.4109 (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery, prepaid U.S. mail, or electronic transmission, a written notice of cancellation to Seller or his or her authorized agent.
- If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

**A. CIC RELATED EXPENSES:** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
CIC Demand	Seller	CIC Capital Contribution	Seller	CIC Transfer Fees	Seller
Other: _____					

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MZ

SELLER(S) INITIALS: CW

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**11. DISCLOSURES:** Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. Check applicable boxes.

☒ **Seller Real Property Disclosure Form:** (NRS 113.130) ☐ **Open Range Disclosure:** (NRS 113.065)

☐ **Construction Defect Claims Disclosure:** If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)

☒ **Lead-Based Paint Disclosure and Acknowledgment:** required if constructed before 1978 (24 CFR 745.113)

☐ **Other:** (list) \_\_\_\_\_

**12. FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES:** All properties are offered without regard to race, color, religion, sex, national origin, age, gender identity or expression, familial status, sexual orientation, ancestry, or handicap and any other current requirements of federal or state fair housing laws.

**13. WALK-THROUGH INSPECTION OF PROPERTY:** Buyer is entitled under this Agreement to a walk-through of the Property within 3 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. **If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.**

**14. DELIVERY OF POSSESSION:** Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than ☒ **COE** ☐ **OR** \_\_\_\_\_. In the event Seller does not vacate the Property by this time, Seller shall be considered a trespasser in addition to Buyer's other legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be considered abandoned by Seller.

**15. RISK OF LOSS:** Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift to Buyer.

**16. ASSIGNMENT OF THIS AGREEMENT:** Unless otherwise stated herein, this Agreement is non-assignable unless agreed upon in writing by all parties.

**17. CANCELLATION OF AGREEMENT:** In the event this Agreement is properly cancelled in accordance with the terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law).

**18. DEFAULT:**

**A. MEDIATION:** Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Notwithstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply. Each party is encouraged to have an independent lawyer of their choice review this mediation provision before agreeing thereto. By initialing below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

**BUYER(S) INITIALS:** MZ / \_\_\_\_\_ **SELLER(S) INITIALS:** CN / \_\_\_\_\_

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MZ

SELLER(S) INITIALS: CN

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**B. IF SELLER DEFAULTS:** If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual damages incurred by Buyer due to Seller's default.

**C. IF BUYER DEFAULTS:** If Buyer defaults in performance under this Agreement, as Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

### Instructions to Escrow

**19. ESCROW:** If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

**20. UNCLAIMED FUNDS:** In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than \$5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

### Brokers

**21. BROKER'S COMPENSATION/FEEs:** Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. **In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ~~will~~ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.**

**22. WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

BUYER(S) INITIALS: MZ

Property Address: 2132 HOUSTON DR

SELLER(S) INITIALS: CN

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claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

## Other Matters

**23. DEFINITIONS:** "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensees working under a developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will handle the closing. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means Residential Purchase Agreement. "Seller" means one or more individuals or the entity that is the owner of the Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is the United States Code. "VA" is the Veterans Administration.

## 24. SIGNATURES, DELIVERY, AND NOTICES:

A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

B. When a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, overnight delivery, by facsimile, and/or by electronic transmission to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

**25. IRC 1031 EXCHANGE:** Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

**26. OTHER ESSENTIAL TERMS:** Time is of the essence. No change, modification or amendment of this Agreement

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MZ

SELLER(S) INITIALS: CW

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shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party.

**THIS IS A LEGALLY BINDING CONTRACT.** All parties are advised to seek independent legal and tax advice to review the terms of this Agreement.

**THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS® (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.**

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27. ADDENDUM(S) ATTACHED: \_\_\_\_\_

28. ADDITIONAL TERMS:  
Buyer agree to pay the difference in cash if appraisal come in lower than purchase price, not to exceed purchase price of \$200k.

### Buyer's Acknowledgement of Offer

**Confirmation of Representation:** The Buyer is represented in this transaction by:

Buyer's Broker: <u>Joyce Nickrandt</u>	Agent's Name: <u>Liwei Helen Chen</u>
Company Name: <u>Investpro Realty</u>	Agent's License Number: <u>S.0175520</u>
Broker's License Number: <u>B0144660</u>	Office Address: <u>3553 VALLEY VIEW BLVD</u>
Phone: <u>702-997-3832</u>	City, State, Zip: <u>LAS VEGAS NV 89103</u>
Fax: <u>702-997-3836</u>	Email: <u>helen0510c@gmail.com</u>

**BUYER LICENSEE DISCLOSURE OF INTEREST:** Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☒ DOES NOT have an interest in a principal to the transaction. -OR-

☐ DOES have the following interest, direct or indirect, in this transaction: ☐ Principal (Buyer) -OR- ☐ family or firm relationship with Buyer or ownership interest in Buyer (if Buyer is an entity): (specify relationship)

Seller must respond by: 5 (☐AM☒PM) on (month) September, (day) 6, (year) 2017. Unless this

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu  
Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MZ  
SELLER(S) INITIALS: CN

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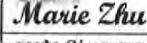
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Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect. Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

 Marie Zhu Marie Zhu 09/05/2017 4:05 PM ☐ AM ☐ PM  
 Buyer's Signature Buyer's Printed Name Date Time  
 \_\_\_\_\_  
 Buyer's Signature Buyer's Printed Name Date Time ☐ AM ☐ PM

### Seller's Response

**Confirmation of Representation:** The Seller is represented in this transaction by:

Seller's Broker: Joyce Nickrandt Agent's Name: Liwei Helen Chen  
 Company Name: Investpro Realty Agent's License Number: S.0172460  
 Broker's License Number: B0144660 Office Address: 3553 Valley View Dr  
 Phone: \_\_\_\_\_ City, State, Zip: Las Vegas NV 89103  
 Fax: 866-782-3075 Email: zhong.kenny@gmail.com

**SELLER LICENSEE DISCLOSURE OF INTEREST:** Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☒ **DOES NOT** have an interest in a principal to the transaction. -OR-  
☐ **DOES** have the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) -OR- ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship) \_\_\_\_\_


**FIRPTA:** If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by Buyer's FIRPTA Designee in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the Buyer's FIRPTA Designee the necessary documents, to be provided by the Buyer's FIRPTA Designee, to determine if withholding is required. (See 26 USC Section 1445).

SELLER DECLARES that he/she ☒ **is not** -OR- ☐ **is** a foreign person therefore subjecting this transaction to FIRPTA withholding. SELLER(S) INITIALS: CN / \_\_\_\_\_

☒ **ACCEPTANCE:** Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

☐ **COUNTER OFFER:** Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

☐ **REJECTION:** In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein **is not** accepted.

 TKNR INC 09/05/2017 4:53 PM ☐ AM ☐ PM  
 Seller's Signature Seller's Printed Name Date Time  
 \_\_\_\_\_  
 Seller's Signature Seller's Printed Name Date Time ☐ AM ☐ PM

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu BUYER(S) INITIALS: MZ  
 Property Address: 2132 HOUSTON DR SELLER(S) INITIALS: CN

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# **ADDENDUM NO. 1** **TO PURCHASE AGREEMENT**



In reference to the Purchase Agreement executed by Marie Zhu  
as Buyer(s) and TKNR INC  
as Seller(s), dated 09/05/17  
covering the real property at 2132 HOUSTON DR LASVEGAS NV 89104  
, the ☒ Buyer ☐ Seller hereby proposes that the Purchase

Agreement be amended as follows:

1. buyer and seller agree to extend the COE to 1/5/18.
2. buyer to make an immediate additional deposit of \$60,000 (sixty thousand dollars) to escrow , and the escrow to release the entire \$60,000 (sixty thousands dollars ) to seller immediately, and become non-refundable. If this transfer is not completed within 48 hours of execution of this addendum , this addendum will become invalid immediately, either buyer and seller have any obligations to each other.
3. Total of \$60,000 will be applied to purchase price as buyer's credit at COE. All other terms on the existing RPA and addendum to stay the same and effective .
4. Buyer also agree to pay for the rent on one of 2 bedroom unit at the rate of \$650 per month until seller place a tenant in the unit ,the rent will be paid by buyer to seller at successful COE .in the event that seller place a tenant in the unit , buyer will no longer be paying the rent to seller , and buyer will pay \$800 tenant placement fee (leasing fee) to current PM immediately, which is none refundable and to be prorated at successful COE.
5. Time is essence on this addendum.
6. Seller has the right to cancel the escrow without any obligation to the buyer only if the buyer fails to close the escrow for any reason what so ever by Jan 5th, 2018.
7. Buyer agrees to hold harmless against the seller, listing agent and its broker, selling agent and its broker if the buyer fails the close by Jan 5th, 2018 per RPA and this addendum.

Authentisign  
Joyce Nickrandt  
witness 7/20/2017 7:48:07 PM PDT

☐ **ADDITIONAL PAGE(S) ATTACHED.** This Addendum is not complete without the additional terms on the attached \_\_\_\_\_ page(s).

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

**WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.**

Authentisign  
Marie Zhu  
☒ Buyer ☐ Seller Date 09/26/2017  
09/26/2017 7:48:07 PM PDT

☐ Buyer ☐ Seller Time 7:48 PM

**Acceptance:**  
[Signature]  
☐ Buyer ☒ Seller Date 09/27/2017  
09/27/2017 11:06:00 AM PDT

☐ Buyer ☐ Seller Time 11:06 AM

Prepared by: Liwei Helen Chen Phone \_\_\_\_\_  
Agent's Printed Name

Addendum to Purchase Agreement 9/12

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# ADDENDUM NO. 2 TO PURCHASE AGREEMENT



In reference to the Purchase Agreement executed by Marie Zhu  
as Buyer(s) and TKNR INC  
as Seller(s), dated 09/05/17  
covering the real property at 2132 HOUSTON DR LASVEGAS NV 89104  
, the ☒ Buyer ☐ Seller hereby proposes that the Purchase Agreement be amended as follows:  
1. Buyer's name amend to WLAB INVESTMENT GROUP LLC

☐ **ADDITIONAL PAGE(S) ATTACHED.** This Addendum is not complete without the additional terms on the attached \_\_\_\_\_ page(s).

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

**WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.**

Marie Zhu 12/12/2017 1:39:33 PM PST  
☒ Buyer ☐ Seller  
Date  
1:39 PM  
Time

**Acceptance:**  
[Signature] 12/12/2017 2:45:12 PM PST  
☐ Buyer ☒ Seller  
Date  
2:45 PM  
Time

Prepared by: Liwei Helen Chen  
Agent's Printed Name  
Phone

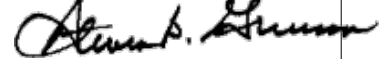
Addendum to Purchase Agreement 9/12 © 2012 Greater Las Vegas Association of REALTORS®

This form presented by Liwei Chen | Investpro Realty | 702-997-3832 | Helen0510C@gmail.com

InstantProMLS

DEF4000366

RA000046



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Attorney for Defendants

**IN THE EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

W L A B INVESTMENT, LLC,  
  
Plaintiff,

CASE NO.: A-18-785917-C  
DEPT. NO.: XIV

**HEARING REQUESTED**

vs.

**DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, PARTIAL SUMMARY  
JUDGMENT**

Date of Hearing:  
Time of Hearing:

TKNR INC., a California Corporation, and  
CHI ON WONG aka CHI KUEN WONG, an  
individual, and KENNY ZHONG LIN, aka  
KEN ZHONG LIN aka KENNETH ZHONG  
LIN aka WHONG K. LIN aka CHONG  
KENNY LIN aka ZHONG LIN, an  
individual, and LIWE HELEN CHEN aka  
HELEN CHEN, an individual and YAN QIU  
ZHANG, an individual, and INVESTPRO  
LLC dba INVESTPRO REALTY, a Nevada  
Limited Liability Company, and MAN  
CHAU CHENG, an individual, and JOYCE  
A. NICKRANDT, an individual, and  
INVESTPRO INVESTMENTS LLC, a  
Nevada Limited Liability Company, and  
INVESTPRO MANAGER LLC, a Nevada  
Limited Liability Company and JOYCE A.  
NICKRANDT, an individual and Does 1  
through 15 and Roe Corporation I - XXX,

Defendants.

Defendants TKNR INC. ("TKNR"), CHI ON WONG ("WONG"), KENNY ZHONG  
LIN ("LIN"), LIWE HELEN CHEN ("CHEN"), YAN QIU ZHANG ("ZHANG"), INVESTPRO  
LLC ("INVESTPRO"), MAN CHAU CHENG ("CHENG"), JOYCE A. NICKRANDT  
("NICKRANDT"), INVESTPRO INVESTMENTS, LLC ("Investments"), and INVESTPRO  
MANAGER LLC (hereinafter collectively referred to as the "Defendants"), by and through their  
counsel of record, MICHAEL B. LEE, P.C., hereby files this Motion for Summary Judgment, or in  
the Alternative, Partial Summary Judgment ("Motion"). This Motion is made on the following

Memorandum of Points and Authorities, any affidavits, declarations or exhibits attached hereto, and any oral arguments accepted at the time of the hearing of this matter. Plaintiff W L A B INVESTMENT, LLC is hereinafter referred to as “Plaintiff” or “WLAB”.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

#### **A. Overview**

Summary Judgment is appropriate as a matter of law. The overwhelming case law in Nevada applies the doctrine of caveat emptor on buyers of real property. Notably, the Property was 63 years old at the time of purchase and being used as a rental property. Nevertheless, Plaintiff waived her inspections twice as it relates to the Property, defined below, as she cancelled her original purchase agreement and entered into a new one. Despite the clear statements that she needed to get an inspection done, and clear disclosures related to the conditions of the Property, Plaintiff still waived her inspection and forged ahead with the purchase. The entire crux of Plaintiff’s action is premised that that there was alleged work done without permits, but TKNR disclosed that it the Seller’s Disclosures. Additionally, permit work is publicly available on the City of Las Vegas’ website, which illustrates that Plaintiff should have known about this issue at the time of purchase, absolving Defendants of any liability.

Moreover, alleged conditions identified by Plaintiff’s alleged expert were all open and obvious, and would have been uncovered by an inspection. Plaintiff’s alleged expert never did any destructive testing, so an inspector would have had the same opportunity to observe everything that he did. Importantly, Plaintiff is a sophisticated commercial buyer who has purchased and renovated several similar properties, so it has a higher burden to demonstrate why it waived inspections. As Defendants disclosed all conditions known to them at the time of the sale, Nevada law does not permit this action to continue. This justifies Summary Judgment on all of Plaintiff’s claims, including the frivolous claims for RICO, fraudulent conveyance, and abuse of process.

Finally, sanctions are also justified against Plaintiff. Astonishingly, Plaintiff is claiming \$16.25 Million in damages related to the purchase of the Property (original purchase price -

1 \$200,000). Incredibly, the original demand by Plaintiff for settlement was \$10,000. Regardless  
2 of whether Plaintiff or Plaintiff’s counsel, who have charged Plaintiff approximately \$64,000 for  
3 this matter so far, are responsible for the violation of Rule 11 in prosecuting this frivolous claim,  
4 Rule 11 permits sanctions against both, which should include an award of attorneys’ fees and  
5 costs to Defendants.

6 **B. Statement of Facts**

7 1. *First Residential Purchase Agreement and Waiver of Inspections,*  
8 *Contractual Broker Limitations*

9 The Property (defining as 2132 Houston Drive, Las Vegas, NV 89104) was originally  
10 constructed in 1954. MLS Listing attached as **Exhibit A**. On or about August 11, 2017, Marie  
11 Zhu (“Zhu”), the original purchaser, executed a residential purchase agreement (“RPA”) for the  
12 Property. Residential Purchase Agreement attached as **Exhibit B** (Plaintiff’s Disclosure) 26 of  
13 166. At all times relevant, Ms. Zhu and Frank Miao (“Miao”), the managing member of  
14 Plaintiff, were sophisticated buyers related to “property management, property acquisition, and  
15 property maintenance.” ROG Response (excerpt) at 3:3-4 attached as **Exhibit N**. The purchase  
16 price for the property was \$200,000. *Id.* Through the RPA, Ms. Zhu waived her due diligence,  
17 although she had a right to conduct inspections:

18 During such Period, Buyer shall have the right to conduct, non-  
19 invasive/non-destructive inspections of all structural, roofing,  
20 mechanical, electrical, plumbing, heating/air conditioning,  
21 water/well/septic, pool/spa, survey, square footage, and any other  
22 property or systems, through licensed and bonded contractors or  
23 other qualified professionals.

24 *Id.* at 28 of 166 at 7(A) lines 36-39.

25 Ms. Zhu did not cancel the contract related to any issues with the Property. *Id.* Under  
26 Paragraph 7(C) of the RPA, Ms. Zhu waived the Due Diligence condition. *Id.* Under Paragraph  
27 7(D) of the RPA, it provided:

28 *It is strongly recommended that Buyer retain licensed Nevada  
professionals to conduct inspections. If any inspection is not  
completed and requested repairs are not delivered to Seller within  
the Due Diligence Period, Buyer is deemed to have waived the  
right to that inspection and Seller's liability for the cost of all*



repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law.

*Id.* Ms. Zhu waived any liability of Defendants for the cost of all repairs that inspection would have reasonably identified had it been conducted. *Id.* Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection, and structural inspection. *Id.*

Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently as to satisfy her use. *Id.* Additionally, Wong, Lin, Chen, Zhang, Cheng, and Nickrandt (collectively, "Brokers" or "Broker Defendants") had "no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party." *Id.*

On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known conditions of the Subject Property. Plaintiff's Disclosure Page 36 of 166 attached as **Exhibit C**. In fact, TKNR disclosed that "3 units has (sic) brand new AC installed within 3 months," and further that the "owner never resided in the property and never visited the property." *Id.* at Page 38. Plaintiff was also aware that the minor renovations, such as painting, was conducted by the Seller's "handyman" as disclosed in the Seller's Disclosures. *Id.* Seller also disclosed that it had done construction, modification, alterations, or repairs without permits. *Id.* at 37. Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquiries. *Id.*

2. *Second Residential Purchase Agreement and Waiver of Inspections, Contractual Broker Limitations*

On or before December 5, 2017, Ms. Zhu had issues related to the financing for the Property because of an appraisal. Chen-Ms. Zhu email attached as **Exhibit D**. As such, Ms. Chen confirmed that Ms. Zhu would do a new purchase agreement, and would agree to pay the difference in an appraisal with a lower value than the purchase price, and waive inspections:

Please note that seller agree the rest of terms and request to add the below term on the contract:  
"Buyer agree to pay the difference in cash if appraisal come in

lower than purchase price, not to exceed purchase price of \$200k"  
I just send you the docs, please review and sign if you are agree.  
Thank you!

**(Per buyer's request will waive licensed home inspector to do  
the home inspection)**

*Id.* (emphasis added).

On the same day, Ms. Zhu and TKNR agreed to Addendum No. 1 to cancel the RPA dated August 11, 2017, Addendum No. 1 attached as **Exhibit E**, and entered into a new Residential Purchase Agreement dated September 5, 2017 ("2<sup>nd</sup> RPA"). 2<sup>nd</sup> RPA attached as **Exhibit F**. As before, the overall purchase price for the Property was \$200,000, but Ms. Zhu changed the contingency for the loan to \$150,000 with earnest money deposit of \$500 and a balance of \$49,500 owed at the close of escrow ("COE" or "Closing"). *Id.* at DEF4000355. The COE was set for September 22, 2017. *Id.* at DEF4000357 at ¶ 5C.

Notably, although Ms. Zhu had not initialed the "Failure to Cancel or Resolve Objections" provision in the RPA, Ex. B. at Page 29 at ¶ 7(c), she initialed the corresponding provision in the 2<sup>nd</sup> RPA. Ex. F at DEF4000358 at ¶ 7(c). This was consistent with Ms. Zhu's instructions to Ms. Chen. Ex. D. This is the second time that Ms. Zhu waived inspections for the Property despite the language in the 2<sup>nd</sup> RPA that strongly advised to get an inspection done.

As noted, Ms. Zhu waived any inspections related to the purchase of the Property in the 2<sup>nd</sup> RPA. *Id.* at DEF4000357 at ¶ 7. Although Ms. Zhu had actual knowledge of the Seller's Disclosures, Ex. C, from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ex. F at Addendum 1 at DEF4000365, Ms. Zhu still never did any inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TNKR. *Id.* Moreover, she also agreed to pay rent in the amount of \$650 per month for one of the units, and to also pay the property manager \$800 for the tenant placement fee. *Id.* Through Addendum 2 to the 2<sup>nd</sup> RPA, Ms. Zhu later changed the purchaser to Plaintiff. *Id.* at DEF4000366.

### 3. No Reliance on Broker Agents

As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent. *Id.* at DEF4000361 ¶ 22. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties. *Id.* Ms. Zhu agreed to

1 satisfy herself, as to the condition of the Property, prior to the close of escrow. *Id.* Ms. Zhu  
2 waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors  
3 related to Ms. Zhu’s failure to conduct walk-throughs or inspections. *Id.* Ms. Zhu assumed full  
4 responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she  
5 deemed necessary. *Id.* In any event, Broker’s liability was limited, under any and all  
6 circumstances, to the amount of that Broker’s commission/fee received in the transaction. *Id.*

7 4. Inspection Would Have Revealed Alleged Conditions

8 On November 17, 2020, Defendants’ expert, Neil D. Opfer, an Associate Professor of  
9 Construction Management at UNLV and overqualified expert, conducted an inspection of the  
10 Property. Opfer Report attached as **Exhibit G**. At that time, while he only had interior access to  
11 one of the three units due to the failure of Plaintiff to accommodate the request for the  
12 inspection, he did a visual inspection of all the areas specified in Plaintiff’s expert’s report. *Id.*  
13 Moreover, he also found pictures of the Property from 2017 that depicted the condition of the  
14 Property prior to August 11, 2017. *Id.* at DEF5000368. While Professor Opfer illustrated the  
15 dubious findings by Plaintiff’s expert with citations showing the actual misstatements of the  
16 building code requirements as it relates to permits, he noted that TNKR did disclose that it did  
17 the work without permits through its disclosures. *Id.* at DEF5000371.

18 As to the alleged issues, Professor Opfer noted that the alleged conditions identified by  
19 Plaintiff’s alleged expert were open and obvious:

20 [n]ote that the Plaintiff could have hired an inspector or contractor  
21 to evaluate this real-estate purchase beforehand but did not. Items  
22 complained about in the Sani Report were open and obvious at the  
23 roof area, attic area, and on the exterior and interior areas of the  
24 Property.

25 Ex. G at DEF5000372.

26 Professor Opfer also noted that Plaintiff’s expert did not do any destructive testing, so the  
27 same alleged conditions that the alleged expert noted, would have been made by an inspector at  
28 the time of the purchase. *Id.* at DEF5000372-373. Similarly, he later noted:

it is the fault of the Plaintiffs for not conducting requisite  
inspections of the Property prior to its purchase. Since this issue is  
apparently open and obvious as per the Sani Report, it would have

1                   been open and obvious as well during a pre-purchase inspection.  
2   *Id.* at DEF5000380. Moreover, he also noted that Plaintiff’s alleged expert did “not recognize  
3   prior conditions in existence before any work took place by the Defendants.” *Id.* at  
4   DEF5000376.

5                   As to the open and obvious nature of the alleged issues, Professor Opfer noted the  
6   following:

- 7                   1.     the photographs from 2017 showed extensive cracking to  
8                   the stucco and slab to the Property prior to any work by  
9                   Defendants and/or the licensed contractor it hired to install  
10                  the HVAC. *Id.*
- 11                  2.     the alleged attic issues could have been inspected at the  
12                  time of the purchase. *Id.* at DEF5000378
- 13                  3.     “any deficient electrical work related to this 220-volt  
14                  service situation could have been readily ascertained by an  
15                  inspection at the time of purchase by the Plaintiff”. *Id.* at  
16                  DEF5000379
- 17                  4.     the alleged HVAC issues were open and obvious. *Id.* at  
18                  DEF5000381
- 19                  5.     “the conditions complained about as to venting and ducting  
20                  were present at the Property prior to Defendants owning the  
21                  Property”. *Id.* at DEF5000388,
- 22                  6.     Plaintiff could have conducted an online search related to  
23                  the permits or lack of permits for the Property. *Id.* at  
24                  DEF5000389.
- 25                  7.     The basis of the Sani Estimate is nonsensical in the first  
26                  place and there is nothing seen from this Sani Report that  
27                  was not present at the time of sale of the Triplex Property.  
28                  There were cracks in the stucco system and concrete slab  
                  system existing in 2017. Roof venting/duct venting had not  
                  been changed by Defendants and was existing in 2017 and  
                  could have been inspected by Plaintiff. *Id.* at DEF5000391.
8.     Any deficiencies with this electrical installation were open,  
                  obvious and could have been inspected prior to purchase as  
                  with all other items with this Triplex Property. Any cracks  
                  such as wall or floor cracks subsequent to the purchase  
                  would obviously be new but again this occurs even on new  
                  homes across the Las Vegas Valley and elsewhere. *Id.* at  
                  DEF5000392.

27                   Professor Opfer also noted that it was well known at the time of the purchase that the  
28   Property was a 63 year old rental property that was subject to potential renter abuse:

Rental properties experience more-severe-service requirements due to many factors often including a lack of knowledge in order to care for a Property on the part of tenants along with often an uncaring attitude as well.

*Id.* at DEF5000379.

**C. Statement of Procedure**

On November 23, 2020, Plaintiff filed its second amended complaint (“SAC”). In large part, the SAC completely failed to acknowledge the waivers by Ms. Zhu related to the inspection of the Property and/or the open and obvious nature of the alleged defects in the then-63 year old Property at the time of purchase. That said, the SAC alleges fifteen causes of action: (1) Recovery Under NRS Chapter 113 [Defendants TKNR, Wong, and Investpro Manager LLC]; (2) Constructive Fraud [Defendants Investpro, Nickrandt, and Chen]; (3) Common Law Fraud [Defendants Investpro, Investpro Manager LLC , TKNR, Wong and Lin]; (4) Fraudulent Inducement [Defendants TKNR, Investpro Manager LLC , Wong, Investpro and Lin]; (5) Fraudulent Concealment [Defendants TKNR, Wong, Investpro, Investpro Manager LLC, and Lin]; (6) Breach Of Fiduciary Duty [Defendants Investpro and Nickrandt and Chen]; (7) RICO [Defendants Lin, Cheng, Investpro Manager LLC and Investpro Investments I LLC]; (8) Damages Under NRS 645.257(1) [Defendant Chen, Lin, Investpro and Nickrandt]; (9) Failure To Supervise, Inadequate training and Education [Defendant Investpro, Zhang, and Nickrandt]; (10) Fraudulent Conveyance [TKNR]; (11) Fraudulent Conveyance [Investpro Investments I LLC]; (12) Civil Conspiracy [As To Defendant Man Chau Cheng, Lin, Investpro, Wong, TKNR, Investpro Investments I LLC and Investpro Manager LLC]; (13) Breach Of Contract [As To Defendant Investpro]; (14) Breach Of Implied Covenant of Good Faith and Fair Dealing [As To Defendant Investpro]; and (15) Abuse of Process [As To All Defendants].

**II. DISCUSSION**

The following Discussion is organized into six Parts. Part A sets forth the legal standards for summary judgment and real estate disclosures. Part B provides the supporting facts and application of the law to illustrate that the waiver of inspections is fatal to Plaintiff’s case as a matter of law. In four subparts, it provides an analysis of (1) the disclosures by TKNR, (2) the

1 waiver of inspections, (3) the alleged deficiencies were open and obvious, and (4) Defendants  
2 did not know about any of those conditions. Part C asserts Nevada law does not permit any  
3 claims against the Broker Defendants. Part D, in four parts, specifies the lack of merit of the  
4 ancillary claims for (1) RICO, (2) Fraudulent Conveyance, (3) Civil Conspiracy, and (4) Abuse  
5 of Process. Part E, in the alternatively, requests partial summary judgment of the uncontested  
6 facts and law if Summary Judgment is not awarded. Finally, Part F requests Rule 11 sanctions.

7 **A. Legal Standards**

8 1. Summary Judgment

9 Summary judgment is appropriate when the pleadings, depositions, answers to  
10 interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate  
11 that no genuine issue of material fact exist, and the moving party is entitled to judgment as a  
12 matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).  
13 Substantive law controls whether factual disputes are material and will preclude summary  
14 judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
15 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the  
16 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley*  
17 *Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

18 The Nevada Supreme Court has held that the non-moving party may not defeat a motion  
19 for summary judgment by relying “on gossamer threads of whimsy, speculation and conjecture.”  
20 *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The Nevada Supreme Court  
21 has also made it abundantly clear when a motion for summary judgment is made and supported  
22 as required by Nevada Rule of Civil Procedure 56, the non-moving party must not rest upon  
23 general allegations and conclusions, but must by affidavit or otherwise set forth specific facts  
24 demonstrating the existence of a genuine factual issue. *Id.*

25 Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment,  
26 or partial summary judgment. “The court shall grant summary judgment if the movant shows  
27 that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a  
28 matter of law.” The court may rely upon the admissible evidence cited in the moving papers

1 and may also consider other materials in the record as well. *Id.* at 56(c). “If the court does not  
2 grant all the relief requested by the motion, it may enter an order stating any material fact —  
3 including an item of damages or other relief — that is not genuinely in dispute and treating the  
4 fact as established in the case.” *Id.* at 56(g).

5 The pleadings and proof offered in a Motion for Summary Judgment are construed in the  
6 light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102 Nev. 425, 429, 725  
7 P.2d 238, 241 (1986). However, the non-moving party still “bears the burden to ‘do more than  
8 simply show that there is some metaphysical doubt’ as to the operative facts in order to avoid  
9 summary judgment being entered.” *Wood*, 121 Nev. at 732, 121 P.3d at 1031. “To successfully  
10 defend against a summary judgment motion, ‘the nonmoving party must transcend the pleadings  
11 and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue  
12 of material fact.’” *Torrealba v. Kesmetis*, 178 P.3d 716, 720 (Nev. 2008) (quoting *Cuzze v.*  
13 *Univ. & Cmty. Coll. Sys. of Nev.*, 172 P.3d 131, 134 (Nev. 2007).

14 The non-moving party bears the burden to set forth specific facts demonstrating the  
15 existence of a "genuine" issue for trial or have summary judgment entered against him. *Collins*  
16 *v. Union Federal Savings & Loan*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983). When there  
17 is no genuine issue of material fact and the non-moving party provides no admissible evidence to  
18 the contrary, summary judgment is “mandated.” *Celotex Corp. v. Catrett*, 477 US 317, 322  
19 (1986). When a motion for summary judgment is made and supported, an adversary party who  
20 does not set forth specific facts showing a genuine issue to be resolved at trial may have a  
21 summary judgment entered against him. *Collins v. Union Federal Sav. & Loan Ass’n*, 99 Nev.  
22 284, 294, 662 P.2d 610, 616 (1983) (citing *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414,  
23 633 P.2d 1220 (1981); *Bird v. Casa Royale West*, 97 Nev. 67, 624 P.2d 17 (1981)).

## 24 2. Real Estate Disclosures

25 “Under NRS Chapter 113, residential property sellers are required to disclose any defects  
26 to buyers within a specified time before the property is conveyed.” *Nelson v. Heer*, 163 P.3d  
27 420, 425 (Nev. 2007) (citing NRS 113.140(1)). “NRS 113.140(1), however, provides that a  
28 seller is not required to ‘disclose a defect in residential property of which [she] is not aware.’ A

1 ‘defect’ is defined as “a condition that materially affects the value or use of residential property  
2 in an adverse manner.” *Id.* (citing NRS 113.100(1)). The Nevada Supreme Court clarified that:

3 [a]scribing to the term “aware” its plain meaning, we determine  
4 that the seller of residential real property does not have a duty to  
5 disclose a defect or condition that “materially affects the value or  
6 use of residential property in an adverse manner,” if the seller does  
7 not realize, perceive, or have knowledge of that defect or  
8 condition. Any other interpretation of the statute would be  
unworkable, as it is impossible for a seller to disclose conditions in  
the property of which he or she has no realization, perception, or  
knowledge. The determination of whether a seller is aware of a  
defect, however, is a question of fact to be decided by the trier of  
fact.

9 *Id.* at 425 (citations omitted). Thus, in the context where the plaintiff cannot demonstrate an  
10 omitted disclosure that caused damage, the seller is entitled to summary judgment as a matter of  
11 law. *Id.* at 426.

12 Generally, “[n]ondisclosure by the seller of adverse information concerning real property  
13 . . . will not provide the basis for an action by the buyer to rescind or for damages when property  
14 is sold ‘as is.’ ” *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549, 552  
15 (1993). Moreover, “[l]iability for nondisclosure is generally not imposed where the buyer either  
16 knew of or could have discovered the defects prior to the purchase.” *Land Baron Invs., Inc. v.*  
17 *Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). The general rule  
18 foreclosing liability for nondisclosure when property is purchased as-is does not apply when the  
19 seller knows of facts materially affecting the value or desirability of the property which are  
20 known or accessible only to [the seller] and also knows that such facts are not known to, or  
21 within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at  
22 633, 855 P.2d at 552 (alteration in original) (internal quotation marks omitted).

23 A buyer waives its common law claims of negligent misrepresentation, fraudulent or  
24 intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would  
25 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close  
26 of escrow, and the information was reasonably accessible to the buyer. *Frederic and Barbara*  
27 *Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).  
28 Accordingly, the Nevada Supreme Court concluded that an agreement to purchase property as-is



1 foreclosed the buyer’s common law claims, justifying the granting of summary judgment on  
2 common law claims. *Id.* (citation omitted).

3 The terms and conditions of the purchase agreement do not create  
4 a duty to disclose. Rather, these disclosures are required by NRS  
5 Chapter 113, which sets forth specific statutory duties imposed by  
6 law independent of the purchase agreement’s terms and conditions.  
7 Additionally, the terms of the purchase agreement do not require  
8 [the seller] to do anything other than provide the listed disclosures.

9 *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL 6955438, at \*5 (Nev. App. Nov. 25,  
10 2020).

11 Nevada Revised Statute (“NRS”) § 113.140 clearly provides that the Seller Disclosures  
12 does not constitute a warranty of the Subject Property and that the Buyer still has a duty to  
13 exercise reasonable care to protect himself. NRS § 113.140 also provides that the Seller does not  
14 have to disclose any defect that he is unaware of. Similarly, NRS § 113.130 does not require a  
15 seller to disclose a defect in residential property of which the seller is not aware. A completed  
16 disclosure form does not constitute an express or implied warranty regarding any condition of  
17 residential property. NRS § 113.140(2). Chapters 113 and “645 of Nevada Revised Statutes do  
18 not relieve a buyer or prospective buyer of the duty to exercise reasonable care to protect himself  
19 or herself.” *Id.* at § 113.140(2).

20 **B. The Two Waivers of Inspection and the Open and Obvious Nature of the**  
21 **Alleged Deficiencies are Fatal to Plaintiff’s Claims as a Matter of Law**

22 Summary Judgment is appropriate as a matter of law on all of Plaintiff’s claims. It is  
23 undisputed that the alleged deficiencies were either disclosed by Defendants, could have been  
24 discovered by an inspection, were open and obvious whereby Plaintiff / Ms. Zhu had notice of  
25 them at the time she purchased the Property, or were unknown to Defendants at the time of the  
26 sale.

27 **1. Disclosures by Seller**

28 On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known  
conditions of the Subject Property. Ex. C. TKNR disclosed that “3 units has (sic) brand new AC  
installed within 3 months,” and further that the “owner never resided in the property and never

1 visited the property.” *Id.* at Page 38. Plaintiff was also aware that the minor renovations, such as  
2 painting, was conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. *Id.*  
3 TNKR also disclosed that it was aware of issues with the heating and cooling systems, *Id.* at 36,  
4 there was construction, modification, alterations, or repairs done without permits, *Id.* at 37, and  
5 lead-based paints. *Id.*

6 As such, Summary Judgment is appropriate under NRS § 113.140(1) (seller is not  
7 required to disclose a defect in residential property of which she is not aware). Under this  
8 statute, “[a]scribing to the term ‘aware’ its plain meaning, . . . the seller of residential real  
9 property does not have a duty to disclose a defect or condition that ‘materially affects the value  
10 or use of residential property in an adverse manner,’ if the seller does not realize, perceive, or  
11 have knowledge of that defect or condition.” *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007).  
12 Thus, as Plaintiff cannot demonstrate an omitted disclosure that caused damage, Defendants are  
13 entitled to summary judgment as a matter of law. *Id.* at 426.

14 Moreover, information related to permits is publicly available. The City of Las Vegas  
15 has a website<sup>1</sup> that allows anyone in the public to search for permits. Permit Search for Property  
16 attached as **Exhibit H**. NRS § 645.259(2) precludes any liability for misrepresentation or under  
17 Chapter 113 if the information is a public record:

18 [e]xcept as otherwise provided in this subsection, the failure of the  
19 seller to make the disclosures required by NRS 113.130 and  
20 113.135 if the information that would have been disclosed pursuant  
to NRS 113.130 and 113.135 **is a public record which is readily  
available to the client.**

21 (Emphasis Added). As the SAC is largely premised on the allegation that TNKR allegedly did  
22 not disclose that it did not use licensed contractors who obtained permits, SAC at ¶ 29, NRS  
23 645.259(2) precludes any of these claims as a matter of law. As such, Summary Judgment is  
24 appropriate as TNKR disclosed that it did not have permits and the information was publicly  
25 available.

26 In total, under NRS § 113.140(1) (seller is not required to disclose a defect in residential

27 <sup>1</sup> <https://www.lasvegasnevada.gov/Business/Permits-Licenses/Building-Permits/Permit-Application-Status?search=address&addrkey=237304>  
28

property of which she is not aware), *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007), and NRS § 645.259(2), Defendants are entitled to Summary Judgment on Plaintiff's claims for (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing]. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law.

2. Waiver of Inspections

On August 11, 2020, through the original RPA, Ms. Zhu waived her due diligence, although she had a right to conduct inspections:

During such Period, Buyer shall have the right to conduct, non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals.

Ex. B at 28 of 166 at 7(A) lines 36-39.

Section II(B)(1) lists the disclosures by TKNR. Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquiries. *Id.* In fact, Ms. Zhu only cancelled the original RPA, Ex. E, because of an issue related to her financing, not because of any concerns related to the Seller's Disclosures. Notably, she included the explicit waiver of the inspections, which included her initialing the provision that she had not done in the original RPA. Ex. F. Ms. Zhu even directly informed her agent to waive all inspections. Ex. D. Although Ms. Zhu had actual knowledge of the Seller's Disclosures, Ex. C, from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ex. F at Addendum 1 at DEF4000365, Ms. Zhu still never did any inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TNKR. *Id.* Moreover, she also agreed to pay rent in the amount of \$650 per month for one of the units, and to also pay the property manager \$800 for the tenant placement fee. *Id.* Through Addendum 2 to the 2<sup>nd</sup> RPA, Ms. Zhu

1 later changed the purchaser to Plaintiff. *Id.* at DEF4000366.

2 As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations  
3 made by Brokers or Broker's agent. *Id.* at DEF4000361 ¶ 22. Ms. Zhu agreed to purchase the  
4 Property AS-IS, WHERE-IS, without any representations or warranties. *Id.* Ms. Zhu agreed to  
5 satisfy herself, as to the condition of the Property, prior to the close of escrow. *Id.* Ms. Zhu  
6 waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors  
7 related to Ms. Zhu's failure to conduct walk-throughs or inspections. *Id.* Ms. Zhu assumed full  
8 responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she  
9 deemed necessary. *Id.* In any event, Broker's liability was limited, under any and all  
10 circumstances, to the amount of that Broker's commission/fee received in the transaction. *Id.*

11 As to the waivers, Paragraph 7(D) of the both the RPA and 2<sup>nd</sup> RPA expressly provided:

12 *It is strongly recommended that Buyer retain licensed Nevada*  
13 *professionals to conduct inspections. If any inspection is not*  
14 *completed and requested repairs are not delivered to Seller within*  
15 *the Due Diligence Period, Buyer is deemed to have waived the*  
*right to that inspection and Seller's liability for the cost of all*  
*repairs that inspection would have reasonably identified had it*  
*been conducted, except as otherwise provided by law.*

16 *Id.* Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently as  
17 to satisfy her use. *Id.* Nevertheless, Ms. Zhu waived her inspection related to the original RPA  
18 and the 2<sup>nd</sup> RPA, reinforced further by actually initialing next to the waiver in the 2<sup>nd</sup> RPA. Ex.  
19 F. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal  
20 inspection, mechanical inspection, soil inspection, and structural inspection. *Id.* Thereby, Ms.  
21 Zhu waived any liability of Defendants for the cost of all repairs that inspection would have  
22 reasonably identified had it been conducted. *Id.* The RPA and the 2<sup>nd</sup> RPA clearly indicated that  
23 Ms. Zhu was purchasing the Property "AS-IS, WHERE-IS without any representations or  
24 warranties." *Id.* at DEF4000361 at ¶ 22.

25 Additionally, Ms. Zhu also agreed that the Brokers Defendants had "no responsibility to  
26 assist in the payment of any repair, correction or deferred maintenance on the Property which  
27 may have been revealed by the above inspections, agreed upon by the Buyer and Seller or  
28 requested by one party." *Id.*

1 As a matter of law, Plaintiff is precluded from seeking damages from Defendants because  
2 of her failure to inspect. “Nondisclosure by the seller of adverse information concerning real  
3 property . . . will not provide the basis for an action by the buyer to rescind or for damages when  
4 property is sold ‘as is.’ ” *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549,  
5 552 (1993). Moreover, “[l]iability for nondisclosure is generally not imposed where the buyer  
6 either knew of or could have discovered the defects prior to the purchase.” *Land Baron Invs.,*  
7 *Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). Defendants  
8 also do not have liability as Ms. Zhu / Plaintiff purchased the Property “as-is” within the reach of  
9 the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at  
10 552. NRS § 113.140 clearly provides that the disclosures do not constitute a warranty of the  
11 Property and that the purchaser still has a duty to exercise reasonable care to protect himself. A  
12 completed disclosure form does not constitute an express or implied warranty regarding any  
13 condition of residential property. NRS § 113.140(2). Chapters 113 and “645 of Nevada Revised  
14 Statutes do not relieve a buyer or prospective buyer of the duty to exercise reasonable care to  
15 protect himself or herself.” *Id.* at § 113.140(2).

16 Thus, Plaintiff waived its common law claims of negligent misrepresentation, fraudulent  
17 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would  
18 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close  
19 of escrow, and the information regarding Property was reasonably accessible to the buyer.  
20 *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d  
21 104, 111 (Nev. 2018).

22 In this context, Summary Judgment is appropriate as a matter of law. *Id.* (citation  
23 omitted). Defendants are entitled to Summary Judgment as to Plaintiff’s claims for (1) Recovery  
24 Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent  
25 Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under  
26 NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil  
27 Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and  
28 Fair Dealing. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance,

(11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law.

3. Alleged Deficiencies Open and Obvious

The alleged conditions identified by Plaintiff's alleged expert in the Property were open and obvious:

[n]ote that the Plaintiff could have hired an inspector or contractor to evaluate this real-estate purchase beforehand but did not. Items complained about in the Sani Report were open and obvious at the roof area, attic area, and on the exterior and interior areas of the Property.

Ex. G at DEF5000372.

Plaintiff's expert did not do any destructive testing, so the same alleged conditions that the alleged expert noted, would have been made by an inspector at the time of the purchase. *Id.* at DEF5000372-373. Similarly, Professor Opfer noted:

it is the fault of the Plaintiffs for not conducting requisite inspections of the Property prior to its purchase. Since this issue is apparently open and obvious as per the Sani Report, it would have been open and obvious as well during a pre-purchase inspection.

*Id.* at DEF5000380. The open and obvious nature of the alleged issues include the following:

1. the photographs from 2017 showed extensive cracking to the stucco and slab to the Property prior to any work by Defendants and/or the licensed contractor it hired to install the HVAC. *Id.*
2. the alleged attic issues could have been inspected at the time of the purchase. *Id.* at DEF5000378
3. "any deficient electrical work related to this 220-volt service situation could have been readily ascertained by an inspection at the time of purchase by the Plaintiff". *Id.* at DEF5000379
4. the alleged HVAC issues were open and obvious. *Id.* at DEF5000381
5. "the conditions complained about as to venting and ducting were present at the Property prior to Defendants owning the Property". *Id.* at DEF5000388,
6. Plaintiff could have conducted an online search related to the permits or lack of permits for the Property. *Id.* at DEF5000389.

////

- 1                   7.     The basis of the Sani Estimate is nonsensical in the first  
2                   place and there is nothing seen from this Sani Report that  
3                   was not present at the time of sale of the Triplex Property.  
4                   There were cracks in the stucco system and concrete slab  
5                   system existing in 2017. Roof venting/duct venting had not  
6                   been changed by Defendants and was existing in 2017 and  
7                   could have been inspected by Plaintiff. *Id.* at DEF5000391.  
8
- 9                   8.     Any deficiencies with this electrical installation were open,  
10                  obvious and could have been inspected prior to purchase as  
11                  with all other items with this Triplex Property. Any cracks  
12                  such as wall or floor cracks subsequent to the purchase  
13                  would obviously be new but again this occurs even on new  
14                  homes across the Las Vegas Valley and elsewhere. *Id.* at  
15                  DEF5000392.
- 16                  9.     Rental properties experience more-severe-service  
17                  requirements due to many factors often including a lack of  
18                  knowledge in order to care for a Property on the part of  
19                  tenants along with often an uncaring attitude as well. *Id.* at  
20                  DEF5000379.

21                  Summary Judgment is appropriate as Plaintiff either knew of or could have discovered  
22                  the defects prior to the purchase. *Land Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev.  
23                  686, 696, 356 P.3d 511, 518 (2015). Clearly, the open and obvious issues were within the reach  
24                  of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at  
25                  552 (alteration in original) (internal quotation marks omitted). In this context, Summary  
26                  Judgment is appropriate as a matter of law. *Id.* (citation omitted). Defendants are entitled to  
27                  Summary Judgment as to Plaintiff's claims for (1) Recovery Under NRS Chapter 113, (2)  
28                  Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent  
29                  Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure  
30                  To Supervise, Inadequate training and Education, (12) Civil Conspiracy, (13) Breach Of  
31                  Contract, and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing.

32                  4.     Unknown to any Defendant

33                  At all times relevant, no Defendant was aware of any issues related to any of the alleged  
34                  complaints raised by Plaintiff and/or Plaintiff's alleged expert. Declaration of Kenny Lin  
35                  attached as **Exhibit I**. The only issues that Defendants were aware of were properly disclosed  
36                  with an explanation. No Defendant was aware of any issues with any structural, electrical,  
37                  plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the  
38

1 Property before the time of the sale to Ms. Zhu. *Id.* Nor was any Defendant aware of any issues  
2 with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or  
3 foundation issues with the Property at the time of the sale to Ms. Zhu. *Id.* As to the HVAC  
4 issue, Defendants were aware that tenants of the Property complained about the cooling of the  
5 Property, which is why TKNR paid to have the system upgraded by a licensed contractor. Air  
6 Team Invoice attached as **Exhibit J**.

7 At all times relevant, during the Due Diligence Period, Plaintiff had access to inspect: the  
8 mechanical systems, the structure of the Property, the windows, for mold / fungus, the electrical  
9 systems, the plumbing systems, the gas lines, the attic, the bathroom exhaust vent / washer /dryer  
10 exhaust vent, the ceiling insulation, the roof decking, the roof trusses, the roof support structures,  
11 the duct system, and the flooring and tiles. Ex. G. At all times relevant, Plaintiff knew that the  
12 Property was originally constructed in 1954. *Id.* at ¶ 70.

13 NRS § 113.140 provides that the Seller does not have to disclose any defect that he is  
14 unaware of. Similarly, NRS § 113.130 does not require a seller to disclose a defect in residential  
15 property of which the seller is not aware. The Nevada Supreme Court has also made it  
16 abundantly clear that a seller does not have any liability for unknown defects and/or where the  
17 diligent buyer should have done an inspection. *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007)  
18 (citing NRS 113.140(1)); *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549,  
19 552 (1993) (nondisclosure by the seller of adverse information concerning real property will not  
20 provide the basis for an action by the buyer for damages when property is sold as is); *Land*  
21 *Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015)  
22 (“[I]liability for nondisclosure is generally not imposed where the buyer either knew of or could  
23 have discovered the defects prior to the purchase.”); *Frederic and Barbara Rosenberg Living Tr.*  
24 *v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018) (buyer waives its common  
25 law claims of negligent misrepresentation, fraudulent or intentional misrepresentation, and/or  
26 unjust enrichment when it expressly agreed that it would carry the duty to inspect the property  
27 and ensure that all aspects of it were suitable prior to close of escrow, and the information was  
28 reasonably accessible to the buyer); *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL



1 6955438, at \*5 (Nev. App. Nov. 25, 2020) (the terms of the purchase agreement do not require  
2 the seller to do anything other than provide the listed disclosures).

3 Therefore, the overwhelming authority demands Summary Judgment in favor of  
4 Defendants as a matter of law. As such, Summary Judgment is appropriate as a matter of law.  
5 *Id.* (citation omitted). Defendants are entitled to Summary Judgment as to Plaintiff's claims for  
6 (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4)  
7 Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8)  
8 Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education,  
9 (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good  
10 Faith and Fair Dealing. It also eliminates the causes of action for (7) RICO, (10) Fraudulent  
11 Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in  
12 fact or law. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance,  
13 (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law.

14 **C. Summary Judgment is Warranted as to Broker Defendants**

15 As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations  
16 made by Brokers or Broker's agent. *Id.* at DEF4000361 ¶ 22. Ms. Zhu agreed to purchase the  
17 Property AS-IS, WHERE-IS, without any representations or warranties. *Id.* Ms. Zhu agreed to  
18 satisfy herself, as to the condition of the Property, prior to the close of escrow. *Id.* Ms. Zhu  
19 waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors  
20 related to Ms. Zhu's failure to conduct walk-throughs or inspections. *Id.* Ms. Zhu assumed full  
21 responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she  
22 deemed necessary. *Id.* In any event, Broker's liability was limited, under any and all  
23 circumstances, to the amount of that Broker's commission/fee received in the transaction. *Id.*  
24 Additionally, Ms. Zhu also agreed that the Brokers Defendants had "no responsibility to assist in  
25 the payment of any repair, correction or deferred maintenance on the Property which may have  
26 been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one  
27 party." *Id.*

28 ////

1 NRS 645.252 sets forth the duties of real estate agents. Based on the Seller's  
2 Disclosures, the RPA, and the 2<sup>nd</sup> RPA, Defendants clearly do not have any liability to Plaintiff  
3 under Nevada law. Plaintiff had a separate agent representing them for the purchase of the  
4 Property. As noted earlier, Plaintiff cancelled the first RPA and entered into the second with  
5 actual knowledge of the Seller's Disclosures and the roles of all Defendants. Exs. A-F. NRS  
6 645.252(4) clearly specifies that agents do not owe a duty to "(a) [i]ndependently verify the  
7 accuracy of a statement made by an inspector certified pursuant to chapter 645D of NRS or  
8 another appropriate licensed or certified expert" or "(c) [c]onduct an investigation of the  
9 condition of the property which is the subject of the real estate transaction."

10 In addition to the authority cited above, Summary Judgment is appropriate as a matter of  
11 law on Plaintiff's claims for (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3)  
12 Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of  
13 Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate  
14 training and Education, (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of  
15 Implied Covenant of Good Faith and Fair Dealing]. It also eliminates the causes of action for (7)  
16 RICO, (10) Fraudulent Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process  
17 since they have no basis in fact or law.

18 **D. No Basis for Extraneous Claims**

19 The SAC contains claims that appear to be loosely associated with the alleged non-  
20 disclosure claims related to the sale of the Property: (7) RICO; (10) Fraudulent Conveyance; (11)  
21 Fraudulent Conveyance; (12) Civil Conspiracy; and (15) Abuse of Process. As noted in the prior  
22 sections, each of these claims fall as a matter of law based on the aforementioned authority and  
23 facts. Nevertheless, this Section will address the lack of merit of each of these claims.

24 **1. RICO**

25 In 1970, the United States Congress passed the Racketeer Influenced and Corrupt  
26 Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"), as a portion of the Organized Crime  
27 Control Act of 1970. In passing RICO, "Congress created a wide array of novel civil and  
28 criminal weapons to use against crime and corruption." *Chappell v. Robbins*, 73 F.3d 918, 919

1 (9th Cir. 1996). Similarly, “Congress created a private claim under RICO at least in part to  
2 compensate victims of racketeering.” *Id.* at 1153 (citing *Petro-Tech, Inc. v. Western Co. of*  
3 *North America*, 824 F.2d 1349, 1358 (3d Cir.1987)). Nevertheless, “RICO was intended to  
4 combat organized crime, not to provide a federal cause of action and treble damages to every tort  
5 plaintiff.” *Oscar v. University Students Co-op. Ass’n*, 965 F.2d 783, 786 (9th Cir. 1992). “[A]s  
6 a matter of law, personal injury, including emotional distress, is not compensable under section  
7 1964(c) of RICO.” *Berg v. First State Ins. Co.*, 915 F.2d 460, 464 (9th Cir. 1990). RICO  
8 “provides compensation only for damages caused by racketeering activity.” *Oscar*, 965 F.2d at  
9 813.

10 “Nevada’s anti-racketeering statutes . . . are patterned after the federal [RICO] statutes.”  
11 *Hale v. Burkhardt*, 104 Nev. 632, 634, 764 P.2d 866, 867 (1988). Nevada codified its own  
12 version of RICO under NRS §§ 207.350-207.520. NRS 207.400(1)(a) specifies that it is  
13 unlawful for a person **with criminal intent** received any proceeds derived, directly or indirectly,  
14 **from racketeering activity**. (Emphasis added). For a federal RICO claim, a plaintiff must  
15 allege the following elements to prevail on a RICO claim under a pattern of racketeering activity:  
16 (1) the conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity. *See Sun*  
17 *Sav. & Loan Ass’n v. Dierdorff*, 825 F.2d 187, 191 (9th Cir.1987).

18 However, “Nevada’s civil RICO statute differs in some respects from the federal civil  
19 RICO statute.” *Hale*, at 635, 764 P.2d at 868. One critical distinction is found in comparing the  
20 language of 18 U.S.C. § 1961(5) with that of NRS 207.390. The federal statute provides that a  
21 claimant must plead a pattern of racketeering activity and that such a pattern requires at least two  
22 predicate acts; Nevada’s RICO statute does not speak in terms of a “pattern of racketeering” and  
23 provides that racketeering activity means two predicate acts of the type described in NRS  
24 207.390 and NRS 207.360. Thus, there is no pattern/continuity requirement as is required under  
25 federal law. *Siragusa v. Brown*, 971 P.2d 801, 811 (Nev. 1998).

26 a. **An Enterprise**

27 Under RICO, an “enterprise” includes any individual, partnership, corporation,  
28 association, or other legal entity, and any union or group of individuals associated in fact

1 although not a legal entity. 18 U.S.C. § 1961(4). It is “ ‘a being different from, not the same as  
2 or part of, the person whose behavior the act was designed to prohibit.’ ” *Rae v. Union Bank*,  
3 725 F.2d 478, 481 (9th Cir.1984) (quotation omitted). For the purposes of a single action, a  
4 corporate defendant cannot be both the RICO person and the RICO enterprise under section  
5 1962(c). *See Wilcox v. First Interstate Bank of Oregon*, 815 F.2d 522, 529 (9th Cir.1987). In  
6 terms of a pleading, problems arise when the named defendant is both the “person” and the  
7 “enterprise.” *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1534 (9th Cir. 1992).

8 b. Racketeering Activity

9 “[R]acketeering activity” is any act indictable under several provisions of Title 18 of the  
10 United States Code, and includes the predicate acts of mail fraud, wire fraud and obstruction of  
11 justice. . . .” *Turner v. Cook*, 362 F.3d 1219, 1229 (9th Cir. 2004) (citing 18 U.S.C. § 1961(1)).  
12 It includes general crimes involving acts or threats of murder, kidnapping, gambling, arson,  
13 robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance. *Id.* at  
14 § 1961(1)(A). It also includes specific enumerated federal crimes related to various crimes  
15 involving theft, fraud, immigration violations, and obstruction of justice. *Id.* at § 1961(1)(B)-  
16 (G).

17 “Continuity” is both a closed and open-ended concept, referring either to a closed period  
18 of repeated conduct, or to past conduct that by its nature projects into the future with a threat of  
19 repetition. A party alleging a RICO violation may demonstrate continuity over a closed period  
20 by proving a series of related predicates extending over a substantial period of time. Predicate  
21 acts extending over a few weeks or months and threatening no future criminal conduct do not  
22 satisfy this requirement[.]

23 c. No Basis for RICO Claim

24 Incorporating the prior sections related to the lack of merit of any of the other claims,  
25 there is no “racketeering” or form of predicate misconduct that “by its nature projects into the  
26 future with a threat of repetition”, *Religious Tech. Ctr. v. Wollersheim*, 971 F.2d 364, 366 (9th  
27 Cir.1992), related to the sale of the Property to Plaintiff. First, there is no “Racketeering  
28 Activity” as it is legal to sell real property to a third party. Also, since the sale to Plaintiff

1 concluded after the sale, there was no continuity. If there was any potential action for the alleged  
2 non-disclosure of known defects, then the action would fall under recognized torts specified in  
3 this brief, not RICO. As such, Summary Judgment is appropriate as (1) the other claims fail as a  
4 matter of law, (2) there was no criminal intent, (3) or a “racketeering activity”.

5 2. No Action for Fraudulent Conveyance

6 Fraudulent Conveyance is governed by NRS §§ 112.180(1), 112.190(1). This requires a  
7 transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the  
8 creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the  
9 debtor made the transfer or incurred the obligation (a) with actual intent to hinder, delay or  
10 defraud any creditor of the debtor; or (b) without receiving a reasonably equivalent value in  
11 exchange for the transfer or obligation, and the debtor. NEV. REV. STAT. § 112.180(1)(a-b).  
12 Alternatively, NRS § 112.190(1) specifies that a transfer made, or obligation incurred, by a  
13 debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the  
14 obligation was incurred if the debtor made the transfer or incurred the obligation without  
15 receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor  
16 was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

17 Here, Plaintiff failed to identify what the alleged transfer was and who the alleged  
18 creditor was that was defrauded. First, this claim lacks any merit as Summary Judgment is  
19 already appropriate as to the supporting claim for alleged liability by Defendants to Plaintiff.  
20 Second, this claim is premature since Plaintiff is not a creditor. Third, there has not been a  
21 showing that Defendants transferred anything. As Plaintiff will not be able to show any transfer  
22 was made “with actual intent to hinder, delay or defraud any creditor of the debtor”, *Id.* at  
23 §112.180(1)(a), and Plaintiff does not have any basis for the claims in this matter, Summary  
24 Judgment is appropriate as a matter of law.

25 3. Civil Conspiracy

26 Under Nevada law, to establish a civil conspiracy claim, a plaintiff must show (1) the  
27 commission of an underlying tort; and (2) an agreement between the defendants to commit that  
28 tort. *Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 110 P.3d 30, 51

(2005) (per curiam) (stating that “an underlying cause of action for fraud is a necessary predicate to a cause of action for conspiracy to defraud”), abrogated on other grounds *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 n. 6 (2008); *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11, 15 (2001). “[I]t suffices under Nevada law to allege that Defendants . . . owed a duty to Plaintiffs not to conspire with those who do owe fiduciary duties to Plaintiffs to breach those duties.” *Boorman v. Nev. Mem’l Cremation Soc’y, Inc.*, 772 F. Supp. 2d 1309, 1315 (D. Nev. 2011).

Here, incorporating the preceding arguments illustrating that Summary Judgment is appropriate as a matter of law, Plaintiff cannot demonstrate (1) the commission of an underlying tort or (2) an agreement amongst the defendants to commit that tort. This illustrates that Summary Judgment is appropriate as a matter of law.

#### 4. Abuse of Process

The elements of an abuse of process claim are: “(1) an ulterior purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding.” *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993). Abuse of process can arise from both civil and criminal proceedings. *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002). Malice, want of probable cause, and termination in favor of the person initiating or instituting proceedings are not necessary elements for a prima facie abuse of process claim. *Nevada Credit Rating Bur. v. Williams*, 88 Nev. 601, 606, 503 P.2d 9, 12 (1972); Restatement (Second) of Torts § 682 cmt. a (1977). The mere filing of a complaint is insufficient to establish the tort of abuse of process. *Laxalt v. McClatchy*, 622 F. Supp. 737, 751 (1985).

Here, Plaintiff illustrated the overall lack of merit related to the abuse of process claim in its limited opposition to Defendants’ motion to file amended answer, counterclaim, and third-party claim

If Defendants are allowed to file the proposed Counterclaim, Plaintiff will likely file it’s (sic) own motion to file a Second Amended Complaint and allege an additional cause of action for abuse of process based on the Defendants’ cause of action for abuse of process.

Opposition (brief only) at 6:10-13 attached as **Exhibit K**. Notably, this Honorable Court found the totality of the Opposition meritless. Order at 2:20-21 attached as **Exhibit L**.

Clearly, the totality of the legal and factual arguments in this Motion illustrate the bad faith nature of Plaintiff's claim. First, it is clear that Plaintiff's action is merely an attempt to extort Defendants with a meritless claim in abuse of the legal process. Second, the Property was a then-63 year old home that Plaintiff purchased in 2018. Third, the purchase price was \$200,000. Fourth, illustrating the abuse of process, Plaintiff are claiming \$16.25 Million in damages:

Damage No.	Amount
1	1,950,000
2	2,600,000
3	2,600,000
4	2,600,000
5	650,000
6	650,000
7	650,000
8	650,000
9	650,000
10	2,600,000
11	Omitted
12	Omitted
13	650,000
	16,250,000

Plaintiff's First Supplemental Disclosure (excerpt) attached as **Exhibit M**. Fourth, Plaintiff also made bad faith claims under RICO and other baseless claims as part of this action. Fifth, Plaintiff's counsel has charged Plaintiff approximately \$64,000 in attorneys' fees to prosecute these worthless claims. Ex. N. Sixth, the original settlement demand from Plaintiff was \$10,000. Ex. I.

As Plaintiff admitted the only purpose in filing the claim for abuse of process was retaliatory, and the overwhelming facts and law illustrate the abuse of process by Plaintiff in bringing this action, Summary Judgment is appropriate as a matter of law.

**E. Partial Summary Judgment**

Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment or partial summary judgment. "If the court does not grant all the relief requested by the motion,

1 it may enter an order stating any material fact — including an item of damages or other relief —  
2 that is not genuinely in dispute and treating the fact as established in the case.” *Id.* at 56(g).  
3 “[A]n admitting party is barred from denying that which it has already admitted. *La-Tex Partn.*  
4 *v. Deters*, 893 P.2d 361, 365 (Nev. 1995) (citing *Wagner v. Carex Investigations & Sec. Inc.*, 93  
5 Nev. 627, 632, 572 P.2d 921, 924 (1977) (commenting on the application of Nev. R. Civ. Pro.  
6 36).

7 Here, if this Honorable Court does not grant Summary Judgment on all claims, then  
8 Defendants respectfully request that It grant partial Summary Judgment as to the following  
9 undisputed facts:

- 10 1. The Property was originally constructed in 1954.
- 11 2. On or about August 11, 2017, Ms. Zhu executed the RPA for the Property.
- 12 3. The purchase price for the property was \$200,000.
- 13 4. Through the RPA, Ms. Zhu waived her due diligence, although she had a right to  
14 conduct inspections.
- 15 5. Ms. Zhu did not cancel the contract related to any issues with the Property.
- 16 6. Under Paragraph 7(C) of the RPA, Ms. Zhu waived the Due Diligence condition.
- 17 7. Under Paragraph 7(D) of the RPA, it provided:  
18 *It is strongly recommended that Buyer retain*  
19 *licensed Nevada professionals to conduct*  
20 *inspections.* If any inspection is not completed and  
21 requested repairs are not delivered to Seller within  
the Due Diligence Period, Buyer is deemed to have  
waived the right to that inspection and Seller's  
liability for the cost of all repairs that inspection  
would have reasonably identified had it been  
conducted, except as otherwise provided by law.
- 22 8. Ms. Zhu waived any liability of Defendants for the cost of all repairs that  
23 inspection would have reasonably identified had it been conducted.
- 24 9. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid  
25 removal inspection, mechanical inspection, soil inspection, and structural  
inspection.
- 26 10. Under Paragraph 7(F), it was Ms. Zhu’s responsibility to inspect the Property  
sufficiently as to satisfy her use.
- 27 11. The Brokers had “no responsibility to assist in the payment of any repair,  
28 correction or deferred maintenance on the Property which may have been  
revealed by the above inspections, agreed upon by the Buyer and Seller or



requested by one party.”

12. On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known conditions of the Subject Property. In fact, TKNR disclosed that “3 units has (sic) brand new AC installed within 3 months,” and further that the “owner never resided in the property and never visited the property.” Plaintiff was also aware that the minor renovations, such as painting, was conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. Seller also disclosed that it had construction, modification, alterations, or repairs done without permits. Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquiries.
13. On or before December 5, 2017, Ms. Zhu had issues related to the financing for the Property because of an appraisal. As such, Ms. Chen confirmed that Ms. Zhu would do a new purchase agreement, and would agree to pay the difference in an appraisal with a lower value than the purchase price, and waive inspections.
14. On the same day, Ms. Zhu and TKNR agreed to Addendum No. 1 to cancel the RPA dated August 11, 2017, and entered into the 2<sup>nd</sup> RPA. As before, the overall purchase price for the Property was \$200,000, but Ms. Zhu changed the contingency for the loan to \$150,000 with earnest money deposit of \$500 and a balance of \$49,500 owed at the COE.
15. Although Ms. Zhu had not initialed the “Failure to Cancel or Resolve Objections” provision in the RPA, she initialed the corresponding provision in the 2<sup>nd</sup> RPA. This was consistent with Ms. Zhu’s instructions to Ms. Chen. This is the second time that Ms. Zhu waived inspections for the Property despite the language in the 2<sup>nd</sup> RPA that strongly advised to get an inspection done.
16. Ms. Zhu waived any inspections related to the purchase of the Property in the 2<sup>nd</sup> RPA. Although Ms. Zhu had actual knowledge of the Seller’s Disclosures from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TKNR. Moreover, she also agreed to pay rent in the amount of \$650 per month for one the units, and to also pay the property manager \$800 for the tenant placement fee.
17. Through Addendum 2 to the 2<sup>nd</sup> RPA, Ms. Zhu later changed the purchaser to Plaintiff.
18. As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker’s agent.
19. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties.
20. Ms. Zhu agreed to satisfy herself, as to the condition of the Property, prior to the close of escrow.
21. Ms. Zhu waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu’s failure to conduct walk-throughs or inspections. Ms. Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. In any event, Broker’s liability was limited, under any and all circumstances, to the amount of that Broker’s commission/fee received in the transaction.

22. Information related to permits is publicly available. The City of Las Vegas has a website that permits anyone in the public to search for permits.
23. NRS § 645.259(2) precludes any liability for misrepresentation or under Chapter 113 if the information is a public record.
24. Plaintiff could have hired an inspector or contractor to evaluate this real-estate purchase beforehand but did not. Items complained about in the Sani Report were open and obvious at the roof area, attic area, and on the exterior and interior areas of the Property.
25. Plaintiff's expert did not do any destructive testing, so the same alleged conditions that the alleged expert noted, would have been made by an inspector at the time of the purchase.
26. It is the fault of the Plaintiffs for not conducting requisite inspections of the Property prior to its purchase. Since this issue is apparently open and obvious as per the Sani Report, it would have been open and obvious as well during a pre-purchase inspection.
27. The photographs from 2017 showed extensive cracking to the stucco and slab to the Property prior to any work by Defendants and/or the licensed contractor it hired to install the HVAC.
28. The alleged attic issues could have been inspected at the time of the purchase.
29. Any deficient electrical work related to this 220-volt service situation could have been readily ascertained by an inspection at the time of purchase by the Plaintiff'.
30. The alleged HVAC issues were open and obvious.
31. The conditions complained about as to venting and ducting were present at the Property prior to Defendants owning the Property.
32. Plaintiff could have conducted an online search related to the permits or lack of permits for the Property.
33. The basis of the Sani Estimate is nonsensical in the first place and there is nothing seen from this Sani Report that was not present at the time of sale of the Triplex Property. There were cracks in the stucco system and concrete slab system existing in 2017. Roof venting/duct venting had not been changed by Defendants and was existing in 2017 and could have been inspected by Plaintiff.
34. Any deficiencies with this electrical installation were open, obvious and could have been inspected prior to purchase as with all other items with this Triplex Property. Any cracks such as wall or floor cracks subsequent to the purchase would obviously be new but again this occurs even on new homes across the Las Vegas Valley and elsewhere.
35. It was well known at the time of the purchase that the Property was a 63 year old rental property that was subject to potential renter abuse.
36. At all times relevant, no Defendant was aware of any issues related to any of the alleged complaints raised by Plaintiff and/or Plaintiff's alleged expert. The only issues that Defendants were aware of were properly disclosed with an

1 explanation. No Defendant was aware of any issues with any structural,  
2 electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or  
3 foundation issues with the Property before the time of the sale to Ms. Zhu. Nor  
4 was any Defendant aware of any issues with any structural, electrical, plumbing,  
5 sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the  
6 Property at the time of the sale to Ms. Zhu. As to the issue HVAC issue,  
7 Defendants were aware that tenants of the Property complained about the cooling  
8 of the Property, which is why TKNR paid to have the system upgraded by a  
9 licensed contractor.

10 37. At all times relevant, during the Due Diligence Period, Plaintiff had access to  
11 inspect: the mechanical systems, the structure of the Property, the windows, for  
12 mold / fungus, the electrical systems, the plumbing systems, the gas lines, the  
13 attic, the bathroom exhaust vent / washer /dryer exhaust vent, the ceiling  
14 insulation, the roof decking, the roof trusses, the roof support structures, the duct  
15 system, and the flooring and tiles.

16 38. NRS 645.252(4) clearly specifies that agents do not owe a duty to “(a)  
17 [i]ndependently verify the accuracy of a statement made by an inspector certified  
18 pursuant to chapter 645D of NRS or another appropriate licensed or certified  
19 expert” or “(c) [c]onduct an investigation of the condition of the property which  
20 is the subject of the real estate transaction.”

#### 21 **F. Attorneys’ Fees and Costs**

22 Pursuant to Nevada Rule of Civil Procedure 11(c), the court may order a party to show  
23 cause why it has not violated the mandates of Rule 11. Rule 11 prevents a party from bringing a  
24 lawsuit for an improper purpose, which includes: (1) harassment, causing unnecessary delay, or  
25 needless increasing the cost of litigation; or (2) making frivolous claims. NEV. R. CIV. PRO.  
26 11(b)(1)-(2). Rule 11 sanctions should be imposed for frivolous actions. *Marshall v. District*  
27 *Court*, 108 Nev. 459, 465, 836 P.2d 47, 52.

28 A frivolous claim is one that is “both baseless and made without a reasonable and  
competent inquiry.” *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (quoting  
*Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir.1990); *Golden Eagle*  
*Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537 (9th Cir.1986)). A determination of  
whether a claim is frivolous involves a two-pronged analysis: (1) the court must determine  
whether the pleading is “well grounded in fact and is warranted by existing law or a good faith  
argument for the extension, modification or reversal of existing law”; and (2) whether the  
attorney made a reasonable and competent inquiry. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564.  
A sanction imposed for violation of Rule 11 shall be limited to what is sufficient to deter

1 repetition of such conduct or comparable conduct by others similarly situated. *Id.* at 11(c)(2).

2 Furthermore, a court may award attorneys’ fees to a prevailing party when it finds that  
3 the claim was brought or maintained without reasonable ground or to harass the prevailing party.  
4 NEV. REV. STAT. § 18.010(2)(b). In other cases, a court may award attorneys’ fees “when it  
5 finds that the opposing party brought or maintained a claim without reasonable grounds.”  
6 *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009). “The court shall liberally  
7 construe the provisions of this paragraph in favor of awarding attorney’s fees in all appropriate  
8 situations.” *Id.* The Nevada Legislature explained that:

9 [i]t is the intent of the Legislature that the court award attorney’s  
10 fees pursuant to this paragraph and impose sanctions pursuant to  
11 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
12 situations to punish for and deter frivolous or vexatious claims and  
13 defenses because such claims and defenses overburden limited  
judicial resources, hinder the timely resolution of meritorious  
claims and increase the costs of engaging in business and  
providing professional services to the public.

14 *Id.* “A claim is groundless if ‘the allegations in the complaint . . . are not supported by any  
15 credible evidence at trial.’” *Barozzi v. Benna*, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996)  
16 (quoting *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo.1984)).

17 As noted in Section II(D)(4), the overwhelming facts and law illustrate that Plaintiff’s  
18 claim is frivolous. Not only did Plaintiff intentionally omit the waiver of inspections from the  
19 pleadings, they also egregiously claimed damages in excess of \$16.25 Million related to the  
20 Property. Plaintiff’s claim is clearly frivolous: (1) where the pleading was not “well grounded in  
21 fact and is warranted by existing law or a good faith argument for the extension, modification or  
22 reversal of existing law”, and (2) Plaintiff’s attorney continued to make frivolous claims.  
23 *Bergmann*, 109 Nev. at 676, 856 P.2d at 564. Sanctions are warranted against Plaintiff and its  
24 counsel, which should include an award attorneys’ fees to Defendants. Plaintiff brought or  
25 maintained this action without reasonable ground and only to harass Defendants. NEV. REV.  
26 STAT. § 18.010(2)(b). The overwhelming facts and law also show that Plaintiff brought or  
27 maintained this claim without reasonable grounds, which justifies an award of attorneys’ fees.  
28 *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009).

**MICHAEL B. LEE, P.C.**  
1820 E. SAHARA AVENUE, SUITE 110  
LAS VEGAS, NEVADA 89104  
TEL – (702) 477.7030; FAX – (702) 477.0096

1     **III.     CONCLUSION**

2             For the aforementioned reasons, this Honorable Court should grant the Motion.

3             DATED this 15 day of December, 2020.

4                             MICHAEL B. LEE, P.C.

5                             /s/ Michael Lee  
6                             MICHAEL B. LEE, ESQ. (NSB No.: 10122)  
7                             1820 East Sahara Avenue, Suite 110  
8                             Las Vegas, Nevada 89104  
9                             Telephone: (702) 477.7030  
10                            Facsimile: (702) 477.0096  
11                            [mike@mblnv.com](mailto:mike@mblnv.com)  
12                            Attorney for Defendants

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 15 day of December, 2020, I placed a copy of the **DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT** as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing by United States mail it to the last known address of the parties listed below, facsimile transmission to the number listed, and/or electronic transmission through the Court’s electronic filing system to the e-mail address listed below:

BENJAMIN B. CHILDS, ESQ.  
Nevada State Bar No. 3946  
318 S. Maryland Parkway  
Las Vegas, Nevada 89101  
Telephone: (702) 251-0000  
Email: [ben@benchilds.com](mailto:ben@benchilds.com)  
Attorneys for *Plaintiff*

/s/Mindy Pallares  
An employee of MICHAEL B. LEE, P.C.

Exhibit A

Exhibit A



LVR	Multiple Dwelling			Ownership		04/09/2020 4:40 PM					
ML#	1919843	Offc	INPR	PubID	230338	Status	H	Area	301	L/Price	\$199,888
Address	2132 /HOUSTON /Drive					StatusUpdate				Zip	89104
City/Town	Las Vegas									State	NV
County	CLARK		MetroMap	55-E1	Twtnshp		21	Range	61	Sect	1
Legal						Subdiv	JUBILEE TRACT		Subdiv#		2800
Parcel#	162-01-110-017					YrBuilt	1954/RE				
List Agent:	Kenny Lin/230338					List Broker: Investpro Realty/INPR					
License #:	S.0172460										

PROPERTY INFORMATION						
Bld Type	TRIPLEX	Appx Bldg SqFt	2,167	#Acres +/-	0.190	Lot Dim 70x120
Cost/Un						Lot SqFt 8,276
Dir	From Charleston and Eastern, Go south on Eastern, Left on Houston to property on the right-hand side.					
Public Remarks	No HOA Fees! BRAND NEW Air Conditioning Unit! Excellent Investment for a single story three unit building! Very cozy for tenants and just walking distance to shopping, park, retail, etc! Fresh two tone paint to all three units! New flooring, upgraded kitchen, and bathrooms! Don't miss it!					
Ag/Ag Remarks	Total rent about \$1,800/month. Please make offers subject to home inspection, PLEASE DO NOT bother tenants in Unit#A & B. Unit #C now is Vacant. GLVAR forms, please! Pre-Approval or POF with the offer. Unit#B&C are brand new central A/C, unit#A is brand new window A/C unit. Pending Cancellation of existing escrow. Agents to verify all information. Thanks for selling!					

INCOME INFORMATION						
Yrly Oper Income	\$22,200	+	Yrly Oth Income	-	Vacancy	=
Yrly Oper Expense	\$2,107	=	NOI		GOI	-
Cap Rate						
Gross Rent Multiplier						
Yearly Other Income Includes	NONE					

OPERATING EXPENSE INFORMATION									
RE Taxes	\$730	Prop Ins		Managmnt		Maintenance			
Utilities		Utils Incl		Exp Sourc	MGMTCO	Trash			
Contract Sv Incl		Assoc Fee1		Assoc Incl		Package Available			
Association Fee	N	Cash Assm				Assessed Lnd/Imprv			
Earn Dep	\$3,500	Current Loan(s)	Assumable?			Other Encumbrance			
Owner Will Carry						Subject to FIRPTA?	N		
Finance Consid	CASH, CONV								
2 Bedroom	#Units 3-Triplex	Rent/UN	\$625	#1 Bath	1	#1.5 Bath	0	#2 Bath	0
2 Bedroom	#Units 3-Triplex	Rent/UN	\$625	#1 Bath	1	#1.5 Bath	0	#2 Bath	0
1 Bedroom	#Units 3-Triplex	Rent/UN	\$550	#1 Bath	1	#1.5 Bath	0	#2 Bath	0
								Avg SF	1

RENTAL EXPENSE INFORMATION						
Ten Pays	ELEC, GAS, WATER					Restrictions
Rent Terms						

BUILDING INFORMATION AND AMENITIES							
Total #Bldgs	1	#Floors	1	Handicap Adapted	N	Roof	COMPOS
Flooring	CERAMIC, WOOD					Constr	STUCCO
Total # of Parking Spaces						Parking	
Appliances	DISHWSH, DRYER, FANHOOD, RANGE OV, REFRIG, WASHER						
Furniture Included?							
Unit Amens	BLINDS, ENCLYRD						
Complex Amens	NONE						

UTILITIES INFORMATION						
Heat Sys	CENTRAL, OTHER	HtFuel	ELEC	Water	PUBLIC	
Cool Sys	CENTRAL, WINDOW	Sep Meter	ELEC, GAS	Sewer	PUBLIC	

VOW/FINANCIAL/LISTING OFFICE INFORMATION				Internet	Y	Public Address	Y	AVM	Y	Commentary	N
Short Sale	N	Foreclo	N	Repo/REO	N	NOD					
Lockbox	M	LockboxLocation	Front door			TempOffMktStatus				T Status Date	
L/Agent	<a href="#">Kenny Lin</a>			L/APh	<a href="#">702-726-0000</a>	REALTOR	Y	AgtOwnshpInt			
	<a href="#">S.0172460</a>										
Office	<a href="#">Investpro Realty</a>			OffcPh	<a href="#">702-997-3832</a>	Bonus SO	No	CoOp	3.000%	Flat Fee	
Off Add	3553 Valley View Dr, Las Vegas 89103				BrokerName	Joyce A Nickrandt	Vr	N	Ex	N	
Agt Fax #	(702) 997-3836	Email	<a href="mailto:zhong.kenny@gmail.com">zhong.kenny@gmail.com</a>			PhotExcl		VTour	<a href="#">Y</a>	OwnLic	N

TeamContact	TeamContPh			TeamEmail		
Kenny Lin	702-726-0000			zhong.kenny@gmail.com		
Resident	ResPh	Occup		AuctTyp	ListDt	08/02/2017
Showing	KEYANY	GateCode		AuctDt	ExpDt	10/31/2017
ContDesc	ComboLB	GateCode2		OrigListPrice	WD	

CONTINGENT/PENDING/SOLD INFORMATION:							
Accept/Date	08/14/2017	EstClo/Date	01/31/2018	DaysListingtoClose	136 days	Orig L.Price	\$199,888
Sold Terms	CASH	ActClo/Date	12/16/2017	BuyersAgtPublicID	233606	Sale Price	\$200,000
Sellers Contrib	\$0	Prop Condition	GOOD	Buyer Broker	INPR	SP/SqFt	\$92
OwnrCarry		Days On Market	14	Broker Office	Investpro Realty, 3553 Valley View Dr, Las Vegas		
Auction Buyer Premium		Down Payment:	\$5,000		89103		DEF 0251

**EXHIBIT B**

**EXHIBIT B**



## RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 08/11/17

Marie Zhu ("Buyer"), hereby offers to purchase  
2132 HOUSTON DR ("Property"), within the  
city or unincorporated area of LAS VEGAS, County of CLARK, State of Nevada,  
Zip 89104, A.P.N. # 162-01-110-017 for the purchase price of \$ 200,000.00  
( Two Hundred Thousand dollars) ("Purchase Price") on the terms and conditions  
contained herein: BUYER ☐ does ~~OR~~ ☒ does not intend to occupy the Property as a residence.

### Buyer's Offer

#### 1. FINANCIAL TERMS & CONDITIONS:

\$ 5,000.00 A. **EARNEST MONEY DEPOSIT ("EMD")** is ☒ presented with this offer ~~OR~~ ☐                     . Upon Acceptance, Earnest Money to be deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2 business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, ~~OR~~ ☐ Seller's Broker's Trust Account. (NOTE: It is a felony in the State of Nevada—punishable by up to four years in prison and a \$5,000 fine—to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

\$ 0.00 B. **ADDITIONAL DEPOSIT** to be placed in escrow on or before (date)                     . The additional deposit ☐ will ~~OR~~ ☐ will not be considered part of the EMD. (Any conditions on the additional deposit should be set forth in Section 28 herein.)

\$ 150,000.00 C. **THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:**  
☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify)                     

\$ 0.00 D. **THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN(S):**  
☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify)                       
Interest: ☐ Fixed rate,            years ~~OR~~ ☐ Adjustable Rate,            years. Seller further agrees to provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer within FIVE (5) calendar days of acceptance of offer.

\$ 0 E. **BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS IN "FINANCING ADDENDUM"** which is attached hereto.

\$ 45,000.00 F. **BALANCE OF PURCHASE PRICE** (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("COE").

\$ 200,000.00 G. **TOTAL PURCHASE PRICE.** (This price DOES NOT include closing costs, prorations, or other fees and costs associated with the purchase of the Property as defined herein.)

#### 2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. **NEW LOAN APPLICATION:** Within 2 business days of Acceptance, Buyer agrees to (1) submit a

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

BUYER(S) INITIALS: MZ

Property Address: 2132 HOUSTON DR

SELLER(S) INITIALS: CW

Rev. 06/17

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Case # A-18-785917-C

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completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

**B. APPRAISAL CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than 14 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.**

**C. LOAN CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 21 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.**

**D. CASH PURCHASE:** Within n/a business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

**3. SALE OF OTHER PROPERTY:** This Agreement ☒ is not -OR- ☐ is contingent upon the sale (and closing) of another property which address is \_\_\_\_\_  
Said Property ☐ is ☒ is not currently listed -OR- ☐ is presently in escrow with \_\_\_\_\_  
Escrow Number: \_\_\_\_\_ Proposed Closing Date: \_\_\_\_\_

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) calendar days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

**4. FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(F) of this Agreement, all items are transferred in an "AS IS" condition. All EXISTING fixtures and fittings including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s);

The following additional items of personal property: \_\_\_\_\_

## 5. ESCROW:

**A. OPENING OF ESCROW:** The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

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BUYER(S) INITIALS: MZ  
SELLER(S) INITIALS: CW

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1 ("Opening of Escrow"), at Nevada Title title or escrow company ("Escrow Company" or  
2 "ESCROW HOLDER") with Michele Eaton ("Escrow Officer") (or such other escrow officer as  
3 Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted  
4 Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and  
5 the Escrow Number.

6  
7 **B. EARNEST MONEY:** Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of  
8 this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

9  
10 **C. CLOSE OF ESCROW:** Close of Escrow ("COE") shall be on or before:  
11 30 days upon acceptance (date). If the designated date falls on a weekend or holiday, COE shall be the next business  
12 day.

13  
14 **D. IRS DISCLOSURE:** Seller is hereby made aware that there is a regulation that requires all ESCROW  
15 HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction  
16 and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this  
17 information to the Internal Revenue Service after COE in the manner prescribed by federal law.

18  
19 **6. TITLE INSURANCE:** This Purchase Agreement is contingent upon the Seller's ability to deliver, good and  
20 marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase  
21 price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate  
22 marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

23  
24 **7. BUYER'S DUE DILIGENCE:** Buyer's obligation is not is not conditioned on the Buyer's Due Diligence as  
25 defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative,  
26 Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 14 calendar days from Acceptance (as  
27 defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence.  
28 **Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's**  
29 **investigations and through the close of escrow.**

30  
31 **A. PROPERTY INSPECTION/CONDITION:** During the Due Diligence Period, Buyer shall take such  
32 action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to,  
33 whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise  
34 affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or  
35 hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other  
36 concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/  
37 non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning,  
38 water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors  
39 or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors.  
40 Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at  
41 Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not  
42 apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross  
43 negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to  
44 consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools;  
45 proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire  
46 protection; other governmental services; existing and proposed transportation; construction and development; noise or odor  
47 from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection  
48 report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and  
49 telephone number of the inspector.

50  
51 **B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer determines, in Buyer's sole  
52 discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence  
53 Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller,  
54 whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of  
55 further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in

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otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MZ  
SELLER(S) INITIALS: CN

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writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

**C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer fails to cancel the Residential Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 7, **Buyer shall be deemed to have waived the Due Diligence Condition.**

**D. INSPECTIONS:** Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.* If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
Energy Audit	Waived	Fungal Contaminant Inspection	Waived	Well Inspection (Quantity)	N/A
Home Inspection	Buyer	Mechanical Inspection	Waived	Well Inspection (Quality)	N/A
Termite/Pest Inspection	Waived	Pool/Spa Inspection	N/A	Wood-Burning Device/Chimney Inspection	N/A
Roof Inspection	Waived	Soils Inspection	Waived	Septic Inspection	N/A
Septic Lid Removal	Waived	Septic Pumping	N/A	Structural Inspection	Waived
Survey (type):	N/A	Other:		Other:	

**E. CERTIFICATIONS:** In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

**F. BUYER'S REQUEST FOR REPAIRS:** It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

**8. FEES, AND PRORATIONS** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

**A. TITLE, ESCROW & APPRAISAL FEES:**

Type	Paid By	Type	Paid By	Type	Paid By
Escrow Fees	50/50	Lender's Title Policy	Buyer	Owner's Title Policy	Seller
Real Property Transfer Tax	Seller	Appraisal	Buyer	Other:	

**B. PRORATIONS:** Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be

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Buyer's Name: Marie Zhu

BUYER(S) INITIALS: MZ

Property Address: 2132 HOUSTON DR

SELLER(S) INITIALS: CH

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credited to the Buyer. All prorrations will be based on a 30-day month and will be calculated as of COE. Prorrations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

**C. PRELIMINARY TITLE REPORT:** Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

**D. LENDER AND CLOSING FEES:** In addition to Seller's expenses identified herein, Seller will contribute \$ 0 to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☒ including **—OR—** ☐ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

E. **HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☒ waives **—OR—** ☐ requires a Home Protection Plan with \_\_\_\_\_, ☒ Seller **—OR—** ☐ Buyer will pay for the Home Protection Plan at a price not to exceed \$ \_\_\_\_\_. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans.

**9. TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

**10. COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"), Seller shall provide **AT SELLER'S EXPENSE** the CIC documents as required by **NRS 116.4109** (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery, prepaid U.S. mail, or electronic transmission, a written notice of cancellation to Seller or his or her authorized agent.
- If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

**A. CIC RELATED EXPENSES:** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

<u>Type</u>	<u>Paid By</u>	<u>Type</u>	<u>Paid By</u>	<u>Type</u>	<u>Paid By</u>
CIC Demand	<b>Seller</b>	CIC Capital Contribution	<b>Seller</b>	CIC Transfer Fees	<b>Seller</b>
Other: _____					

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MEZ

SELLER(S) INITIALS: SW

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**11. DISCLOSURES:** Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. Check applicable boxes.

☒ **Seller Real Property Disclosure Form:** (NRS 113.130) ☐ **Open Range Disclosure:** (NRS 113.065)

☐ **Construction Defect Claims Disclosure:** If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)

☒ **Lead-Based Paint Disclosure and Acknowledgment:** required if constructed before 1978 (24 CFR 745.113)

☐ **Other:** (list) \_\_\_\_\_

**12. FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES:** All properties are offered without regard to race, color, religion, sex, national origin, age, gender identity or expression, familial status, sexual orientation, ancestry, or handicap and any other current requirements of federal or state fair housing laws.

**13. WALK-THROUGH INSPECTION OF PROPERTY:** Buyer is entitled under this Agreement to a walk-through of the Property within 3 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. **If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.**

**14. DELIVERY OF POSSESSION:** Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than ☒ **COE** ☐ **OR** ☐ \_\_\_\_\_. In the event Seller does not vacate the Property by this time, Seller shall be considered a trespasser in addition to Buyer's other legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be considered abandoned by Seller.

**15. RISK OF LOSS:** Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift to Buyer.

**16. ASSIGNMENT OF THIS AGREEMENT:** Unless otherwise stated herein, this Agreement is non-assignable unless agreed upon in writing by all parties.

**17. CANCELLATION OF AGREEMENT:** In the event this Agreement is properly cancelled in accordance with the terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law).

**18. DEFAULT:**

**A. MEDIATION:** Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Notwithstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply. Each party is encouraged to have an independent lawyer of their choice review this mediation provision before agreeing thereto. By initialing below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

**BUYER(S) INITIALS:** MZ **SELLER(S) INITIALS:** CN

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

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**BUYER(S) INITIALS:** MZ  
**SELLER(S) INITIALS:** CN

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**B. IF SELLER DEFAULTS:** If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual damages incurred by Buyer due to Seller's default.

**C. IF BUYER DEFAULTS:** If Buyer defaults in performance under this Agreement, as Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

### Instructions to Escrow

**19. ESCROW:** If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

**20. UNCLAIMED FUNDS:** In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than \$5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

### Brokers

**21. BROKER'S COMPENSATION/FEEs:** Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. **In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ☐ will -OR- ☐ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.**

**22. WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all

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Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

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BUYER(S) INITIALS: MZ

SELLER(S) INITIALS: CW

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claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

## Other Matters

**23. DEFINITIONS:** "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensees working under a developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will handle the closing. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means Residential Purchase Agreement. "Seller" means one or more individuals or the entity that is the owner of the Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is the United States Code. "VA" is the Veterans Administration.

## 24. SIGNATURES, DELIVERY, AND NOTICES:

A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

B. When a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, overnight delivery, by facsimile, and/or by electronic transmission to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

**25. IRC 1031 EXCHANGE:** Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

**26. OTHER ESSENTIAL TERMS:** Time is of the essence. No change, modification or amendment of this Agreement

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu

Property Address: 2132 HOUSTON DR

Rev. 06/17

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BUYER(S) INITIALS: MZ

SELLER(S) INITIALS: CW

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shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party.

**THIS IS A LEGALLY BINDING CONTRACT.** All parties are advised to seek independent legal and tax advice to review the terms of this Agreement.

**THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS® (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.**

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27. **ADDENDUM(S) ATTACHED:** \_\_\_\_\_

28. **ADDITIONAL TERMS:** \_\_\_\_\_

### Buyer's Acknowledgement of Offer

**Confirmation of Representation:** The Buyer is represented in this transaction by:

Buyer's Broker: <u>Joyce Nickrandt</u>	Agent's Name: <u>Liwei Helen Chen</u>
Company Name: <u>Investpro Realty</u>	Agent's License Number: <u>S.0175520</u>
Broker's License Number: <u>B0144660</u>	Office Address: <u>3553 VALLEY VIEW BLVD</u>
Phone: <u>702-997-3832</u>	City, State, Zip: <u>LAS VEGAS NV 89103</u>
Fax: <u>702-997-3836</u>	Email: <u>helen0510c@gmail.com</u>

**BUYER LICENSEE DISCLOSURE OF INTEREST:** Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☒ **DOES NOT** have an interest in a principal to the transaction. **-OR-**  
☐ **DOES** have the following interest, direct or indirect, in this transaction: ☐ Principal (Buyer) **-OR-** ☐ family or firm relationship with Buyer or ownership interest in Buyer (if Buyer is an entity): (specify relationship)

**Seller must respond by:** 5 (☐AM☒PM) on (month) August, (day) 12, (year) 2017. Unless this

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu  
 Property Address: 2132 HOUSTON DR

BUYER(S) INITIALS: MZ  
 SELLER(S) INITIALS: CW


Rev. 06/17

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 Instant Forms

Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect. Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

 Marie Zhu 08/11/2017 2:23 PM ☐ AM ☐ PM  
 Buyer's Signature Buyer's Printed Name Date Time  
 \_\_\_\_\_  
 Buyer's Signature Buyer's Printed Name Date Time ☐ AM ☐ PM

### Seller's Response

**Confirmation of Representation:** The Seller is represented in this transaction by:

Seller's Broker: Joyce Nickrandt Agent's Name: Kenny Lin  
 Company Name: Investpro Realty Agent's License Number: 8.0172460  
 Broker's License Number: \_\_\_\_\_ Office Address: 3553 Valley View Dr  
 Phone: 702-997-3832 City, State, Zip: Las Vegas NV 89103  
 Fax: 866-782-3075 Email: zhong.kenny@gmail.com

**SELLER LICENSEE DISCLOSURE OF INTEREST:** Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☒ **DOES NOT** have an interest in a principal to the transaction. -OR-  
☐ **DOES** have the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) -OR- ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship)


**FIRPTA:** If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by Buyer's FIRPTA Designee in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the Buyer's FIRPTA Designee the necessary documents, to be provided by the Buyer's FIRPTA Designee, to determine if withholding is required. (See 26 USC Section 1445).

SELLER DECLARES that he/she ☒ is not ☐ OR ☐ is a foreign person therefore subjecting this transaction to FIRPTA withholding. SELLER(S) INITIALS: CW

☒ **ACCEPTANCE:** Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

☐ **COUNTER OFFER:** Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

☐ **REJECTION:** In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein is not accepted.

 TKNR Inc 08/11/2017 10:24 PM ☐ AM ☐ PM  
 Seller's Signature Seller's Printed Name Date Time  
 \_\_\_\_\_  
 Seller's Signature Seller's Printed Name Date Time ☐ AM ☐ PM

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Marie Zhu BUYER(S) INITIALS: MZ  
 Property Address: 2132 HOUSTON DR SELLER(S) INITIALS: CW

EXHIBIT C

EXHIBIT C





### SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner (see NRS 113.130 and 113.140).

Date August 2nd, 2017

Do you currently occupy or have you ever occupied this property? ☐ YES ☒ NO

Property address 2132 HOUSTON DR

LAS VEGAS NV 89104

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form. (NRS 113.130(3))

Type of Seller: ☐ Bank (financial institution); ☐ Asset Management Company; ☐ Owner-occupier; ☒ Other: Investor

**Purpose of Statement:** (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

**Instructions to the Seller:** (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW (see NRS 113.150).

**Systems / Appliances:** Are you aware of any problems and/or defects with any of the following:

	YES	NO	N/A
Electrical System .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Plumbing .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sewer System & line .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Septic tank & leach field .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Well & pump .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Yard sprinkler system(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fountain(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heating system .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cooling system .....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Solar heating system .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fireplace & chimney .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Wood burning system .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Garage door opener .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Water treatment system(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>			
Water heater .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Toilet(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bathub(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Shower(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sink(s) .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sauna / hot tub(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Built-in microwave .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Range / oven / hood-fan .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dishwasher .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Garbage disposal .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Trash compactor .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Central vacuum .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Alarm system .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>			
Smoke detector .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Intercom .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Data Communication line(s) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Satellite dish(es) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>			
Other .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

Kenny Lin  
Seller(s) Initials

MZ

Buyer(s) Initials

Nevada Real Estate Division  
Replaces all previous versions

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Seller Real Property Disclosure Form 547  
Revised 07/25/2017

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**Property conditions, improvements and additional information:**

YES NO N/A

Are you aware of any of the following?:

1. **Structure:**
- (a) Previous or current moisture conditions and/or water damage? ☐ YES ☒ NO
- (b) Any structural defect? ☐ YES ☒ NO
- (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ☒ YES ☒ NO
- (d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ☐ YES ☒ NO  
(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)
2. **Land / Foundation:**
- (a) Any of the improvements being located on unstable or expansive soil? ☐ YES ☒ NO
- (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ☐ YES ☒ NO
- (c) Any drainage, flooding, water seepage, or high water table? ☐ YES ☒ NO
- (d) The property being located in a designated flood plain? ☐ YES ☒ NO
- (e) Whether the property is located next to or near any known future development? ☐ YES ☒ NO
- (f) Any encroachments, easements, zoning violations or nonconforming uses? ☐ YES ☒ NO
- (g) Is the property adjacent to "open range" land? ☐ YES ☒ NO  
(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)
3. **Roof:** Any problems with the roof? ☐ YES ☒ NO
4. **Pool/spa:** Any problems with structure, wall, liner, or equipment? ☐ YES ☒ NO
5. **Infestation:** Any history of infestation (termites, carpenter ants, etc.)? ☐ YES ☒ NO
6. **Environmental:**
- (a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ☐ YES ☒ NO
- (b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ☐ YES ☒ NO
7. **Fungi / Mold:** Any previous or current fungus or mold? ☐ YES ☒ NO
8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property? ☐ YES ☒ NO
9. **Common Interest Communities:** Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property? ☐ YES ☒ NO
- (a) Common Interest Community Declaration and Bylaws available? ☐ YES ☒ NO
- (b) Any periodic or recurring association fees? ☐ YES ☒ NO
- (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ☐ YES ☒ NO
- (d) Any litigation, arbitration, or mediation related to property or common area? ☐ YES ☒ NO
- (e) Any assessments associated with the property (excluding property taxes)? ☐ YES ☒ NO
- (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ☐ YES ☒ NO
10. Any problems with water quality or water supply? ☐ YES ☒ NO
11. **Any other conditions** or aspects of the property which materially affect its value or use in an adverse manner? ☐ YES ☒ NO
12. **Lead-Based Paint:** Was the property constructed on or before 12/31/77? ☒ YES ☐ NO  
(If yes, additional Federal EPA notification and disclosure documents are required)
13. **Water source:** Municipal ☒ Community Well ☐ Domestic Well ☐ Other ☐  
If Community Well: State Engineer Well Permit # \_\_\_\_\_ Revocable ☐ Permanent ☐ Cancelled ☐  
Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.
14. **Conservation Easements** such as the SNWA's Water Smart Landscape Program: Is the property a participant? ☐ YES ☒ NO
15. **Solar panels:** Are any installed on the property? ☐ YES ☒ NO  
If yes, are the solar panels: Owned ☐ Leased ☐ or Financed ☐
16. **Wastewater disposal:** ☒ Municipal Sewer ☐ Septic System ☐ Other ☐
17. This property is subject to a Private Transfer Fee Obligation? ☐ YES ☒ NO

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

Seller(s) Initials

Buyer(s) Initials



**EXPLANATIONS:** Any "Yes" to questions on pages 1 and 2 must be fully explained here.  
Attach additional pages if needed.

one of the unit has brand new kitchen cabinet installed  
all 3 Units has brand new AC installed within 3 months.  
all 3 bathrooms are redone within 2 years.  
sprinkler for landscaping doesn't work, all pipes are broken;  
Please consider that there are no sprinkler system.  
AC units are installed by Licensed contractor, all other work  
are done by owner's handyman.  
owner never reside in the property, and never ~~live~~ visited  
the property. @

  
Seller(s) Initials

  
Buyer(s) Initials



Buyers and sellers of residential property are advised to seek the advice of an attorney concerning their rights and obligations as set forth in Chapter 113 of the Nevada Revised Statutes regarding the seller's obligation to execute the Nevada Real Estate Division's approved "Seller's Real Property Disclosure Form". For your convenience, Chapter 113 of the Nevada Revised Statutes provides as follows:

**CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE**

**NRS 113.100 Definitions.** As used in NRS 113.100 to 113.150, inclusive, unless the context otherwise requires:

1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
2. "Disclosure form" means a form that complies with the regulations adopted pursuant to NRS 113.120.
3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.
4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
5. "Seller" means a person who sells or intends to sell any residential property.

(Added to NRS by 1995, 842; A 1999, 1446)

**NRS 113.110 Conditions required for "conveyance of property" and to complete service of document.** For the purposes of NRS 113.100 to 113.150, inclusive:

1. A "conveyance of property" occurs:
  - (a) Upon the closure of any escrow opened for the conveyance; or
  - (b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
2. Service of a document is complete:
  - (a) Upon personal delivery of the document to the person being served; or
  - (b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.

(Added to NRS by 1995, 844)

**NRS 113.120 Regulations prescribing format and contents of form for disclosing condition of property.** The Real Estate Division of the Department of Business and Industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.
2. Provides notice:
  - (a) Of the provisions of NRS 113.140 and subsection 5 of NRS 113.150.
  - (b) That the disclosures set forth in the form are made by the seller and not by his agent.
  - (c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.

(Added to NRS by 1995, 842)

**NRS 113.130 Completion and service of disclosure form before conveyance of property; discovery or worsening of defect after service of form; exceptions; waiver.**

1. Except as otherwise provided in subsection 2:
  - (a) At least 10 days before residential property is conveyed to a purchaser:
    - (1) The seller shall complete a disclosure form regarding the residential property; and
    - (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.
  - (b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:
    - (1) Rescind the agreement to purchase the property; or
    - (2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.
2. Subsection 1 does not apply to a sale or intended sale of residential property:
  - (a) By foreclosure pursuant to chapter 107 of NRS.
  - (b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
  - (c) Which is the first sale of a residence that was constructed by a licensed contractor.
  - (d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.
3. A purchaser of residential property may not waive any of the requirements of subsection 1 as a condition of sale or for any other purpose.
4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, or upon the request of the purchaser of the residential property, provide:
  - (a) Written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware; and
  - (b) If any defects are repaired or replaced or attempted to be repaired or replaced, the contact information of any asset management company who provided asset management services for the property. The asset management company shall provide a service report to the purchaser upon request.
5. As used in this section:
  - (a) "Seller" includes, without limitation, a client as defined in NRS 645H.060.
  - (b) "Service report" has the meaning ascribed to it in NRS 645H.150.

(Added to NRS by 1995, 842; A 1997, 349; 2003, 1339; 2005, 598; 2011, 2832)

Seller(s) Initials

Buyer(s) Initials

Nevada Real Estate Division  
Replaces all previous versions

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Seller Real Property Disclosure Form 547  
Revised 07/25/2017

This form presented by Kenny Lin | Investpro Realty | 702-997-3832 | zhong.kenny@investprorealty.com

LAB Investment v. TKNR  
Case # A-18-785917-C

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RA000097



**NRS 113.135 Certain sellers to provide copies of certain provisions of NRS and give notice of certain soil reports; initial purchaser entitled to rescind sales agreement in certain circumstances; waiver of right to rescind.**

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206, inclusive, and 40.600 to 40.695, inclusive;

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.

3. The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.

(Added to NRS by 1999, 1446)

**NRS 113.140 Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.**

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.

2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.

3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.

(Added to NRS by 1995, 843; A 2001, 2896)

**NRS 113.150 Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.**

1. If a seller or the seller's agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.

2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:

(a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

(b) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.

3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:

(a) On the holder of any escrow opened for the conveyance; or

(b) If an escrow has not been opened for the conveyance, on the seller or the seller's agent.

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.

5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:

(a) An officer or employee of this State or any political subdivision of this State in the ordinary course of his or her duties; or

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided.

6. A purchaser of residential property may waive any of his or her rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.

(Added to NRS by 1995, 843; A 1997, 350, 1797)

The above information provided on pages one (1), two (2) and three (3) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). **SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE (See NRS 113.130(1)(b)).**

Seller(s): T K B R Inc Date: 8/7/17

Seller(s): [Signature] Date: 8/7/17

**BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.100-150, inclusive, attached hereto as pages four (4) and five (5).**

Buyer(s): Marie Zhu Date: 08/21/2017

Buyer(s): 8/21/2017 7:26:20 PM PDT Date: \_\_\_\_\_

**EXHIBIT D**

**EXHIBIT D**



K L &lt;zhong.kenny@gmail.com&gt;

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**Fwd: 2132 Houston Dr**

2 messages

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**Helen Chen** <helen0510c@gmail.com>  
To: Joyce Nickranbt <investprocommercial@gmail.com>  
Cc: Kenny Lin <zhong.kenny@gmail.com>

Thu, Dec 20, 2018 at 10:59 AM

----- Forwarded message -----

From: **Helen Chen** <helen0510c@gmail.com>  
Date: Tue, Sep 5, 2017 at 3:43 PM  
Subject: 2132 Houston Dr  
To: <frankmiao@yahoo.com>, Michael Perry <swf.mpperry@gmail.com>

Hi Frank and Marie,

Please note that seller agree the rest of terms and request to add the below term on the contract:

"Buyer agree to pay the difference in cash if appraisal come in lower than purchase price, not to exceed purchase price of \$200k"

I just send you the docs, please review and sign if you are agree. Thank you!  
(Per buyer's request will waive licensed home inspector to do the home inspection)

Sincerely,



**Helen Chen**  
Cell: 702-970-7777  
Office: 702-997-3832  
Email: [helen0510c@gmail.com](mailto:helen0510c@gmail.com)  
3553 S. Valley View Blvd  
Las Vegas, NV 89103  
[www.investprorealty.net](http://www.investprorealty.net)



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**Helen Chen** <helen0510c@gmail.com>  
To: Joyce Nickranbt <investprocommercial@gmail.com>  
Cc: Kenny Lin <zhong.kenny@gmail.com>

Thu, Dec 20, 2018 at 10:59 AM

----- Forwarded message -----

From: **Helen Chen** <helen0510c@gmail.com>  
Date: Tue, Sep 5, 2017 at 5:07 PM  
Subject: Re: 2132 Houston Dr  
To: <frankmiao@yahoo.com>, Michael Perry <swf.mpperry@gmail.com>

Hi Michael,

Please see attached executed cancellation addendum and new purchase agreement. Thank you!

Sincerely,

DEF4000353

RA000100

**Helen Chen**

Cell: 702-970-7777

Office: 702-997-3832

Email: [helen0510c@gmail.com](mailto:helen0510c@gmail.com)

3553 S. Valley View Blvd

Las Vegas, NV 89103

[www.investprorealty.net](http://www.investprorealty.net)

On Tue, Sep 5, 2017 at 3:43 PM, Helen Chen <[helen0510c@gmail.com](mailto:helen0510c@gmail.com)> wrote:

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I just send you the docs, please review and sign if you are agree. Thank you!  
(Per buyer's request will waive licensed home inspector to do the home inspection)

Sincerely,

**Helen Chen**

Cell: 702-970-7777

Office: 702-997-3832

Email: [helen0510c@gmail.com](mailto:helen0510c@gmail.com)

3553 S. Valley View Blvd

Las Vegas, NV 89103

[www.investprorealty.net](http://www.investprorealty.net)

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**2 attachments****Cancellation Addendum.pdf**

159K

**New Residential\_Purchase\_Agreement\_\_Rev\_06\_17\_.pdf**

628K

DEF4000354

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