

1 **REAL ESTATE PURCHASE AND SALE AGREEMENT**
2 **BY AND BETWEEN**
3 **WIRE WAY, LLC,**
4 **a Texas limited liability company**
5 **("Seller")**
6 **and**
7 **RCI HOLDINGS, INC.,**
8 **a Texas corporation**
9 **("Purchaser")**
10 **THIS REAL ESTATE PURCHASE AND SALE**

11 **AGREEMENT** (this "Agreement") is made and entered into
12 by and between **WIRE WAY, LLC**, a Texas limited liability
13 company ("Seller"), and **RCI HOLDINGS, INC.**, a Texas cor-
14 poration ("Purchaser"), pursuant to the terms and conditions
15 set forth herein.

16 **WITNESSETH:**

17 **WHEREAS**, Seller is the owner of a certain real
18 property consisting of approximately 4.637± acres of land, to-
19 gether with all rights, (excepting for mineral rights as set forth
20 below), title and interests of Seller in and to any and all im-
21 provements and appurtenances exclusively belonging or per-
22 taining thereto (the "Property") located at 10557 Wire Way,
23 Dallas (the "City"), Dallas County, Texas, which Property is
24 more particularly described on **Exhibit A** attached hereto and
25 incorporated herein by reference; and

26 **WHEREAS**, contemporaneously with the execution
27 of this Agreement, North by East Entertainment, Ltd., a Texas
28 limited partnership ("North by East"), is entering into an
29 agreement with RCI Entertainment (Northwest Highway),
30 Inc., a Texas corporation ("RCI Entertainment"), a wholly
31 owned subsidiary of Rick's Cabaret International, Inc., a Texas
32 corporation ("Rick's") for the sale and purchase of the assets
33 of the business more commonly known as "Platinum Club II"
34 that operates from and at the Property ("Asset Purchase
35 Agreement"); and

Commented [DCT1]: Pay attention to the other agreements in play in this document. ¶ The original, unannotated version of this agreement is available on the SEC Web site at http://www.sec.gov/Archives/edgar/data/935419/000114036108012368/ex10_2.htm

Commented [DCT2]: Note the entity – an LLC is likely to be a convenience entity.

Commented [DCT3]: Note the entity here – also see below about what RCI Holdings really is.

Commented [DCT4]: Note the archaic "Witnesseth" and "Whereas" language.

Commented [DCT5]: What does "4.637± acres" mean?

Commented [DCT6]: "All right, title, and interest of Seller" is the conventional formula for conveyance. ¶ Mineral-rights carve-outs are not uncommon.

Commented [DCT7]: QUESTION: READ THESE NEXT TWO "WHEREAS" PARAGRAPHS CAREFULLY; what's really going on here?

Commented [DCT8]: Buyer is a sub of the public company.

Commented [DCT9]: "More commonly known as": This will often be enough of an identifier.

36 **WHEREAS**, subject to and simultaneously with the
37 closing of the Asset Purchase Agreement, Seller will enter into
38 a lease with RCI Entertainment, as Tenant, for the Property,
39 dated to be effective as of the closing date, as defined in the
40 Asset Purchase Agreement (the "Lease") attached hereto as
41 **Exhibit B** and incorporated herein by reference; and

Commented [DCT10]: Note the effective-date approach.

Commented [DCT11]: QUESTION: Is this necessary? Is it a good idea?

42 **WHEREAS**,
43 subject to the closing of the Asset Purchase Agree-
44 ment, the execution and acceptance by Seller of the Lease,
45 and pursuant to the terms and provisions contained
46 herein,
47 Seller desires to sell and convey to Purchaser and
48 Purchaser desires to purchase the Property.

Commented [DCT12]: Everything has to come together

49 **NOW, THEREFORE**, for and in consideration of
50 the premises and mutual covenants and conditions contained
51 herein, and other good and valuable consideration, the receipt
52 and sufficiency of which are hereby acknowledged, the parties
53 hereto agree as follows:

54 **ARTICLE I**

55 **PURCHASE AND SALE**

56 **Section 1.01. Purchase and Sale.** Pursuant to the
57 terms and provisions contained herein, Seller hereby agrees to
58 sell, transfer and convey by General Warranty Deed to Pur-
59 chaser, and Purchaser hereby agrees to purchase from Seller,
60 the Property, free and clear of all liens and encumbrances
61 subject to any permitted exceptions mutually agreed
62 to by the Parties (the "Permitted Exceptions").

Commented [DCT13]: I've added extra line breaks to this paragraph – the original version is WAY too long.

Commented [DCT14]: General Warranty Deed: What's that? What other kinds of deed might there be?

63 Seller hereby reserves from this sale, all right, title
64 and interest of Seller in and to the oil, gas and other non-
65 surface minerals under the Property;

Commented [DT15]: A significant part of the Agreement is devoted to establishing a process for determining which exceptions (to free-and-clear title) are *permitted* exceptions.

66 provided, neither Seller nor Seller's heirs, succes-
67 sors, lessees, assigns or grantees, shall ever use any portion of
68 the surface of the Property for the development of or explora-
69 tion for the oil, gas and other non-surface minerals reserved
70 hereunder, any such use being expressly waived by Seller for
71 all purposes and for all times.

Commented [DCT16]: QUESTION: Is this "provided" language the best way to carve out exceptions? See Stark section 23.3.

Commented [DCT17]: QUESTION: How can the Seller take advantage of its mineral rights, if it can't make use of the surface?

Commented [DCT18]: QUESTION: Any issues with the "waived ... for all times" language?

72 The aforementioned General Warranty Deed shall in-
73 clude a provision reserving from the sale all right, title and in-
74 terest of Seller in and to the oil, gas and other non-surface
75 minerals under the Property;

76 provided, neither Seller nor Seller's heirs, successors,
77 lessees, assigns or grantees, shall ever use any portion of the
78 surface of the Property for the development of or exploration
79 for the oil, gas and other non-surface minerals reserved here-
80 under, any such use being expressly waived by Seller for all
81 purposes and for all times.

Commented [DCT19]: Another "provided" issue. ¶ Note the repetition here (see comment 13) – it violates the D.R.Y. rule of drafting (Don't Repeat Yourself).

82
83 **Section 1.02. Disclaimer and Indemnity.** THE
84 PROPERTY SHALL BE CONVEYED AND TRANS-
85 FERRED TO PURCHASER "AS IS, WHERE IS AND
86 WITH ALL FAULTS".

Commented [DCT20]: QUESTION: Why all-caps? Any alternative approaches to achieving the purpose?

Commented [DCT21]: QUESTION: Why use both "conveyed" and "transferred"? QUESTION: Is passive voice appropriate?

Commented [DCT22]: QUESTION: Is this where the period goes when a sentence ends with a close-quotation mark?

87 EXCEPT FOR THE REPRESENTATIONS, WAR-
88 RANTIES AND COVENANTS OF SELLER SET FORTH
89 IN ARTICLE V OF THIS AGREEMENT,
90 SELLER DOES NOT WARRANT OR MAKE ANY
91 REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO
92 FITNESS FOR A PARTICULAR PURPOSE, MERCHANT-
93 ABILITY, DESIGN, QUANTITY, QUALITY, LAYOUT,
94 FOOTAGE, PHYSICAL CONDITION, OPERATION,
95 COMPLIANCE WITH SPECIFICATIONS, ABSENCE OR

Commented [DCT23]: QUESTION: Any issues with providing a laundry list?

96 LATENT DEFECTS OR COMPLIANCE WITH LAWS
97 AND REGULATIONS
98 (INCLUDING, WITHOUT LIMITATION, THOSE
99 RELATING TO HEALTH, SAFETY AND THE ENVI-
100 RONMENT)
101 OR ANY OTHER MATTER AFFECTING THE
102 PROPERTY

103 AND SELLER SHALL BE UNDER NO OBLIGA-
104 TION WHATSOEVER TO UNDERTAKE ANY REPAIRS,
105 ALTERATIONS OR OTHER WORK OF ANY KIND WITH
106 RESPECT TO ANY PORTION OF THE PROPERTY.

107 FURTHER, PURCHASER SHALL INDEMNIFY,
108 DEFEND AND HOLD HARMLESS SELLER AND SELL-
109 ER'S REPRESENTATIVES FROM AND AGAINST ANY
110 CLAIMS OR CAUSES OF ACTION ARISING OUT OF
111 THE CONDITION OF THE PROPERTY BROUGHT BY
112 ANY OF PURCHASER'S SUCCESSORS OR ASSIGNS,
113 OR ANY THIRD PARTY, AGAINST SELLER OR SELL-
114 ER'S REPRESENTATIVES.

115 INFORMATION PROVIDED OR TO BE PRO-
116 VIDED BY SELLER IN RESPECT OF THE PROPERTY
117 WAS OBTAINED FROM A VARIETY OF SOURCES.

118 SELLER HAS NOT MADE AN INDEPENDENT
119 INVESTIGATION OF SUCH INFORMATION AND
120 MAKES NO REPRESENTATIONS AS TO THE ACCURA-
121 CY OR COMPLETENESS THEREOF.

122 PURCHASER HEREBY ASSUMES ALL RISK
123 AND LIABILITY RESULTING FROM THE OWNERSHIP,
124 USE, CONDITION, LOCATION, MAINTENANCE, RE-
125 PAIR OR OPERATION OF THE PROPERTY, WHICH
126 PURCHASER WILL INSPECT AND ACCEPT "AS IS".

Commented [DCT24]: QUESTION: Is it good editing to say "... and Seller shall be under no obligation"

Commented [DCT25]: COMMENT: Notice how hard it is to tell *at a glance* where one sentence ends and another begins.

Commented [DCT26]: QUESTION: With the rest of this sentence in mind, are there any issues with the indemnity obligation?

Commented [DCT27]: QUESTION: Is "defend" necessary if there's an indemnity obligation?

Commented [DCT28]: In U.S. usage, periods and commas go inside quotation marks; semi-colons go outside.

127 IN THIS REGARD, PURCHASER ACKNOWLEDGES THAT

129 (a) PURCHASER HAS NOT ENTERED INTO THIS AGREEMENT IN RELIANCE UPON ANY INFORMATION GIVEN TO PURCHASER PRIOR TO THE DATE OF THIS AGREEMENT,

Commented [DCT29]: QUESTION: Why is this here?

Commented [DT30]: QUESTION: In the context of this group of sentences, is "PRIOR TO The date of this Agreement" the best thing for Seller?

133 INCLUDING, BUT NOT LIMITED TO, PROMOTIONAL MATERIALS OR FINANCIAL DATA ,

135 (b) PURCHASER WILL MAKE ITS DECISION TO PURCHASE THE PROPERTY BASED UPON PURCHASER'S OWN DUE DILIGENCE AND INVESTIGATIONS,

138 (c) PURCHASER HAS SUCH KNOWLEDGE AND EXPERIENCE IN REAL ESTATE INVESTIGATION TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTIONS PROVIDED IN THIS AGREEMENT, AND

142 (d) PURCHASER IS FINANCIALLY ABLE TO BEAR THE ECONOMIC RISK OF THE LOSS OF SUCH INVESTMENT AND THE COST OF THE DUE DILIGENCE AND INVESTIGATIONS UNDER THIS AGREEMENT.

147 IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING.

152 Disclaimers similar to the foregoing in form satisfactory to Seller as well as Seller's reservation of the mineral estate shall be inserted in any and all documents to be delivered by Seller to Purchaser at Closing.

156 **ARTICLE II**

157 **PURCHASE PRICE, EARNEST MONEY AND INDE-**
158 **PENDENT CONSIDERATION**

159
160 **Section 2.01. Purchase Price.** The purchase price
161 (the "Purchase Price") to be paid by Purchaser to Seller for the
162 Property acquired pursuant to this Agreement shall be Six Mil-
163 lion and No/100 Dollars (\$6,000,000.00).

164 Except as otherwise set forth herein, the Purchase
165 Price shall be due and payable in cash at the Closing (as here-
166 inafter defined) of the Property.

167
168 **Section 2.02. Earnest Mon-**
169 **ey.** Contemporaneously with the execution of this Agree-
170 ment, Purchaser shall deliver to Republic Title of Texas, Inc.,
171 Attention: Mel Morgan, 2626 Howell, 10th Floor, Dallas, Tex-
172 as 75204 (the "Title Company"), the amount of One Hundred
173 Thousand Dollars (\$100,000.00) (the "Initial Earnest Money")
174 in cash or immediately available funds.

175 The Initial Earnest Money is fully refundable until
176 the later of June 10, 2008 or ten (10) days after the approval of
177 RCI Entertainment's application for a sexually oriented busi-
178 ness license by the City of Dallas and the transfer of all other
179 permits utilized to operate Platinum Club II, (but in no event
180 later than August 31, 2008)

181 after which date it becomes non-refundable but will
182 continue to be held by the Title Company and shall be credited
183 against the Purchase Price at Closing.

184
185 **Section 2.03. Additional Payments.** Subject to and
186 simultaneously with the closing of the Asset Purchase Agree-
187 ment, Purchaser shall pay to Seller, directly, the sum of

Commented [DCT31]: Note how deliveries are to be made.

Commented [DCT32]: QUESTION: What does "immediately-available funds" mean?

Commented [DCT33]: QUESTION: What would be another way to express "the later of" ?

Commented [DCT34]: Always a good idea to have a sunset date.

Commented [DCT35]: QUESTION: So what happens if the escrow payment never becomes non-refundable – is it still credited against the purchase price at closing?

Commented [DCT36]: Note the simultaneity here.

188 One Million Five Hundred Thousand and No/100 Dollars
189 (\$1,500,000.00) in cash or immediately available funds (the
190 “Cash Payment”).

191 This Cash Payment delivered to Seller shall be im-
192 mediately non-refundable.

193 If this transaction closes, the \$1,500,000 Cash Pay-
194 ment delivered hereunder shall be credited against the Pur-
195 chase Price at Closing.

196

197 **Section 2.04. Additional Earnest Mon-**

198 **ev.** Commencing on such date 60 days from the closing and
199 funding of the Asset Purchase Agreement and continuing each
200 consecutive month thereafter until the Closing (as hereinafter
201 defined), Purchaser shall deliver as additional earnest money

202 (“Additional Earnest Money”) to the Title Company each
203 month the amount of Two Hundred Thousand and No/100
204 Dollars (\$200,000.00) in cash or immediately available funds
205 until not later than the Closing.

206 Any and all Additional Earnest Money delivered to
207 the Title Company shall be immediately non-refundable.

208 If this transaction closes, all Additional Earnest Mon-
209 ey delivered hereunder shall be credited against the Purchase
210 Price at Closing.

211 In the event that Purchaser does not deliver any por-
212 tion of the Additional Earnest Money to Seller as set forth
213 herein and such failure to deliver continues for a period of five
214 (5) business days thereafter, then this Agreement may be ter-
215 minated by either party as its sole remedy for such failure,

216 and no party shall thereafter have any further obliga-
217 tion to the other hereunder.

218

Commented [DCT37]: QUESTION: Is it likely that a judge would refuse to enforce the agreement if the dollar amount were *not* spelled out in words?

Commented [DCT38]: QUESTION: What are “immediately-available funds”?

Commented [DCT39]: QUESTION: What does “such date” mean?

Commented [DCT40]: What’s the big picture here?

Commented [DCT41]: This is a “walk-away” provision.

Commented [DT42]: Are there any obligations that the parties might want to keep in place after a walk-away termination?

219

220

ARTICLE III

221

SURVEY, TITLE BINDER, LEASES AND SOIL TESTS

222

Section 3.01. Survey and Title Binder. (a) Seller

223

and Purchaser acknowledge that Seller has delivered, or

224

caused to be delivered, to Purchaser a copy of an existing on-

225

the-ground survey (the "Survey") of the Property.

226

(b) Within ten (10) days after the Date of Exe-

227

cution of this Agreement (as hereinafter defined), Seller shall

228

deliver or cause to be delivered to Purchaser, at Seller's sole

229

expense, at the address stated below, a copy of

230

(i) a title commitment (the "Title Binder") addressed

231

to Purchaser issued by the Title Company, showing Purchaser

232

and Seller as set forth in this Agreement, covering the Proper-

233

ty

234

and binding the Title Company to issue to Purchaser

235

at the Closing, on behalf of the Title Company (or its under-

236

writer),

237

a Texas Owner's Policy of Title Insurance on the

238

standard form of policy prescribed by the Texas State Board

239

of Insurance (the "Owner's Title Policy")

240

in the aggregate amount of the Purchase Price for the

241

Property to be acquired by Purchaser pursuant hereto, and

242

(ii) copies of any and all instruments referred to in

243

the Title Binder as constituting exceptions or restrictions upon

244

or matters affecting the title of Seller to the Property,

245

except that copies of any liens or any other matters

246

which are to be released at or before the Closing may be omit-

247

ted (the "Exception Documents").

248

(c) Seller and Purchaser acknowledge that

249

Seller has delivered, or caused to be delivered, to Purchaser

Commented [DT43]: Notice who pays for the title policy – this is customary.

Commented [DCT44]: QUESTION: What is a "title binder"? (Hint: Keep reading below.)

250 true, correct, complete and legible copies of any and all leases
251 or other conditions affecting or relating to the Property,
252 whether such leases or conditions are presently in written
253 form, valid or recorded.

254 (d) Seller and Purchaser acknowledge that
255 Seller has delivered, or caused to be delivered, to Purchaser a
256 copy of the "as built" plans for the interior and exterior of the
257 building located on the Property.

Commented [DCT45]: Note the concept of "as-built."

258 (e) Seller and Purchaser acknowledge that
259 Seller has delivered, or caused to be delivered, to Purchaser
260 any and all soils and compaction tests (collectively, the "Soils
261 Tests") and environmental tests and reports (the "Environmen-
262 tal Reports") performed by or on behalf of Seller or which
263 Seller has in its possession relating to the Property.

Commented [DCT46]: QUESTION: Should either party have asked for a different verb than "acknowledge"? Which party or parties? Why (or why not)?

Commented [DCT47]: Environmental issues can be big.

Commented [DCT48]: This "or" could be an important one.

264 Without in any way limiting or diminishing Seller's
265 obligation hereunder, Purchaser shall have the right, at Pur-
266 chaser's expense, to have the Seller's Soil Tests and Environ-
267 mental Reports updated and/or reissued to Purchaser.

Commented [DCT49]: QUESTION: What does the purchaser likely want to do?

268
269 **Section 3.02. Review of Survey and Title Bind-**
270 **er.** In the event any exceptions or reservations appear in the
271 Title Binder or in the event the Survey is unacceptable to Pur-
272 chaser,

Commented [DCT50]: QUESTION: "Unacceptable," meaning what?

273 Purchaser's sole and exclusive remedy shall be to
274 terminate this Agreement by written notice delivered to Seller
275 on or before the date which is ten (10) business days after the
276 date of Purchaser's receipt of all the items to be delivered ref-
277 erenced above in Section 3.01 and the Purchaser shall be enti-
278 tled to immediately receive the return of the Initial Earnest
279 Money.

Commented [DCT51]: "Terminate this Agreement" is a conventional phrase, but one that can result in awkwardness elsewhere in the document.

280 If Purchaser does not exercise its right to terminate
281 this Agreement in accordance with this Section 3.02, all mat-
282 ters contained in or on, and all of Purchaser's objections to, the
283 Title Binder, Survey, Exception Documents and all other doc-
284 uments delivered hereunder or otherwise obtained by Purchas-
285 er pursuant to or in connection with this Agreement or the
286 Property shall either be cured to the satisfaction of Purchaser
287 or waived by Purchaser at or prior to the closing of the Asset
288 Purchase Agreement.

Commented [DCT52]: QUESTION: What's wrong with this sentence?
What if neither one is true – no cure, but no waiver?

289 In the event that the Purchaser does not waive any
290 exceptions or reservations that appear, then Purchaser's sole
291 and exclusive remedy shall be to terminate this Agreement by
292 written notice delivered to Seller and shall be entitled to im-
293 mediately receive the return of the Initial Earnest Money.

294 Any matters to which Purchaser does not object or
295 which Purchaser waives or is deemed to have waived shall be
296 "Permitted Exceptions".

297 If Purchaser terminates this Agreement as provided in
298 this Section 3.02, this Agreement shall terminate and no party
299 hereunder shall thereafter have any further obligation to the
300 other hereunder, except as otherwise provided herein.

Commented [DCT53]: QUESTION: What's wrong with this sentence
(syntactically, not substantively)?

301 4

302
303
304 **ARTICLE IV**

305 **FEASIBILITY STUDY AND INSPECTION**

306 **Section 4.01. Feasibility Study.** (a) On or before (i)
307 ten (10) days after the approval of RCI Entertainment's appli-
308 cation for sexually oriented business license by the City of
309 Dallas and (ii) the transfer of all other permits utilized to oper-

Commented [DCT54]: HOMEWORK EXERCISE (non-graded): Fix the
first sentence of this subdivision (a).

310 ate the Platinum Club II (but in no event later than August 31,
311 2008),

312 Purchaser may conduct its due diligence on the Prop-
313 erty, including but not limited to, studies or tests or to conduct
314 an engineering and/or economic feasibility study of the Prop-
315 erty,

316 which studies and tests may have included, without
317 limitation, financial and marketing analyses, soil tests, topo-
318 graphical analysis, engineering studies, environmental studies
319 and tests and similar preliminary work.

320 Purchaser hereby expressly waives the right to any
321 additional period of time for same.

322

323 (b) Notwithstanding the foregoing, Purchaser
324 shall indemnify and defend Seller and hold Seller harmless
325 from and against any and all claims, liabilities or damages to
326 the Property or against Seller caused by Purchaser's and/or
327 Purchaser's authorized agents', representatives' or employees'
328 actions during the or as a result of any inspection of the Prop-
329 erty by such parties during such time period.

330

331

ARTICLE V

332

REPRESENTATIONS, WARRANTIES, COVENANTS

333

AND AGREEMENTS

334

Section 5.01. Representations, Warranties and

335

Covenants of Seller. Seller represents, warrants and cove-
336 nants to Purchaser as follows:

337

(a) Organization, Good Standing and Qualifi-

338

cation. The Seller (i) is an entity duly organized, validly exist-
339 ing and in good standing under the laws of the state of Texas,

340

(ii) has all requisite power and authority to operate its busi-

Commented [DT55]: Is "may have included" the proper syntax?

Commented [DCT56]: QUESTION: Why say "notwithstanding the foregoing"?

Commented [DCT57]: QUESTION: Let's talk about this phrasing – and compare with the introduction to 5.02.

341 ness, and (iii) is duly qualified to transact business and is in
342 good standing in Texas.

343 (b) Ownership of the Property. ||As of the Clos-
344 ing, the Seller will be able to convey the Property free and
345 clear of any lien, claims, equities, charges, options, rights of
346 first refusal or encumbrances (save and except the Permitted
347 Exceptions) as evidenced by the title commitment for the
348 Property to be issued to Purchaser prior to the Closing and as
349 evidenced by a title policy to be provided to Purchaser at the
350 time of Closing.

351 Seller shall have at Closing the unrestricted right and
352 power to transfer, convey and deliver full ownership of the
353 Property without the consent or agreement of any other person
354 and without any designation, declaration or filing with any
355 governmental authority.

356 Upon the transfer of the Property to the Purchaser as
357 contemplated herein, Purchaser will receive good and valid ti-
358 tle thereto, free and clear of any liens, claims, equities, charg-
359 es, options, rights of first refusal, encumbrances or other re-
360 strictions,

361 subject to the agreed upon Permitted Exceptions, if
362 any.

363

364

5

365

366

367 (c) Authorization. The Seller has all requisite
368 corporate power and authority to execute and deliver this
369 Agreement and to perform its obligations hereunder and to
370 consummate the transactions contemplated hereby.

Commented [DCT58]: IN-CLASS EXERCISE: What's wrong with this paragraph (syntactically)?

371 All action on the part of the Seller necessary for the
372 authorization, execution, delivery and performance of this
373 Agreement has been taken by the Seller.

374 This Agreement, when duly executed and delivered
375 in accordance with its terms, will constitute legal, valid and
376 binding obligations of the Seller enforceable against it in ac-
377 cordance with its terms,

378 except as may be limited by bankruptcy, insolvency,
379 reorganization and other similar laws of general application
380 affecting creditors' rights generally or by general equitable
381 principles.

382 (d) No Breaches; Consents. The execution,
383 delivery, and performance of this Agreement and the transac-
384 tions contemplated hereby by the Seller does not:

385 (i) violate any provision of its Articles of Organiza-
386 tion or Regulations;

387 (ii) conflict with, violate, or constitute a breach of or
388 a default under;

389 (iii) result in the creation or imposition of any lien,
390 claim, or encumbrance of any kind upon the Property; or

391 (iv) require any authorization, consent, approval, ex-
392 emption, or other action by or filing with any third party or
393 Governmental Authority under any provision of:

394 (a) any applicable Legal Requirement; or

395 (b) any credit or loan agreement, promissory
396 note, or any other agreement or instrument to which
397 the Seller is a party or by which the Property may be
398 bound or affected.

399 For purposes of this Agreement, "Governmental Au-
400 thority" means any foreign governmental authority, the United
401 States of America, any state of the United States, and any po-

Commented [DCT59]: QUESTION: What are these?

Commented [DCT60]: QUESTION: Is this usage correct?

Commented [DCT61]: Note the in-line definition here.

402 litical subdivision of any of the foregoing, and any agency,
403 department, commission, board, bureau, court, or similar enti-
404 ty, having jurisdiction over the parties hereto or their respec-
405 tive assets or properties.

406 For purposes of this Agreement, "Legal Require-
407 ment" means any law, statute, injunction, decree, order or
408 judgment (or interpretation of any of the foregoing) of, and the
409 terms of any license or permit issued by, any Governmental
410 Authority.

411 (e) Proceedings Relating to Property. There is
412 no pending, or, to the best knowledge of the Seller, judicial,
413 municipal or administrative proceedings with respect to, or in
414 any manner affecting the Property or any portion thereof,

415 including, without limitation, proceedings for or in-
416 volving tenant evictions, collections, condemnations, eminent
417 domain, alleged building code or zoning violations, personal
418 injuries or property damage alleged to have occurred on the
419 Property or by reason of the use and operation of the Property,

420 or written notice of any attachments, executions, as-
421 signments for the benefit of creditors, receiverships, conserva-
422 torships or voluntary or involuntary proceedings in bankruptcy
423 or pursuant to any other debtor relief laws pending or threat-
424 ened against the Seller or the Property itself,

425 or the taking of the Property for public needs.

426
427 (f) Public Improvements. The Seller has no
428 knowledge of any existing or proposed public improvements
429 which involve or which may result in any charge being levied
430 or assessed against the Property or which will or could result
431 in the creation of any lien upon the Property or any part there-
432 of.

Commented [DCT62]: QUESTION: What's wrong with these first few lines?

433 (g) Certificates. To the best knowledge of
434 Seller, all certificates of occupancy, licenses, permits, authori-
435 zations and approvals required by law or by any Governmental
436 Authority having jurisdiction over the Property have been ob-
437 tained and are in full force and effect.

Commented [DCT63]: QUESTION: Any ambiguities here?

438 (h) Material Defect. The Seller has no
439 knowledge of any material defects to the Property which have
440 not been disclosed in writing to Purchaser

441 (except as set forth in Exhibit C attached hereto and
442 incorporated herein for all purposes).

443
444 (i) Flooding. The Seller has no knowledge of
445 any flooding which has occurred on the Property.

Commented [DCT64]: QUESTION: Is there room for disagreement about what constitutes "flooding"?

446
447 (j) Environmental. To the best knowledge of
448 Seller, the Property is not in violation of any state, local or
449 federal statutes, laws, regulations, ordinances, or rules pertain-
450 ing to health or the environment requirements affecting the
451 Property

452 and the Seller has not received any citation, directive,
453 letter or other communication, written or oral, or any notice of
454 any proceeding, claim or lawsuit relating to any environmental
455 issue at the Property;

456 provided however, Seller has disclosed to Purchaser
457 that some or all of the Property was previously the location of
458 a land fill and used for such purposes.

459 Seller expressly makes no representation or warranty
460 to Purchaser with respect to the soils, environmental and eco-
461 logical condition of the Property

462 including, but not limited to, the presence of any
463 Hazardous Materials in, on or beneath the surface of the Prop-

464 erty or in the ground water or the surface water on, in, under
465 or serving the Property.

466 Seller has produced a list of possible defects in the
467 Property as set forth on **Exhibit C**, attached hereto.

468

469 (k) Seller has disclosed that the mineral rights
470 under the Property are not being sold to Purchaser.

471

472 (l) ALL REPRESENTATIONS AND WAR-
473 RANTIES OF SELLER CONTAINED IN THIS AGREE-
474 MENT SHALL SURVIVE THE CLOSING, SUBJECT TO
475 ANY AND ALL APPLICABLE STATUTES OF LIMITA-
476 TIONS EXPIRY.

477

478 **Section 5.02. Representations, Warranties and**

479 **Covenants of Purchaser.** To induce Seller to enter into this
480 Agreement and to sell the Property, Purchaser (and RCI Enter-
481 tainment, where applicable) represent(s), warrant(s) and cove-
482 nant(s) to Seller as follows:

483 (a) Purchaser has full power to enter into this
484 Agreement and to consummate the transactions provided for
485 herein,

486 and neither entering into this Agreement, nor con-
487 summing any of the transactions provided for herein, will re-
488 sult in or constitute a violation or breach by Purchaser of any
489 lien, deed of trust, agreement or other instrument

490 affecting the Property

491 or to which Purchaser is a party

492 or by which Purchaser is bound.

493 (b) Purchaser will comply with all applicable
494 laws, ordinances, regulations, statutes, codes, rules, orders,

Commented [DCT65]: QUESTION: Why is "to induce ..." included here?

Commented [DCT66]: QUESTION: Why is this compliance provision included?

Commented [DCT67]: QUESTION: Could this laundry list be replaced with a defined term – and is there already a defined term that might fit?

495 decrees, determinations, covenants and restrictions relating to
496 the Property and every part thereof

497 including those promulgated or imposed by any
498 agency, department, commission, board, bureau or instrumen-
499 tality of any governmental authority of the United States, the
500 State of Texas, the City, the County of Dallas or any other lo-
501 cal authority.

502 (c) Purchaser and/or RCI Entertainment will
503 maintain all permits, licenses and insurance policies required
504 to operate a club and timely comply with all terms and condi-
505 tions of the Lease, in accordance with the terms and conditions
506 of the Lease

507 and any uncured default under the Lease by the Pur-
508 chaser and/or RCI Entertainment shall be a default of this
509 Agreement.

510 Upon the occurrence of such uncured default, Seller
511 may pursue any of the remedies set forth in Section 8.02.

512 (d) Purchaser understands and consents to the
513 Seller's reservation from this sale, all right, title and interest of
514 Seller in and to the oil, gas and other non-surface minerals un-
515 der the Property;

516 provided, neither Seller nor Seller's heirs, successors,
517 lessees, assigns or grantees, shall ever use any portion of the
518 surface of the Property for the development of or exploration
519 for the oil, gas and other non-surface minerals reserved here-
520 under, any such use being expressly waived by Seller for all
521 purposes and for all times.

522 (e) Prior to Closing and funding of the pur-
523 chase contemplated by this Agreement, neither Purchaser nor
524 RCI Entertainment, nor any of their parents, affiliates, subsidi-
525 aries or related companies

Commented [DCT68]: QUESTION: What's wrong with the rest of this sentence?

526 shall voluntarily surrender the sexually oriented
527 business license subsequent to its issuance to Purchaser or RCI
528 Entertainment by the City of Dallas for use at the Property,
529 nor shall Purchaser nor RCI Entertainment, nor any
530 of their parent, affiliate, subsidiary or related companies
531 seek to move said license to a location with-
532 in 1000 feet of the Property,
533 nor apply for an additional license within
534 1000 feet of the Property as measured under the City of Dal-
535 las' sexually oriented business ordinance.

Commented [DCT69]: QUESTION: Does the rest of the sentence belong with the first part?

Commented [DCT70]: QUESTION: Why is this here?

Commented [DCT71]: QUESTION: Who are some of the potential "influencers" in this deal, other than the parties?

536 (f) ALL REPRESENTATIONS AND WAR-
537 RANTIES OF PURCHASER CONTAINED IN THIS
538 AGREEMENT SHALL SURVIVE THE CLOSING, SUB-
539 JECT TO ANY AND ALL APPLICABLE STATUTES OF
540 LIMITATIONS EXPIRY.

541 542 **ARTICLE VI**

543 **EMINENT DOMAIN**

Commented [DCT72]: Eminent domain should always be at least in the back of your mind when drafting a real-estate contract.

544 **Section 6.01. Eminent Domain.** Without limiting
545 any of Purchaser's other rights set forth in this Agreement,
546 if, prior to the Closing, any portion of the Property
547 shall be permanently taken or condemned or transferred by
548 agreement in lieu of condemnation for any public or quasi-
549 public use or purpose by any competent authority,

550 Purchaser may, at its option,

Commented [DCT73]: These options will frequently be negotiated.

551 (a) terminate this Agreement by written notice to
552 Seller, in which event all monies previously paid will be re-
553 funded and neither party shall thereafter have any further obli-
554 gations to the other hereunder,

555 (b) acquire only that portion of the Property which
556 has not been taken, condemned or transferred, or

557 (c) close the acquisition of the Property as provided
558 herein.

559 If Purchaser elects to close, despite said taking, con-
560 demnation or transfer, Seller shall assign to Purchaser Seller's
561 right, title and interest in and to any compensation award re-
562 sulting from said taking, condemnation or transfer.

Commented [DCT74]: QUESTION: Could the purchaser get a windfall out of this?

563 8
564 **ARTICLE VII**

565 **CLOSING**

566 **Section 7.01. Closing Schedule.**

567 (a) The closing of the purchase and sale of the Prop-
568 erty to be conveyed under this Agreement (the "Closing", and
569 the date of such Closing shall hereinafter be referred to as the
570 "Closing Date") shall be held at the offices of the Title Com-
571 pany on or before one year from the closing of the Asset Pur-
572 chase Agreement.

Commented [DCT75]: QUESTION: "One year from" – does that mean one year before, or one year after, or both?

573 Notwithstanding the foregoing, the Purchaser shall
574 have the right but not the obligation to complete the purchase
575 of the Property at any time subsequent to the closing of the
576 Asset Purchase Agreement by providing the Seller and the Ti-
577 tle Company ten (10) days written notice of its intention to
578 close the acquisition of the Property.

Commented [DCT76]: QUESTION: So how will this actually work?

579
580 **Section 7.02. Delivery of Documents and Pur-**

581 **chase Price.** (a) At the Closing, Seller shall deliver to Pur-
582 chaser the following (the "Closing Documents"):

583 (i) a general warranty deed in appropriate form
584 to convey the Property to the Purchaser free and clear of any
585 liens or encumbrances (the "Deed") subject to any agreed up-
586 on Permitted Exceptions;

Commented [DCT77]: QUESTION: Is "in appropriate form" a good idea? What other ways are there to do this?

Commented [DCT78]: QUESTION: Why say "agreed upon"?

587 (ii) an Owner's Title Policy covering the Prop-
588 erty in the full amount of the Purchase Price to be paid there-
589 for issued by the underwriter for the Title Company pursuant
590 to the Title Binder as provided herein;

591 (iii) any and all such other documents and in-
592 struments as may be reasonably necessary to effectuate the
593 transfer of the Property as provided herein.

594 (b) At the Closing, Purchaser shall deliver to
595 Seller

596 (i) the Purchase Price for the Property less the Initial
597 Earnest Money, the \$1,500,000 Cash Payment and any Addi-
598 tional Earnest Money in immediately available funds, either
599 by wire transfer or cashier's check, and

600 (ii) any and all such other documents and instruments
601 as may be reasonably necessary to effectuate the transfer of
602 the Property and other transactions as provided herein.

603

604 **Section 7.03. Proration of Closing Costs and Ex-**
605 **penses.**

606 (a) Ad valorem taxes for the Property for the then
607 current year shall be prorated at the Closing effective as of the
608 date of the Closing and shall be adjusted in cash to Purchaser
609 at the Closing.

610 If the amount of taxes for the year in which the Clos-
611 ing takes place is not known at the time of the Closing, the ap-
612 portionment of the taxes shall be upon the basis of the tax rate
613 for the preceding year applied to the latest assessed valuation;

614 provided, however, that any difference in ad valorem
615 taxes for the year of sale actually paid by Purchaser shall be
616 adjusted between the parties upon receipt of written evidence
617 of the payment thereof.

Commented [DCT79]: A catch-all.

Commented [DCT80]: EXERCISE: Let's re-write this sentence.

Commented [DCT81]: QUESTION: Does this make any sense?

Commented [DCT82]: Taxes are usually pro-rated

Commented [DCT83]: This leaves open one aspect of the deal.

618 (b) Seller hereby agrees to pay and be respon-
619 sible for the following Closing costs:

620 (i) all fees and premiums for the Title
621 Binder and for the Owner's Title Policy;

622 (ii) one-half (2) of the Title Company's
623 escrow fees;

624 (iii) all costs and expenses incurred by
625 or on behalf of Seller including Seller's attorney's fees; and

626 (iv) such other incidental costs and
627 fees provided herein to be paid by Seller or otherwise custom-

628 arily paid by sellers of property in Dallas County, Texas in
629 transactions of a similar nature to the transactions provided
630 herein.

631 (c) Purchaser hereby agrees to pay and be re-
632 sponsible for the following Closing costs:

633 (i) all fees and premiums for a Mort-
634 gagee's Title Policy, if any;

635 (ii) the cost of recording the Deed to
636 the Property;

637 (iii) one-half (2) of the Title Company's
638 escrow fees;

639 (iv) all costs and expenses incurred by
640 or on behalf of Purchaser including Purchaser's attorney's fees;
641 and

642 (v) such other incidental costs and fees
643 provided herein to be paid by Purchaser or otherwise custom-
644 arily paid by purchasers of property in Dallas County, Texas
645 in transactions of a similar nature to the transactions provided
646 herein.

647

Commented [DCT84]: "Hereby agrees" is redundant – the whole agreement is Seller's agreement – but contracts sometimes do this anyway to provide "sound bites."

QUESTION: What does "pay and be responsible for" mean?

Commented [DCT85]: QUESTION: Is there a better way to "architect" this concept?

Commented [DCT86]: QUESTION: Is this potentially dangerous? (Compare with "the usual stipulations, counsel?" at the beginning of a deposition.)

648 **Section 7.04. Texas Property Code Section 5.010**

649 **Notice.**

650

651 **NOTICE REGARDING POSSIBLE**

652 **LIABILITY FOR ADDITIONAL TAXES**

653 If for the current ad valorem tax year the taxable val-
654 ue of the land that is the subject of this Agreement is deter-
655 mined by a special appraisal method that allows for appraisal
656 of the land at less than its market value, [THEN:] the person to
657 whom the land is transferred may not be allowed to qualify the
658 land for that special appraisal in a subsequent tax year and the
659 land may then be appraised at its full market value.

660 In addition, the transfer of the land or a subsequent
661 change in the use of the land may result in the imposition of an
662 additional tax plus interest as a penalty for the transfer or the
663 change in the use of the land.

664 The taxable value of the land and the applicable
665 method of appraisal for the current tax year is public infor-
666 mation and may be obtained from the tax appraisal district es-
667 tablished for the county in which the land is located.

668 **ARTICLE VIII**

669 **TERMINATION, DEFAULT AND REMEDIES**

670 **Section 8.01. Termination.** If this Agreement is
671 terminated pursuant to any paragraph or provision hereof
672 granting such power or by the mutual written consent of the
673 parties hereto, [THEN:] the parties shall thereafter have no
674 further obligation or liabilities to the other hereunder.

675 All monies held in escrow pursuant to this Agree-
676 ment shall be returned to the appropriate party as provided for
677 in the relevant section hereto.

Commented [DCT87]: It's always good to know just what the law requires This property code section is at <http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.5.htm>

SUGGESTION: Skim through the other required notices.

Commented [DCT88]: QUESTION: What about surviving provisions?

Commented [DCT89]: "Hereto"?

678 **Section 8.02. Purchaser's Default and Seller's**
679 **Remedies.** In the event Purchaser fails to fulfill any of its ob-
680 ligations hereunder, including all rental payments and obliga-
681 tions under the Lease, except as a result of Seller's default
682 hereunder or the termination of this Agreement pursuant to
683 any provision hereof, [THEN:] Seller shall have the sole right
684 to terminate this Agreement and retain ALL the Earnest Mon-
685 ey, Additional Earnest Money and monthly payments made by
686 Purchaser, as liquidated damages for the breach of this
687 Agreement.

Commented [DCT90]: QUESTION: How could this be renegotiated?

688 **Section 8.03. Seller's Default and Purchaser's**
689 **Remedies.** In the event Seller fails to fulfill any of its obliga-
690 tions hereunder, except as a result of Purchaser's default here-
691 under or the termination of this Agreement pursuant to any
692 provision hereof, Purchaser shall have the right to
693 (a) terminate this Agreement and receive the Initial
694 Earnest Money, the Cash Payment, Additional Earnest Money
695 and monthly payments made by Purchaser, as liquidated dam-
696 ages for the breach of this Agreement or
697 (b) enforce specific performance of this Agreement
698 and require Seller to consummate the sale, transfer and con-
699 veyance of the Property to the Purchaser in accordance with
700 the terms and conditions hereof.

Commented [DCT91]: QUESTION: How would you renegotiate this?

701 **ARTICLE IX**
702 **COMMISSION**

703 **Section 9.01. Commission.** Each of the parties
704 hereto hereby represents and warrants to the other parties that
705 no real estate commissions or finder's fees are due or payable
706 as a result of or in connection with this Agreement or the
707 transactions contemplated herein to any person or agency,

Commented [DCT92]: QUESTION: "Represents and warrants" – does this work for "your" side?

708 and that each of the parties hereby agrees to indemni-
709 fy the other party and hold the other party harmless from and
710 against any and all claims for real estate commissions and/or
711 finders fees occasioned by its acts.

Commented [DCT93]: QUESTION: What are the implications of “hold harmless” in this context?

712 **ARTICLE X**

713 **MISCELLANEOUS PROVISIONS**

714 **Section 10.01. Date of Agreement.** The term "Date
715 of this Agreement" as used herein shall mean the date, which-
716 ever is latest, this Agreement has been fully executed by Seller
717 and Purchaser, as indicated by their signatures below.

718 **Section 10.02. Date of Performance.** In the event
719 the Closing Date should fall on a legal holiday, Saturday or
720 Sunday, such date shall be extended to the next working day
721 which is not a legal holiday, Saturday or Sunday, and such
722 next working day shall be considered to be the Closing Date.

723 **Section 10.03. Notices.** Any notices or other com-
724 munications required or permitted hereunder shall be suffi-
725 ciently given if in writing and delivered in person or sent by
726 registered or certified mail (return receipt requested) or na-
727 tionally recognized overnight delivery service, postage pre-
728 paid, addressed as follows, or to such other address as such
729 party may notify to the other parties in writing:

If to Purchaser: Rick's Cabaret International, Inc.
10959 Cutten Road
Houston, Texas 77066
Attention: Eric Langan
Telephone: (281) 397-6730
Facsimile: (281) 397-6765

with a copy to: Axelrod Smith & Kirshbaum
5300 Memorial Drive, Suite 700

Houston, Texas 77007
Attention: Robert D. Axelrod
Telephone: (713) 861-1996
Facsimile: (713) 552-0202

If to Seller: Wire Way, LLC
2300 Willow Bend
Plano, Texas 75093
Attention: George P. Kondos
Telephone: (972) 231-9924
Facsimile: (972) 231-8636

with a copy to: Quilling, Selander, Cummiskey
& Lownds, P.C.
2001 Bryan St., Suite 1800
Dallas, Texas 75201
Attn: Art Selander
Telephone: (214) 871-2100
Facsimile: (214) 871-2111

730

731 Any address for notice may be changed by written notice so
732 given.

733 **Section 10.04. Attorney's Fees.** If either party shall
734 be required to employ an attorney to enforce or defend the
735 rights of such party hereunder, the prevailing party shall be en-
736 titled to recover reasonable attorney's fees incurred in connec-
737 tion therewith.

738 **Section 10.05. Survival.** Any portion of this
739 Agreement not otherwise consummated at the Closing will not
740 survive the Closing as a continuing agreement by and between
741 the parties hereto.

Commented [DCT94]: QUESTION: How will this part work? Are there any business-convenience implications?

Commented [DCT95]: QUESTION: Could this be phrased better?
QUESTION: What's the "default" rule in Texas for attorneys' fees? (Look up Tex. Civ. Prac. & Rem. Code 38.001.)
QUESTION: What if this deal were taking place in California?

Commented [DCT96]: QUESTION: What might the implications be of "not survive the Closing"? How does that affect, say, the attorneys-fees clause, or section 10.7?

742 **Section 10.6. Relationship of the Parties.** Nothing
743 contained herein is intended to create, nor shall it ever be con-
744 stituted to make, Seller and Purchaser partners or joint ventur-
745 ers.

Commented [DCT97]: QUESTION: Does this provision do all that much for the parties? Would a court be bound by it?

746 **Section 10.7. Compliance with Section 6045(e) of**
747 **the Tax Reform Act of 1986.** The Title Company hereby
748 agrees to

Commented [DT98]: QUESTION: Is the title company even a party?
[Hint: See the signature page.]

749 (a) timely file returns with the Internal Revenue Ser-
750 vice, on Form 1099-B or such other forms as instructed by the
751 Internal Revenue Service, showing the gross proceeds of each
752 transaction contemplated hereunder, the recipient thereof and
753 such other information as the Internal Revenue Service may
754 by form or regulation require from time to time, and

755 (b) furnish Seller and Purchaser with a written state-
756 ment showing the name and address of the Title Company and
757 the information shown on such returns with respect to each
758 such transaction.

759 These returns shall be filed to ensure that the parties
760 to these transactions will be in compliance with Section
761 6045(e) of the Internal Revenue Code of 1986, as amended
762 from time to time, and as further set forth in any regulations
763 promulgated thereunder.

764 **Section 10.8. Sale Offer.** The execution of this
765 Agreement by Seller constitutes an offer to sell the Proper-
766 ty. Unless this Agreement is accepted by Purchaser and a ful-
767 ly executed copy, along with the Initial Earnest Money, is de-
768 livered to the title company on or before 5:00 p.m., May 12,
769 2008, the offer set forth in this Agreement shall be automati-
770 cally revoked and terminated.

Commented [DCT99]: QUESTION: Are both “revoked” and “terminat-
ed” needed? **NOTE:** It’s always good to have a sunset provision.

771 **Section 10.9. Disclosures.** Seller expressly makes
772 the disclosures set forth on the attached **Exhibit**
773 **C** incorporated herein by reference.

Commented [DT100]: Does the term “expressly makes the disclosures” actually mean anything?

774 **Section 10.10. Location of Flood Plain.** Seller
775 makes no representation or warranty, express or implied, re-
776 garding the location of any 100 year flood plain or the impact
777 of a 100 year flood plain on the Property.

Commented [DCT101]: Flood plain is another issue to watch for in any real-estate deal

778 Any costs or expenses associated with the revision of
779 the 100 year flood plain or revision of the 100 year flood plain
780 map, including

Commented [DT102]: Here’s a better way to write this: “The Seller will bear [1] any expenses [2] associated with the revision of the 100 year flood plain or revision of the 100 year flood plain map. Such expenses include, without limitation: (a) administrative and filing expenses for obtaining a conditional letter of map revision or letter of map revision, and (b) expenses of construction to revise the 100 year flood plain.”

781 (a) administrative and filing expenses for obtaining a
782 conditional letter of map revision or letter of map revision, and

[DCT notes: 1. The use of passive voice isn’t too awful here, but active voice lets Seller see at the very beginning of the sentence that it is responsible for the costs mentioned here. 2. “Costs or expenses” is redundant.]

783 (b) costs of construction to revise the 100 year flood
784 plain, shall be borne solely and exclusively by Purchaser, and
785 Seller shall have no liability therefor.

786 **Section 10.11. Severability.** Whenever possible,
787 each provision of this Agreement shall be interpreted in such
788 manner as to be effective and valid under applicable law,
789 but if any provision of this Agreement is held to be
790 prohibited by or invalid under applicable law, such provision
791 will be ineffective only to the extent of such prohibition or in-
792 validity, without invalidating the remainder of this Agreement.

Commented [DCT103]: Such a broad severability clause might or might not be a good idea in a given agreement.

793 **Section 10.12. Assignment; Successors and As-**
794 **signs.** Except as otherwise provided herein, the provisions
795 hereof shall inure to the benefit of, and be binding upon, the
796 successors and permitted assigns of the parties hereto.

797 No party hereto may assign its rights or delegate its
798 obligations under this Agreement without the prior written
799 consent of the other parties hereto,

Commented [DT104]: QUESTION: From a business perspective, how risky is this assignment-consent provision likely to be in this contract? What if the contract were a longer-term thing?

800 which consent will not be unreasonably withheld.

Commented [DT105]: How might an unreasonably-withheld dispute play out?

801 **Section 10.13. Public Announcements.** The par-
802 ties hereto agree that prior to making any public announce-
803 ment or statement with respect to the transactions contemplat-
804 ed by this Agreement, the party desiring to make such public
805 announcement or statement shall consult with the other parties
806 hereto and exercise their best efforts to agree upon the text of
807 a public announcement or statement to be made by the party
808 desiring to make such public announcement;

Commented [DCT106]: “Best efforts” can be problematic.

QUESTION: Is the term “*their best efforts*” grammatically correct here?

809 provided, however, that if any party hereto is re-
810 quired by law to make such public announcement or state-
811 ment, then such announcement or statement may be made
812 without the approval of the other parties.

Commented [DCT107]: QUESTION: Is this *really* a good idea?

813 **Section 10.14. Entire Agreement.** This Agreement
814 and the other documents delivered pursuant hereto constitute
815 the full and entire understanding and agreement between the
816 parties with regard to the subject matter hereof and thereof and
817 supersede and cancel all prior representations, alleged warran-
818 ties, statements, negotiations, undertakings, letters, acceptanc-
819 es, understandings, contracts and communications, whether
820 verbal or written among the parties hereto and thereto or their
821 respective agents with respect to or in connection with the
822 subject matter hereof.

Commented [DT108]: This should be “whether oral or written,” be-
cause the term *verbal* refers to the use of words (as opposed to pictures,
music, etc.).

823 **Section 10.15. Choice of Law.** This Agreement
824 shall be governed by, and construed in accordance with, the
825 laws of the State of Texas, without regard to principles of con-
826 flict of laws.

827 In any action between or among any of the parties,
828 whether arising out of this Agreement or otherwise, each of
829 the parties irrevocably consents to the exclusive jurisdiction
830 and venue of the federal and state courts located in Dallas
831 County, Texas.

Commented [DCT109]: This ought to be its own section.

832 **Section 10.16. Execution.** This Agreement may be
833 executed in two or more counterparts, all of which when taken
834 together shall be considered one and the same agreement and
835 shall become effective when counterparts have been signed by
836 each party and delivered to the other party, it being understood
837 that both parties need not sign the same counterpart.

838 In the event that any signature is delivered by facsim-
839 ile transmission or by e-mail delivery of a “.pdf” format data
840 file, such signature shall create a valid and binding obligation
841 of the party executing (or on whose behalf such signature is
842 executed) with the same force and effect as if such facsimile
843 or “.pdf” signature page were an original thereof.

Commented [DCT110]: A provision for the modern era

844 **Section 10.17. Costs and Expenses.** Each party
845 shall pay their own respective fees, costs and disbursements
846 incurred in connection with this Agreement.

Commented [DCT111]: QUESTION: Think of some of the other provisions above, requiring each party to pay its own expenses – are they really necessary?

847 **Section 10.18. Section Headings.** The section and
848 subsection headings in this Agreement are used solely for
849 convenience of reference, do not constitute a part of this
850 Agreement, and shall not affect its interpretation.

Commented [DCT112]: QUESTION: What does this really do?

851 **Section 10.19. Attorney Review - Construction.** In
852 connection with the negotiation and drafting of this Agree-
853 ment, the parties represent and warrant to each other that they
854 have had the opportunity to be advised by attorneys of their
855 own choice and, therefore, the normal rule of construction to
856 the effect that any ambiguities are to be resolved against the
857 drafting party shall not be employed in the interpretation of
858 this Agreement or any amendments hereto.

Commented [DCT113]: HOMEWORK: Look up the “contra proferentem” rule.

859 **Section 10.20. No Third-Party Beneficiar-**
860 **ies.** Nothing in this Agreement will confer any third party
861 beneficiary or other rights upon any person or any entity that
862 is not a party to this Agreement.

Commented [DCT114]: QUESTION: Why a disclaimer?

863 Section 10.21. Validity. The invalidity or unen-
864 forceability of any provision of this Agreement shall not affect
865 the validity or enforceability of any other provisions of this
866 Agreement, which shall remain in full force and effect.

867
868 [THE BALANCE OF THIS PAGE IS INTENTIONALLY
869 LEFT BLANK]

870 EXECUTED on the dates stated below:

871
872

| <u>SELLER:</u> | <u>PURCHASER:</u> |
|--|--|
| WIRE WAY, LLC, a Texas limited liability com- pany | RCI HOLDINGS, INC., a Texas corporation |

| | |
|---|--|
| By:/s/ George P. Kondos _____ George P. Kondos, Man- ager | By:/s/ Eric Langan _____ Eric Langan, President |
|---|--|

| | |
|---|---|
| May 10, 2008 _____ Date of Execution | May 10, 2008 _____ Date of Execution |
|---|---|

873
874

Commented [DCT115]: QUESTION: How does this relate to the sever-
ability provision?

875 **AGREED AND ACKNOWLEDGED WITH**
876 **RESPECT TO SECTION 5.02 ONLY BY:**
877 **RCI ENTERTAINMENT (NORTHWEST HIGHWAY),**
878 **INC.:**

Commented [DCT116]: QUESTION: What's going on here?
QUESTION: Why notarize this?

879
880

By:/s/ Eric Langan

Eric Langan, President

881
882
883

ACKNOWLEDGMENT

884 The undersigned Title Company hereby acknowledg-
885 es its receipt of an executed copy of this Agreement and the
886 Earnest Money provided herein (if any)

887 and, further, agrees to comply with and be bound by
888 the terms and provisions of this Agreement,

889 including, without limitation, those terms relating to
890 disposition of the Earnest Money (if applicable) and compli-
891 ance with Section 6045(e) of the Internal Revenue Code of
892 1986, as amended from time to time, and as further set forth in
893 any Regulations or forms promulgated thereunder.

894 [SIGNATURE BLOCK FOR TITLE COMPANY OMIT-
895 TED]

896
897