1 REAL ESTATE PURCHASE AND SALE AGREEMENT Commented [DCT1]: Pay attention to the other agreements in play in 2 BY AND BETWEEN this document. ¶ The original, unannotated version of this agreement is 3 available on the SEC Web site at WIRE WAY, LLC, http://www.sec.gov/Archives/edgar/data/935419/000114036108012368/ 4 a Texas limited liability company ex10 2.htm 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 Commented [DCT2]: Note the entity – an LLC is likely to be a convenience entity. 13 company ("Seller"), and RCI HOLDINGS, INC., a Texas cor-**Commented [DCT3]:** Note the entity here – also see below about what RCI Holdings really is. 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 Commented [DCT4]: Note the archaic "Witnesseth" and "Whereas" language. property consisting of approximately 4.637± acres of land, to-18 Commented [DCT5]: What does "4.637± acres" mean? 19 gether with all rights, (excepting for mineral rights as set forth Commented [DCT6]: "All right, title, and interest of Seller" is the conventional formula for conveyance. ¶ Mineral-rights carve-outs are not uncommon. 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 Commented [DCT7]: QUESTION: READ THESE NEXT TWO "WHERE-AS" PARAGRAPHS CAREFULLY; what's really going on here? 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 Commented [DCT8]: Buyer is a sub of the public company. 32 corporation ("Rick's") for the sale and purchase of the assets of the business more commonly known as "Platinum Club II" 33 Commented [DCT9]: "More commonly known as": This will often be enough of an identifier. 34 that operates from and at the Property ("Asset Purchase 35 Agreement"); and

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
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.
49	NOW, THEREFORE, for and in consideration of
50	the premises and mutual covenants and conditions contained
	1
51	herein, and other good and valuable consideration, the receipt
	•
51	herein, and other good and valuable consideration, the receipt
51 52	herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties
51 52 53	herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:
51525354	herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows: ARTICLE I
5152535455	herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows: ARTICLE I PURCHASE AND SALE
515253545556	herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows: ARTICLE I PURCHASE AND SALE Section 1.01. Purchase and Sale. Pursuant to the
51525354555657	herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows: ARTICLE I PURCHASE AND SALE Section 1.01. Purchase and Sale. Pursuant to the terms and provisions contained herein, Seller hereby agrees to
5152535455565758	herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows: ARTICLE I PURCHASE AND SALE Section 1.01. Purchase and Sale. Pursuant to the terms and provisions contained herein, Seller hereby agrees to sell, transfer and convey by General Warranty Deed to Pur-
51 52 53 54 55 56 57 58 59	herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows: ARTICLE I PURCHASE AND SALE Section 1.01. Purchase and Sale. Pursuant to the terms and provisions contained herein, Seller hereby agrees to sell, transfer and convey by General Warranty Deed to Purchaser, and Purchaser hereby agrees to purchase from Seller,
51 52 53 54 55 56 57 58 59	herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows: ARTICLE I PURCHASE AND SALE Section 1.01. Purchase and Sale. Pursuant to the terms and provisions contained herein, Seller hereby agrees to sell, transfer and convey by General Warranty Deed to Purchaser, and Purchaser hereby agrees to purchase from Seller, the Property, free and clear of all liens and encumbrances

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

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

Commented [DCT12]: Everything has to come together

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?

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.

and interest of Seller in and to the oil, gas and other non-

surface minerals under the Property;

64

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 all purposes and for all times. 71 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. 82 83 Section 1.02. Disclaimer and Indemnity. THE PROPERTY SHALL BE CONVEYED AND TRANS-84 85 FERRED TO PURCHASER "AS IS, WHERE IS AND WITH ALL FAULTS". 86 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 [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?

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).

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?

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?

 $\begin{tabular}{ll} \textbf{Commented [DCT28]:} & In U.S. usage, periods and commas go \underline{inside} \\ quotation marks; semi-colons go outside. \\ \end{tabular}$

127	IN THIS REGARD, PURCHASER ACKNOWL-
128	EDGES THAT
129	(a) PURCHASER HAS NOT ENTERED INTO
130	THIS AGREEMENT IN RELIANCE UPON ANY INFOR-
131	MATION GIVEN TO PURCHASER PRIOR TO THE DATE
132	OF THIS AGREEMENT,
133	INCLUDING, BUT NOT LIMITED TO, PROMO-
134	TIONAL MATERIALS OR FINANCIAL DATA ,
135	(b) PURCHASER WILL MAKE ITS DECISION TO
136	PURCHASE THE PROPERTY BASED UPON PURCHAS-
137	ER'S OWN DUE DILIGENCE AND INVESTIGATIONS,
138	(c) PURCHASER HAS SUCH KNOWLEDGE AND
139	EXPERIENCE IN REAL ESTATE INVESTIGATION TO
140	EVALUATE THE MERITS AND RISKS OF THE TRANS-
141	ACTIONS PROVIDED IN THIS AGREEMENT, AND
142	(d) PURCHASER IS FINANCIALLY ABLE TO
143	BEAR THE ECONOMIC RISK OF THE LOSS OF SUCH
144	INVESTMENT AND THE COST OF THE DUE DILI-
145	GENCE AND INVESTIGATIONS UNDER THIS AGREE-
146	MENT.
147	IT IS UNDERSTOOD AND AGREED THAT THE
148	PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR
149	NEGOTIATION TO REFLECT THAT THE PROPERTY IS
150	SOLD BY SELLER AND PURCHASED BY PURCHASER
151	SUBJECT TO THE FOREGOING.
152	Disclaimers similar to the foregoing in form satisfac-
153	tory to Seller as well as Seller's reservation of the mineral es-
154	tate shall be inserted in any and all documents to be delivered
155	by Seller to Purchaser at Closing.
156	ARTICLE II

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?

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. <u>Earnest Mon-</u>	
169	ey. Contemporaneously with the execution of this Agree-	
170	ment, Purchaser shall deliver to Republic Title of Texas, Inc.,	Commented [DCT31]: Note how deliveries are to be made.
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.	Commented [DCT32]: QUESTION: What does "immediately-available funds" mean?
175	The Initial Earnest Money is fully refundable until	Tunus means
176	the later of June 10, 2008 or ten (10) days after the approval of	Commented [DCT33]: QUESTION: What would be another way to ex
177	RCI Entertainment's application for a sexually oriented busi-	press "the later of" ?
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)	Commented [DCT34]: Always a good idea to have a sunset date.
181	after which date it becomes non-refundable but will	
182	continue to be held by the Title Company and shall be credited	Commented [DCT35]: QUESTION: So what happens if the escrow
183	against the Purchase Price at Closing.	payment never becomes non-refundable – is it still credited 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-	Commented [DCT36]: Note the simultaneity here.
187	ment, Purchaser shall pay to Seller, directly, the sum of	

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 Section 2.04. Additional Earnest Mon-197 198 ey. 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 until not later than the Closing. 205 206 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 terminated by either party as its sole remedy for such failure, 215 216 and no party shall thereafter have any further obliga-

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?

tion to the other hereunder.

217

219	3
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.)

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

(d) Seller and Purchaser acknowledge that

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

copy of the "as built" plans for the interior and exterior of the

building located on the Property.

(e) Seller and Purchaser acknowledge that

Seller has delivered, or caused to be delivered, to Purchaser any and all soils and compaction tests (collectively, the "Soils Tests") and environmental tests and reports (the "Environmental Reports") performed by or on behalf of Seller or which Seller has in its possession relating to the Property.

Without in any way limiting or diminishing Seller's obligation hereunder, Purchaser shall have the right, at Purchaser's expense, to have the Seller's Soil Tests and Environmental Reports updated and/or reissued to Purchaser.

Section 3.02. Review of Survey and Title Binder. In the event any exceptions or reservations appear in the Title Binder or in the event the Survey is unacceptable to Purchaser,

Purchaser's sole and exclusive remedy shall be to terminate this Agreement by written notice delivered to Seller on or before the date which is ten (10) business days after the date of Purchaser's receipt of all the items to be delivered referenced above in Section 3.01 and the Purchaser shall be entitled to immediately receive the return of the Initial Earnest Money.

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

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.

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

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

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

If Purchaser does not exercise its right to terminate this Agreement in accordance with this Section 3.02, all matters contained in or on, and all of Purchaser's objections to, the Title Binder, Survey, Exception Documents and all other documents delivered hereunder or otherwise obtained by Purchaser pursuant to or in connection with this Agreement or the Property shall either be cured to the satisfaction of Purchaser or waived by Purchaser at or prior to the closing of the Asset Purchase Agreement.

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

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

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

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

(syntactically, not substantively)?

Commented [DCT53]: QUESTION: What's wrong with this sentence

ARTICLE IV

FEASIBILITY STUDY AND INSPECTION

Section 4.01. <u>Feasibility Study</u>. (a) On or before (i) ten (10) days after the approval of RCI Entertainment's application for sexually oriented business license by the City of 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 Notwithstanding the foregoing, Purchaser (b) 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-

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.

ing and in good standing under the laws of the state of Texas,

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

339

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

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

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

Upon the transfer of the Property to the Purchaser as contemplated herein, Purchaser will receive good and valid title thereto, free and clear of any liens, claims, equities, charges, options, rights of first refusal, encumbrances or other restrictions,

subject to the agreed upon Permitted Exceptions, if any.

364 5

(c) <u>Authorization</u>. The Seller has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby.

 $\label{lem:commented} \textbf{[DCT58]:} \ \ \textbf{IN-CLASS EXERCISE:} \ \ \textbf{What's wrong with this paragraph (syntactically)?}$

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; Commented [DCT59]: QUESTION: What are these? 387 (ii) conflict with, violate, or constitute a breach of or a default under: 388 Commented [DCT60]: QUESTION: Is this usage correct? 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 Commented [DCT61]: Note the in-line definition here. 401 States of America, any state of the United States, and any political subdivision of any of the foregoing, and any agency, department, commission, board, bureau, court, or similar entity, having jurisdiction over the parties hereto or their respective assets or properties.

For purposes of this Agreement, "Legal Requirement" means any law, statute, injunction, decree, order or judgment (or interpretation of any of the foregoing) of, and the terms of any license or permit issued by, any Governmental Authority.

(e) <u>Proceedings Relating to Property</u>. There is no pending, or, to the best knowledge of the Seller, judicial, municipal or administrative proceedings with respect to, or in any manner affecting the Property or any portion thereof,

including, without limitation, proceedings for or involving tenant evictions, collections, condemnations, eminent domain, alleged building code or zoning violations, personal injuries or property damage alleged to have occurred on the Property or by reason of the use and operation of the Property,

or written notice of any attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws pending or threatened against the Seller or the Property itself,

or the taking of the Property for public needs.

(f) <u>Public Improvements</u>. The Seller has no knowledge of any existing or proposed public improvements which involve or which may result in any charge being levied or assessed against the Property or which will or could result in the creation of any lien upon the Property or any part thereof.

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

433	(g) <u>Certificates</u> . 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-
137	tained and are in full force and effect.
138	(h) <u>Material Defect</u> . The Seller has no
139	knowledge of any material defects to the Property which have
440	not been disclosed in writing to Purchaser
141	(except as set forth in Exhibit C attached hereto and
142	incorporated herein for all purposes).
143	
144	(i) <u>Flooding</u> . The Seller has no knowledge of
145	any flooding which has occurred on the Property.
146	
147	(j) <u>Environmental</u> . To the best knowledge of
148	Seller, the Property is not in violation of any state, local or
149	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-

Commented [DCT63]: QUESTION: Any ambiguities here?

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

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	summating 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,		

 $\begin{tabular}{ll} \textbf{Commented [DCT65]:} & QUESTION: Why is "to induce ..." included here? \end{tabular}$

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 Purchaser understands and consents to the (d) 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-

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

chase contemplated by this Agreement, neither Purchaser nor

RCI Entertainment, nor any of their parents, affiliates, subsidi-

under, any such use being expressly waived by Seller for all

Prior to Closing and funding of the pur-

purposes and for all times.

(e)

aries or related companies

520

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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	Commented [DCT69]: QUESTION: Does the rest of the sentence be-
530	of their parent, affiliate, subsidiary or related companies	long with the first part?
531	seek to move said license to a location with-	Commented [DCT70]: QUESTION: Why is this here?
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 [DCT71]: QUESTION: Who are some of the potential "in-
536	(f) ALL REPRESENTATIONS AND WAR-	fluencers" in this deal, other than the parties?
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		
541 542	ARTICLE VI	
	ARTICLE VI EMINENT DOMAIN	Commented [DCT72]: Eminent domain should always be at least in
542		Commented [DCT72]: Eminent domain should always be at least in the back of your mind when drafting a real-estate contract.
542 543	EMINENT DOMAIN	
542543544	EMINENT DOMAIN Section 6.01. Eminent Domain. Without limiting	
542543544545	Section 6.01. Eminent Domain. Without limiting any of Purchaser's other rights set forth in this Agreement,	
542543544545546	Section 6.01. Eminent Domain. Without limiting any of Purchaser's other rights set forth in this Agreement, if, prior to the Closing, any portion of the Property	
542543544545546547	Section 6.01. Eminent Domain. Without limiting any of Purchaser's other rights set forth in this Agreement, if, prior to the Closing, any portion of the Property shall be permanently taken or condemned or transferred by	
542543544545546547548	Section 6.01. Eminent Domain. Without limiting any of Purchaser's other rights set forth in this Agreement, if, prior to the Closing, any portion of the Property shall be permanently taken or condemned or transferred by agreement in lieu of condemnation for any public or quasi-	
542543544545546547548549	Section 6.01. Eminent Domain. Without limiting any of Purchaser's other rights set forth in this Agreement, if, prior to the Closing, any portion of the Property shall be permanently taken or condemned or transferred by agreement in lieu of condemnation for any public or quasipublic use or purpose by any competent authority,	the back of your mind when drafting a real-estate contract.
542543544545546547548549550	Section 6.01. Eminent Domain. Without limiting any of Purchaser's other rights set forth in this Agreement, if, prior to the Closing, any portion of the Property shall be permanently taken or condemned or transferred by agreement in lieu of condemnation for any public or quasipublic use or purpose by any competent authority, Purchaser may, at its option,	the back of your mind when drafting a real-estate contract.
542543544545546547548549550551	Section 6.01. Eminent Domain. Without limiting any of Purchaser's other rights set forth in this Agreement, if, prior to the Closing, any portion of the Property shall be permanently taken or condemned or transferred by agreement in lieu of condemnation for any public or quasipublic use or purpose by any competent authority, Purchaser may, at its option, (a) terminate this Agreement by written notice to	the back of your mind when drafting a real-estate contract.
 542 543 544 545 546 547 548 549 550 551 552 	Section 6.01. Eminent Domain. Without limiting any of Purchaser's other rights set forth in this Agreement, if, prior to the Closing, any portion of the Property shall be permanently taken or condemned or transferred by agreement in lieu of condemnation for any public or quasipublic use or purpose by any competent authority, Purchaser may, at its option, (a) terminate this Agreement by written notice to Seller, in which event all monies previously paid will be re-	the back of your mind when drafting a real-estate contract.
 542 543 544 545 546 547 548 549 550 551 552 553 	Section 6.01. Eminent Domain. Without limiting any of Purchaser's other rights set forth in this Agreement, if, prior to the Closing, any portion of the Property shall be permanently taken or condemned or transferred by agreement in lieu of condemnation for any public or quasipublic use or purpose by any competent authority, Purchaser may, at its option, (a) terminate this Agreement by written notice to Seller, in which event all monies previously paid will be refunded and neither party shall thereafter have any further obli-	the back of your mind when drafting a real-estate contract.

557 (c) close the acquisition of the Property as provided 558 herein. 559 If Purchaser elects to close, despite said taking, condemnation or transfer, Seller shall assign to Purchaser Seller's 560 Commented [DCT74]: QUESTION: Could the purchaser get a windfall out of this? 561 right, title and interest in and to any compensation award re-562 sulting from said taking, condemnation or transfer. 563 564 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-Commented [DCT75]: QUESTION: "One year from" – does that mean one year before, or one year after, or both? 572 chase Agreement. 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 **Commented [DCT76]:** QUESTION: So how will this actually work? 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. 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"): a general warranty deed in appropriate form 583 (i) Commented [DCT77]: QUESTION: Is "in appropriate form" a good idea? What other ways are there to do this? 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 [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	Commented [DCT79]: A catch-all.
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-	Commented [DCT80]: EXERCISE: Let's re-write this sentence.
598	tional Earnest Money in immediately available funds, either	
599	by wire transfer or cashier's check, and	Commented [DCT81]: QUESTION: Does this make any sense?
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	Commented [DCT82]: Taxes are usually pro-rated
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	Commented [DCT83]: This leaves open one aspect of the deal.
617	of the payment thereof.	

618	(b)	Seller l	nereby 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 her	rein to be	paid by Seller or otherwise custom-
628	arily paid by sell	ers of pro	operty in Dallas County, Texas in
629	transactions of a	similar n	ature to the transactions provided
630	herein.		
631	(c)	Purchas	ser hereby agrees to pay and be re-
632	sponsible for the following Closing costs:		g Closing costs:
633		(i)	all fees and premiums for a Mort-
634	gagee's Title Pol	icy, if an	y;
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 P	urchaser	including Purchaser's attorney's fees;
641	and		
642		(v)	such other incidental costs and fees
643	provided herein t	to be paid	by Purchaser or otherwise custom-
644	arily paid by pure	chasers o	f property in Dallas County, Texas
645	in transactions of	f a simila	r 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. <u>Termination</u> . 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-

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"?

ment shall be returned to the appropriate party as provided for

in the relevant section hereto.

676

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. 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 and monthly payments made by Purchaser, as liquidated dam-695 696 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. 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

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

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

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

as a result of or in connection with this Agreement or the

transactions contemplated herein to any person or agency,

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. 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 nationally recognized overnight delivery service, postage pre-727 728 paid, addressed as follows, or to such other address has 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

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

5300 Memorial Drive, Suite 700

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

Houston, Texas 77007

Attention: Robert D. Axelrod

Telephone: (713) 861-1996

Facsimile: (713) 552-0202

Wire Way, LLC

If to Seller:

740

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?

survive the Closing as a continuing agreement by and between

Section 10.6. Relationship of the Parties. Nothing contained herein is intended to create, nor shall it ever be construed to make, Seller and Purchaser partners or joint venturers.

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

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

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

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

(b) furnish Seller and Purchaser with a written statement showing the name and address of the Title Company and the information shown on such returns with respect to each such transaction.

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

Section 10.8. Sale Offer. The execution of this Agreement by Seller constitutes an offer to sell the Property. Unless this Agreement is accepted by Purchaser and a fully executed copy, along with the Initial Earnest Money, is delivered to the title company on or before 5:00 p.m., May 12, 2008, the offer set forth in this Agreement shall be automatically revoked and terminated.

Commented [DCT99]: QUESTION: Are both "revoked" and "terminated" needed? **NOTE**: It's always good to have a sunset provision.

771	Section 10.9. <u>Disclosures</u> . Seller expressly makes
772	the disclosures set forth on the attached Exhibit
773	$\underline{\mathbf{C}}$ incorporated herein by reference.
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.
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
781	(a) administrative and filing expenses for obtaining a
782	conditional letter of map revision or letter of map revision, and
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.
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	No party hereto may assign its rights or delegate its obligations under this Agreement without the prior written

Commented [DT100]: Does the term "expressly makes the disclosures" actually **mean** anything?

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

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."

[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 $\underline{i}t$ is responsible for the costs mentioned here. 2. "Costs or expenses" is redundant.]

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

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?

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

which consent will not be unreasonably withheld.

Section 10.13. Public Announcements. The parties hereto agree that prior to making any public announcement or statement with respect to the transactions contemplated by this Agreement, the party desiring to make such public announcement or statement shall consult with the other parties hereto and exercise their best efforts to agree upon the text of a public announcement or statement to be made by the party desiring to make such public announcement;

County, Texas.

provided, however, that if any party hereto is required by law to make such public announcement or statement, then such announcement or statement may be made without the approval of the other parties.

Section 10.14. Entire Agreement. This Agreement and the other documents delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof and supersede and cancel all prior representations, alleged warranties, statements, negotiations, undertakings, letters, acceptances, understandings, contracts and communications, whether verbal or written among the parties hereto and thereto or their respective agents with respect to or in connection with the subject matter hereof.

Section 10.15. <u>Choice of Law</u>. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to principles of conflict of laws.

In any action between or among any of the parties, whether arising out of this Agreement or otherwise, each of the parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in Dallas

Commented [DCT106]: "Best efforts" can be problematic.

QUESTION: Is the term "their best efforts" grammatically correct here?

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

Commented [DT108]: This should be "whether <u>oral</u> or written," because the term *verbal* refers to the use of words (as opposed to pictures, music, etc.).

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

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

Section 10.20. No Third-Party Beneficiaries. Nothing in this Agreement will confer any third party beneficiary or other rights upon any person or any entity that is not a party to this Agreement.

Commented [DCT110]: A provision for the modern era

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

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

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

Commented [DCT114]: QUESTION: Why a disclaimer?

863	Section 10.21. Valid	ity. 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		
	SELLER:	PURCHASER:
	WIRE WAY, LLC,	RCI HOLDINGS, INC.,
	a Texas limited liability com-	a Texas corporation
	pany	
	By:/s/ George P. Kondos	By:/s/ Eric Langan
	George P. Kondos, Man-	Eric Langan, President
	ager	
	May 10, 2008	May 10, 2008
	Date of Execution	Date of Execution

Commented [DCT115]: QUESTION: How does this relate to the severability provision?

873

875	AGREED AND ACKNOWLEDGED WITH	
876	RESPECT TO SECTION 5.02 ONLY BY:	
877	RCI ENTERTAINMENT (NORTHWEST HIGHWAY),	
878	INC.:	
879		
880		
	By:/s/ Eric Langan	
	Eric Langan, President	
881		
882		
883	<u>ACKNOWLEDGMENT</u>	
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		

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

QUESTION: Why notarize this?