

THE STRINGER COMPANY, INC.

TAXPAYER EXHIBIT

B1

December 18, 2012

Scott L. Stringer and Irene Stringer
609814, 610020

MEMORANDUM

Date: June 7, 2007

To: Tom Merschel

From: Scott Stringer

Re: Agreement for Consulting Services

Tom,

I received your "Agreement for Consulting Services" and was surprised you would send this type of document to me. As you know, I brought the San Ramon deal to Monterey Development Group to see if you wanted to be investors and co-developers with me on this project. I have always been a principal in all of my projects, including those with New Cities Development. If you haven't already, I would suggest that you have a conversation with Fred Bates. We both have the same interest to secure our "property interest" while entitling the property to insure our capital gain position. I will not be executing this document as it does not accurately reflect my position in the deal.

Sincerely,



Scott

STATE BOARD OF EQUALIZATION



Appeal Name: Scott L. Stringer and Irene Stringer

Case ID: 609814, 610020 ITEM # B1

Date: December 18, 2012 Exhibit No: 12.2



FTB DEPT PUBLIC COMMENT

Subj: MDG Capital Investors 2004 Audit
Date: 7/18/2007 2:54:23 P.M. Pacific Daylight Time
From: tbistrian@montereydevelopmentgroup.com
To: ScottLStringer@aol.com
CC: tmerschel@montereydevelopmentgroup.com

Hi Scott,

I understand that you would rather not sign the consulting agreement due to tax reasons. The purpose of the FTB auditor's request is to ascertain that you were not an employee of MDG Capital Investors. I would think just a simple e-mail stating that fact would work just as well. Would you be so kind and send me something stating that? I also need your tax ID number if your proceeds from the San Ramon transaction were reported on your personal taxes. If not, I have the ID number of The Stringer Company, Inc.

Thank you.

**Tama Bistran
Controller**



MONTEREY
DEVELOPMENT GROUP

775-324-6900

831-658-0395 (x116)

831-642-9179 (fax)

831-901-9310 (mobile)

tbistrian@montereydevelopmentgroup.com

SCOTT L. STRINGER

[REDACTED]
[REDACTED]
[REDACTED]
Phone: [REDACTED]
Facsimile: [REDACTED]
scottlstringer@aol.com

May 15, 2003

Thomas J. Merschel
Monterey Development Group, LLC
9781 Blue Larkspur Lane
Monterey, Ca. 93940

Re: Cramer Property
Modesto, California

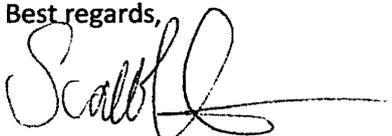
Dear Tom:

I am following up on our recent telephone conversation regarding the Cramer property located in Modesto, California. As promised, I have enclosed a binder entitled "Business Plan for the Cramer Property" dated May 8, 2003 for your review. Please review at your earliest convenience and then we can schedule a meeting or conference call to discuss the project in more detail and address any questions you may have.

As we discussed, I am offering your company the opportunity to become a co-owner, along with me, by providing investment capital for this project. We will discuss the amount of capital required subsequent to your review of the material I have provided.

I look forward to hearing from you after you complete your review.

Best regards,


Scott L. Stringer

Scott:

To recap our discussion of last week, outlined below will be the "hand shake" deal terms for you, Chip and I on San Ramon, Modesto and new deals (which I hope we can do many). The structure assumes that 50% of any deal profits goes to the "sweat" equity or development side and 50% goes to the capital provider side:

1. You will receive 1/3 of the "sweat" or development side ($50\%/3 = 16.67\%$ of the overall deal).
2. You will be given the opportunity, when a deal is initially executed (option, purchase, or however structured) and an escrow opened with a deposit to receive 1/3 of the capital side ($50\%/3 =$ an additional 16.67% of the overall deal) if you fully participate in the provision of the required equity (i.e. if deposit = \$150K, your portion would be \$50K, plus 1/3 of all expenses, deposits and additional capital requirements when required).

For San Ramon and Modesto your interest is 16.67% of each deal, subject to any dilution as outlined below in #2 if, for any reason we cannot find a buyer to sell to now and decide to build out those projects and need to bring in additional capital.

3. If outside, additional equity (private or institutional) is required to fully capitalize the project, then your share (either 16.67% or 33.3%) will be diluted, just like our share, by the amount required to be allocated to the equity provider (e.g. if 50% of the profits must be given up to an investor, then your share would be reduced by 50%, whatever that original position was (e.g. if 16.67%, then $16.67\% \times 50\% = 8.33\%$ or if 33.3%, then $33.3\% \times 50\% = 16.67\%$)).
4. Chip and I will control the decision as to bringing in any additional equity as we will handle any and all debt requirements (loans, notes, guarantees, etc.).
5. We will handle the creation of any required legal entities (LLC's, JV's of any type and structure) to develop the property and the Stringer Company will not be a formal member of the project entity.
6. There are always deals that do not "fit the box" so to speak, and, as always, the three of us need to communicate clearly if our "vision" of how a particular deal should work fairly for all is not being achieved by the standard structure outlined above.

I think that's the gist of our discussion, let me know if I've missed anything and we'll tweak as needed. And, as we discussed, I think its important for the three of us to get together sometime this 1st quarter to brainstorm on what type of deals in what markets we want to collectively set as a priority so that we can fill our pipeline and, hopefully, our pockets.

Tom

t----- Original Message -----

From: ScottLStringer@aol.com
To: tmerschel@montereydevelopmentgroup.com
Sent: Friday, January 16, 2004 9:56 AM
Subject: (no subject)

Tom:

Good luck in your meetings today with Lyon and Meritage. Now that we are considering selling Modesto or San Ramon instead of building, I thought this would be the appropriate time to revisit

our financial relationship. As we have previously discussed, we are using the same partnership arrangement that I had with New Cities. In our previous discussions we have not fully discussed the exact workings of that deal. I know we talked about the "12 1/2%" deal, but that doesn't fully explain the arrangement.

My deal with New Cities is to receive 25% of what Fred, Lee and Tom received on the developer side. If a financial partner was brought into the deal, all of our percentages would decrease accordingly with the financial partner taking their share. Typically this would be a 50% share to the financial partner, reducing our share to 50% from 100%. Accordingly, this would reduce my share from 25% to 12.5%. If a financial partner takes less than 50% our shares are adjusted accordingly. An example of this would be the St. John's deal where I received 15%. In a land flip with no financial partner there is no dilution. An example of this would be the Tracy deal where I received 25%.

Applying this to our relationship, I would receive 25% of what you and Chip would receive. If we have to bring in a financial partner, then the percentages are adjusted as discussed above. When you and I discussed this on the telephone, I assumed we were going to build these projects and that you had stated a financial partner was necessary. If this occurred, the result would probably be a 12 1/2% share, but each deal is a little different.

I wanted to bring this to your attention now given the possibility of us flipping one or both of the projects. This isn't different from our earlier discussions, it's just that we never fully discussed the mechanics as I've outlined above.

Call me to discuss.

Scott

G. SCOTT HAISLET
ATTORNEY AT LAW
986 MORAGA ROAD • LAFAYETTE, CA 94549
TELEPHONE (925) 283-1031
FACSIMILE (925) 283-3850
Email: scott@goscott.com

December 17, 2012

Chief, Board Proceedings Division
State Board of Equalization
Attn: John Johnson
450 N Street, MIC:81
Sacramento, CA 95814
john.johnson@boe.ca.gov

RE: Appeal of Scott L. & Irene Stringer
Appeal Case ID No. 609814
Hearing Date: December 18, 2012

Dear Mr. Johnson:

I represent the taxpayer in the captioned case.

I write in response to a fax that I received on behalf of taxpayer in the captioned case, fax from David Gemmingen, Esq., Tax Counsel IV, Franchise Tax Board (FTB), fax dated December 11, 2012, to Board of Equalization (BOE).

Notwithstanding the request of Board of Equalization for information, taxpayer objects to the accompaniment given to the BOE in Mr. Gemmingen's fax, together with FTB's rationale, on the grounds that they are irrelevant, non-dispositive, and unreasonably prejudicial on the instant case, for the following reasons:

First, "agreement for consulting services" relates to a property in Contra Costa County that has nothing to do with the property interest the taxpayer exchanged in the instant controversy. It is reasonable that parties dealing with each other on two different transactions can structure or document their relationships in the two different transactions in two different ways. There appears to be no connection between the Contra Costa County property under the "agreement for consulting services" and the property in the instant case. Thus, the Contra Costa County property arrangement between Monterey Development Group and taxpayer cannot be dispositive in any way on the instant transaction.

Further, the Contra Costa County property arrangement proposed a principal-agent arrangement (Stringer as agent of Monterey Development Group). Stringer never contemplated such an arrangement. As reflected in the (ratified) agreements between Stringer and Monterey Development Group, Stringer remained a principal with a specific

Chief, Board Proceedings Division
State Board of Equalization
Attn: John Johnson
December 17, 2012
Page 2 of 3

RE: Appeal of Scott L. & Irene Stringer
Appeal Case ID No. 609814
Hearing Date: December 18, 2012

property interest. This is supported in the fact that Stringer never signed the "agreement for consulting services". It was merely a proposal by Monterey Development Group.

Taxpayer (Stringer) would not have entered into such an agreement. Taxpayer (Stringer) is able to testify that he would not have entered into a principal-agent services agreement. Taxpayer would never have entered into such an arrangement that would have him relinquishing all property rights. Taxpayer instead agreed to an arrangement with Monterey Development Group that left taxpayer with an interest in real property. Taxpayer is able to testify that he entered into an agreement with Monterey Development Group under which taxpayer (Stringer) retained a property interest.

Taxpayer (Stringer) did not receive compensation as Franchise Tax Board asserts. Taxpayer relinquished his interest in the subject property (Modesto) as part of a non-simultaneous exchange under section 1031.

Franchise Tax Board's principal argument in this case is that taxpayer received \$3 million in taxable compensation. Now, with this late disclosure, it appears that the Franchise Tax Board is basing its case on a purported written consulting arrangement that was (1) never ratified, and (2) related to a property other than the 1031 relinquished property.

Second, the "IRS Form 6252" for 2004 and 2005 of Monterey Development Group concerning the reported (purported) "installment sale" of the "Modesto Contact" cannot be dispositive on the characterization of the taxpayer's report and claim for section 1031 exchange treatment. Absent judicial determination that in fact the Monterey Development Group correctly reported an installment sale of the "Modesto Contact", it is not appropriate for the FTB to determine arbitrarily that the Monterey Development Group's characterization is correct and thereby find taxpayer's tax treatment (1031 exchange) incorrect. In other words, just because FTB said Monterey's tax treatment was correct does not mean it was in fact correct.

Third, please note that such information (the accompaniments to Mr. Gemmingen's letter) was only given to taxpayer by fax on 12/11/12, and was not disclosed previously, certainly a somewhat surprising disclosure at this late date. Not only is taxpayer highly prejudiced based on the lateness of these disclosures, but obviously taxpayer will not have an opportunity to conduct any reasonable or meaningful discovery (e.g., obtain and evaluate FTB's audit file concerning Monterey Development Group's tax returns for 2004 and 2005) prior to the BOE hearing scheduled just seven days after these disclosures.

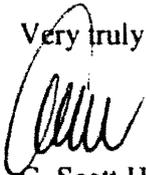
Chief, Board Proceedings Division
State Board of Equalization
Attn: John Johnson
December 17, 2012
Page 3 of 3

RE: Appeal of Scott L. & Irene Stringer
Appeal Case ID No. 609814
Hearing Date: December 18, 2012

Taxpayer requests that BOE view these FTB submissions in light of the foregoing taxpayer objections.

Thank you for your consideration.

Very truly yours,



G. Scott Haislet

cc:

David Gemmingen, Esq., Franchise Tax Board, david.gemmingen@ftb.ca.gov
Ms. Jenna Mayfield, Board of Equalization – jenna.mayfield@boe.ca.gov
Anthony Epolite, Esq., Board of Equalization – Anthony.epolite@boe.ca.gov
Scott Stringer, taxpayer



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Division
P.O. Box 1720
Rancho Cordova, CA 95741-1720

Date: December 11, 2012

FACSIMILE TRANSMITTAL COVER SHEET

CONFIDENTIALITY NOTE:

This telecopy may contain confidential and/or legally privileged information and is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, the employee, or agent responsible for delivering this telecopy to the intended recipient, be advised that any copying, dissemination, distribution, unauthorized inspection, or disclosure of information from this telecopy is prohibited. Persons disclosing confidential information are subject to penalties under applicable laws.

If you have received this telecopy in error, please notify the sender immediately by telephone and mail the entire facsimile message back to us at the address listed above.

Please deliver the following page(s)

TO: NAME : Scott Haislet
FIRM/UNIT : office of G. Scott Haislet
FAX NO. : 925 283 3850
PHONE NO. ()
RE : S. Stringer Appeal - BOARD OF EQUALIZATION
FROM: NAME : DAVID GEMMINGEN
FIRM/UNIT : FRANCHISE TAX Bd LEGAL DIVISION
FAX NO. :
PHONE NO. () 916 845 3480

Number of pages FAXED: 10 (includes this page)

Hard copy: will follow
 will not follow

Comments:

Please see attached transmittal memorandum



State of California
Franchise Tax Board

Legal Division MS A260
PO Box 1720
Rancho Cordova CA 95741-1720
tel: 916.845.3480 fax: 916.843.6044
ftb.ca.gov

chair John Chiang | member Jerome E. Horton | member Ana J. Matosantos

Date: 12.11.12

Case: 4310396893283543

Case Unit: 4310396893283548

In reply refer to 410:DTG

TO: CHIEF, BOARD PROCEEDINGS DIVISION
STATE BOARD OF EQUALIZATION
450 N STREET, MIC: 81
SACRAMENTO, CA 95814

FROM: DAVID GEMMINGEN

RE: Appeal of Scott L. & Irene Stringer
Appeal Case ID No. 609814

MEMORANDUM

The above entitled appeal is scheduled for oral hearing on Tuesday December 18, 2012. Attached for your Board's reference are items that transactionally pertain to the assessment of commission income to appellant Scott Stringer. Your Board recently asked for information concerning the Internal Revenue Service's review of Mr. Stringer's 2004 and 2005 tax years.

Respondent's audit of Mr. Stringer was prompted by an audit of a taxpayer other than Mr. Stringer, and considered documentation, such as the attached 9/2/04 Agreement for Consulting Services between appellant Scott Stringer and Monterey Development Group, LLC, (MDG) which also had a 16% commission of net profits to Mr. Stringer in return for his services to MDG, as well as a MDG's Forms 6252 for tax years 2004 and 2005 reporting the sale of the Modesto property contracts to its affiliated entity, MDG Capital Investors, Inc., for a total price of \$18,000,000. Appellants' representative's office on December 7, 2012, at 12:34 pm emailed various documents to your Board and respondent, one of which was a .pdf file entitled MDG Asset Purchase Agreement, which listed MDG as the sole seller of the Cramer and Rowe contracts for \$18,000,000 total consideration. The attached Forms 6252 pertain to that sale, with MDG reporting the full amount realized for 100% interest in both the Cramer and Rowe contracts.

Tax Counsel IV

cc: Scott Haislet

Wws #2 9/2/04

AGREEMENT FOR CONSULTING SERVICES

Consulting Agreement w/ Stringer

This Agreement for Consulting Services ("this Agreement") is made and entered into as of September 9, 2003 between MONTEREY DEVELOPMENT GROUP, LLC, a California limited liability company ("Client") and SCOTT STRINGER ("Consultant") for the purposes and upon the terms and conditions hereinafter set forth.

RECITALS

A. Client has negotiated and entered into a written contract (the "Contract") with VIRTUOSO DEVELOPMENT COMPANY, LLC, a California limited liability company ("Virtuoso"). The Contract comprises the three following written agreements: (i) the agreement entitled *Purchase and Sale Agreement and Joint Escrow Instructions* dated as of June 3, 2003, (ii) the first amendment thereto entitled *First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions* dated as of June 3, 2003 and (iii) the second amendment thereto entitled *Second Amendment to Purchase and Sale Agreement and Joint Escrow Instructions* dated as of June 3, 2003. The Contract both entitles and obligates Client to purchase approximately 6.14 acres of land (the "Property") located in the City of San Ramon (the "City"), County of Contra Costa, State of California. Client anticipates that Client will acquire the Property pursuant to the Contract and then will hold the Property for investment and in due course Client or a successor in interest to Client will sell the Property to a third party.

B. Consultant is familiar with the Property and is also familiar with land use and land entitlement regulations and procedures in the City.

C. Client wishes to engage Consultant, pursuant to the provisions of this Agreement, to consult with Client and advise Client concerning ways and means to realize Client's goals with respect to the Property.

D. Consultant is willing, pursuant to the provisions of this Agreement, to accept the engagement which Client has proposed, as said engagement is described in this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the Recitals and the mutual covenants herein, the sufficiency of which Client and Consultant each acknowledge, Client and Consultant hereby agree as follows.

WWS 11

1374

2004 J. A

1. **Term of this Agreement.** The term of this Agreement, and the responsibilities, rights and obligations of the parties hereunder, shall commence as of the date of this Agreement, and shall terminate upon the sale of the Property to a third party which is not an affiliate of Client.

2. **Scope of Engagement.** Consultant shall provide its services to Client at any time and from time to time during the term of this Agreement promptly following the request for specific services from Client. If any services which Client shall request are not clear to Consultant, Consultant shall immediately confer with Client for the purpose of clarifying, articulating and enumerating the tasks which the particular service request encompasses. If Client requests, Consultant shall promptly provide a written memorandum to Client which (a) summarizes the tasks which have been requested (and, if a conference occurs, subsequently clarified) and (b) sets forth a schedule for the sequence in which the tasks will be undertaken including reasonable estimates of the time frame for completing each task. To the extent completion of any task requires information from or participation by Client, Consultant shall refer to such needs in the written memorandum.

3. **Limitations.** Consultant shall make no statements or representations on behalf of Client to any person whomsoever (including, without limitation, Virtuoso, other property owners in the City, potential purchasers of property in the City and/or the County of Contra Costa, potential lenders, and/or governmental officials) unless Consultant has first obtained the written assent of Client to each such statement or representation. Authorization for one statement or representation shall not constitute authorization for any subsequent statement or representation, even to the person or entity to whom the original statement or representation was addressed. Consultant shall have no authority to hire other consultants (such as civil engineers, soils engineers, architects, appraisers, lawyers, and accountants) or to contact real estate brokers or real estate salesmen or other persons interested in the Property unless Client has expressly authorized Consultant in writing so to act. Consultant hereby expressly acknowledges that Consultant is not and shall not act as Client's agent or representative and shall, if necessary to make his status clear to any third party, explicitly disavow in writing that he is an agent or representative of Client and take any other actions reasonably necessary to negate any impression that he is authorized to act on behalf of Client.

4. **Consultant's Compensation.** In consideration for the willingness of Consultant to enter into this Agreement and to provide the services of Consultant hereunder, Client shall pay Consultant a fee equal to Sixteen and One Third Percent (16.333%) of the net profits which Client realizes from the sale of the Property to an unaffiliated third party. Payment shall not be due until such time as Client has fully liquidated Client's entire interest in the Property but shall be made within a reasonable time (not to exceed ninety days) thereafter. For purposes of this Section 4, "Client's interest in the Property" shall be understood

to refer both to any direct ownership in the Property which Client may obtain as well as to any ownership interest which Client may hold in any entity (such as a limited liability company) or entities which, concurrently or sequentially, may own a direct ownership interest in the Property. As used herein "net profits" shall mean the revenue which Client may obtain from disposition of the Property reduced by all costs which Client shall have incurred in connection with the Property (including, without limitation: the cost of acquiring the Property; closing charges and prorations charged to Client and/or any affiliate of Client at the closing for the sale of the Property to an unaffiliated third party; all fees and charges in connection with applying for and processing entitlements for the Property; all associated professional fees for engineers, architects, environmental and other consultants, attorneys, appraisers, accountants, etc.; a general and administrative fee equal four percent (4%) of the gross selling price; and a commission equal to four percent (4%) of the gross selling price payable by the unaffiliated third party which buys the Property.

5. **Expenses.** Consultant shall be exclusively responsible for, and Client shall have no liability whatsoever for, any out-of-pocket expenses or other expenses which Consultant may incur in connection with performing Consultant's services under this Agreement.

6. **Status of Parties.** Consultant is an independent contractor and is neither the agent nor an employee of Client. Consultant shall have no power or right to make any decisions, incur any obligations or enter into any agreements on behalf of Client. Client and Consultant intend this Agreement to be an independent contract. They disavow any intention to enter into hereby any partnership, joint venture or any other form of common enterprise.

7. **Confidentiality.** To assure that Consultant shall maintain confidentiality with respect to business done pursuant to this Agreement and with respect to information about the affairs of Client which Consultant may obtain in the course of fulfilling his obligations hereunder, Consultant, upon the request of Client, shall execute and deliver to Client a confidentiality agreement substantially in the form of Exhibit A hereto.

8. **Indemnity.** Consultant shall indemnify, defend and hold Client harmless against any and all Claims (as said term "Claims" is hereinafter defined) with legal counsel (should legal representation be required) reasonably acceptable to Client, all at Consultant's sole and exclusive cost and expense. As used herein the term "Claims" shall mean any and all claims, liabilities, losses, damages and/or costs which Client shall incur or suffer as a result of: entering into this Agreement with Consultant; the actions and/or omissions of Consultant in the course of performing services under this Agreement or otherwise in connection with this Agreement; and/or Consultant's relationship with Client hereunder. The obligations of Consultant under this Section shall survive the expiration or sooner termination of this Agreement.

9. **Notices.** All notices required hereunder shall be in writing and shall be delivered by personal delivery, commercial courier, by facsimile transmission (provided that

receipt is confirmed by telephone or otherwise), or by mailing such notice by first class mail, certified, return receipt requested, postage and fees prepaid, addressed as follows:

To CLIENT: Monterey Development Group, LLC
 Attention: Thomas J. Merschel
 9781 Blue Larkspur Lane
 Monterey, CA 93940

To Consultant: Mr. Scott Stringer
 [PLEASE SUPPLY ADDRESS]

or to such other address as either party may designate by written notice to the other. All notices shall be deemed delivered upon actual receipt or refusal of delivery..

10. Miscellaneous Provisions.

(a) **Governing Law; Amendment; Construction.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of California. Any modification of this Agreement must be in writing and signed by both Client and Consultant. This Agreement memorializes the agreements reached after arms length bargaining between Consultant and Client; the parties and their counsel have reviewed it fully and it shall be deemed jointly drafted. Words, phrases, and all provisions hereof shall, except as specifically defined herein, be interpreted in accordance with their ordinary meanings. All personal pronouns used in this Agreement shall include the other genders. The singular shall include the plural, and the plural the singular, whenever and as often as may be appropriate. The captions and headings in this Agreement are for convenience only, are not part of the substantive provisions of this Agreement, and do not in any way limit or amplify the provisions hereof.

(b) **Entire Agreement.** This Agreement (together with any Schedules And Exhibits hereto) constitutes the sole and entire agreement between Consultant and Client concerning the Property and supersedes any and all prior oral or written agreements or understandings between them pertaining to the transactions contemplated herein. No representations, warranties or inducements, express or implied, have been made by either party to the other, except as set forth herein.

(c) **Partial Invalidity.** If a court of competent jurisdiction shall hold that any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be impaired or invalidated. The parties shall, however, substitute for the provision held to be invalid or unenforceable a provision which is valid and enforceable which approximates as closely as possible the commercial and economic intent of the stricken provision.

(d) **Attorney's Fees.** Each party shall be separately responsible for any

B77 2004 2.1

attorney's fees it may incur in connection with the negotiation and preparation of this Agreement, any Exhibits hereto and any other instruments or documents mentioned herein. If there is any legal action or proceeding between Consultant and Client to enforce any provision of this Agreement or to protect or establish any right or remedy of either party hereunder, the prevailing party shall be entitled to all its costs and expenses, including attorney's fees and expert witness fees, incurred in connection with such action and in any appeal therefrom.

(e) **Successors and Assigns.** The provisions of this Agreement shall

survive the Closing. The provisions of this Agreement shall inure to the benefit of and bind Consultant and Client and their respective successors and assigns. The obligations of Consultant under this Agreement are personal and non-transferable in light of Consultant's familiarity with the Property and the confidence which Client places in Consultant as a result of Client's long-standing relationship with Consultant, and accordingly Consultant shall have no right to assign Consultant's rights under this Agreement, including, without limitation, the right to receive the Consultant Payment, without the prior written consent of Client, which Client may grant or withhold in Client's absolute discretion.

(f) **Further Documents.** At any time and from time to time during the

term of this Agreement as well as following the closing of the sale of the Property to a third party, each party, at the expense of the requesting party, shall execute and deliver (and acknowledge before a notary public where necessary) such instruments of transfer and such other documents as the other party may reasonably request or as are necessary to carry out and give effect to the purposes and intent of this Agreement.

(g) **Counterparts.** This Agreement may be executed in one or more

counterparts, each of which shall be a fully binding and enforceable contract and agreement against the party signing such counterpart, but all such counterparts shall together constitute but one agreement.

(h) **No Memorandum of this Agreement.** Neither Client nor Consultant

shall cause or permit the recordation of this Agreement.

1). **Client's Cooperation.** Client shall cooperate with

Consultant at such reasonable times as Consultant may request where Consultant deems such cooperation necessary or useful in the fulfillment of the tasks which Client has asked Consultant to undertake pursuant to this Agreement. To that end Client shall make appropriate personnel reasonably available to Consultant, and shall furnish Consultant with such documentary information in Client's possession or control may Consultant may reasonably request, for purposes of enabling Consultant to obtain information which Consultant deems necessary in the course of its services.

IN WITNESS WHEREOF, Client and Consultant have executed this Agreement as of the date first above written.

CLIENT

MONTEREY DEVELOPMENT GROUP, LLC, a California limited liability company

By: Nochan Land Company, LLC, a California limited liability company, managing member

By. _____

Thomas J. Merschel, Managing Member

CONSULTANT

Scott Stringer

1379 9004 217

Form **6252**

Installment Sale Income

OMB No 1545-0028

2004
79

Department of the Treasury
Internal Revenue Service

► Attach to your tax return.
► Use a separate form for each sale or other disposition of property on the installment method.

Name(s) shown on return

Identifying number

MONTEREY DEVELOPMENT GROUP, LLC

- 1 Description of property ► MODESTO CONTRACT
- 2a Date acquired (month, day, year) ► 7/22/03 b Date sold (month, day, year) ► 11/08/04
- 3 Was the property sold to a related party (see instructions) after May 14, 1980? If 'No,' skip line 4. Yes No
- 4 Was the property you sold to a related party a marketable security? If 'Yes,' complete Part III. If 'No,' complete Part III for the year of sale and the 2 years after the year of sale. Yes No

Gross Profit and Contract Price. Complete this part for the year of sale only.

5	Selling price including mortgages and other debts. Do not include interest whether stated or unstated	5	18,000,000.
6	Mortgages, debts, and other liabilities the buyer assumed or took the property subject to (see instructions)	6	
7	Subtract line 6 from line 5	7	18,000,000.
8	Cost or other basis of property sold	8	16,859.
9	Depreciation allowed or allowable	9	
10	Adjusted basis. Subtract line 9 from line 8	10	16,859.
11	Commissions and other expenses of sale	11	
12	Income recapture from Form 4797, Part III (see instructions)	12	
13	Add lines 10, 11, and 12	13	16,859.
14	Subtract line 13 from line 5. If zero or less, do not complete the rest of this form (see instructions)	14	17,983,141.
15	If the property described on line 1 above was your main home, enter the amount of your excluded gain (see instructions). Otherwise, enter -0-	15	0.
16	Gross profit. Subtract line 15 from line 14	16	17,983,141.
17	Subtract line 13 from line 6. If zero or less, enter -0-	17	0.
18	Contract price. Add line 7 and line 17	18	18,000,000.

Installment Sale Income. Complete this part for the year of sale and any year you receive a payment or have certain debts you must treat as a payment on installment obligations.

19	Gross profit percentage. Divide line 16 by line 18. For years after the year of sale, see instructions	19	0.9991
20	If this is the year of sale, enter the amount from line 17. Otherwise, enter -0-	20	0.
21	Payments received during year (see instructions). Do not include interest, whether stated or unstated	21	1,400,000.
22	Add lines 20 and 21	22	1,400,000.
23	Payments received in prior years (see instructions). Do not include interest, whether stated or unstated	23	
24	Installment sale income. Multiply line 22 by line 19	24	1,398,740.
25	Enter the part of line 24 that is ordinary income under the recapture rules (see instructions)	25	
26	Subtract line 25 from line 24. Enter here and on Schedule D or Form 4797 (see instructions)	26	1,398,740.

Related Party Installment Sale Income. Do not complete if you received the final payment this tax year.

- 27 Name, address, and taxpayer identifying number of related party
- 28 Did the related party resell or dispose of the property ("second disposition") during this tax year? Yes No
- 29 If the answer to question 28 is 'Yes,' complete lines 30 through 37 below unless one of the following conditions is met. Check the box that applies.
 - a The second disposition was more than 2 years after the first disposition (other than dispositions of marketable securities). If this box is checked, enter the date of disposition (month, day, year)
 - b The first disposition was a sale or exchange of stock to the issuing corporation.
 - c The second disposition was an involuntary conversion and the threat of conversion occurred after the first disposition.
 - d The second disposition occurred after the death of the original seller or buyer.
 - e It can be established to the satisfaction of the Internal Revenue Service that tax avoidance was not a principal purpose for either of the dispositions. If this box is checked, attach an explanation (see instructions).
- 30 Selling price of property sold by related party (see instructions)
- 31 Enter contract price from line 18 for year of first sale
- 32 Enter the smaller of line 30 or line 31
- 33 Total payments received by the end of your 2004 tax year (see instructions)
- 34 Subtract line 33 from line 32. If zero or less, enter -0-
- 35 Multiply line 34 by the gross profit percentage on line 19 for year of first sale
- 36 Enter the part of line 35 that is ordinary income under the recapture rules (see instructions)
- 37 Subtract line 36 from line 35. Enter here and on Schedule D or Form 4797 (see instructions)

R1A3

Form **6252**

Installment Sale Income

OMB No 1545-0228

2005

Attachment
Sequence No. **79**

Department of the Treasury
Internal Revenue Service

▶ Attach to your tax return.
▶ Use a separate form for each sale or other disposition of property on the installment method.

Name(s) shown on return

Identifying number

MONTEREY DEVELOPMENT GROUP, LLC

1 Description of property ▶ **MODESTO PURCHASE CONTRACT - INTANGIBLE**

2a Date acquired (month, day, year) ▶ **7/22/03** b Date sold (month, day, year) ▶ **11/08/04**

3 Was the property sold to a related party (see instructions) after May 14, 1980? If 'No,' skip line 4. Yes No

4 Was the property you sold to a related party a marketable security? If 'Yes,' complete Part III. If 'No,' complete Part III for the year of sale and the 2 years after the year of sale. Yes No

Gross Profit and Contract Price. Complete this part for the year of sale only.

5 Selling price including mortgages and other debts. Do not include interest whether stated or unstated.	5	
6 Mortgages, debts, and other liabilities the buyer assumed or took the property subject to (see instructions).	6	
7 Subtract line 6 from line 5.	7	
8 Cost or other basis of property sold.	8	
9 Depreciation allowed or allowable.	9	
10 Adjusted basis. Subtract line 9 from line 8.	10	
11 Commissions and other expenses of sale.	11	
12 Income recapture from Form 4797, Part III (see instructions).	12	
13 Add lines 10, 11, and 12.	13	
14 Subtract line 13 from line 5. If zero or less, do not complete the rest of this form (see instructions).	14	
15 If the property described on line 1 above was your main home, enter the amount of your excluded gain (see instructions). Otherwise, enter -0-	15	
16 Gross profit. Subtract line 15 from line 14.	16	
17 Subtract line 13 from line 5. If zero or less, enter -0-	17	
18 Contract price. Add line 7 and line 17.	18	

Installment Sale Income. Complete this part for the year of sale and any year you receive a payment or have certain debts you must treat as a payment on installment obligations.

19 Gross profit percentage. Divide line 16 by line 18. For years after the year of sale, see instructions.	19	0.9991
20 If this is the year of sale, enter the amount from line 17. Otherwise, enter -0-	20	0.
21 Payments received during year (see instructions). Do not include interest, whether stated or unstated.	21	16,260,807.
22 Add lines 20 and 21.	22	16,260,807.
23 Payments received in prior years (see instructions). Do not include interest, whether stated or unstated.	23	1,400,000.
24 Installment sale income. Multiply line 22 by line 19.	24	16,246,172.
25 Enter the part of line 24 that is ordinary income under the recapture rules (see instructions).	25	
26 Subtract line 25 from line 24. Enter here and on Schedule D or Form 4797 (see instructions).	26	16,246,172.

Related Party Installment Sale Income. Do not complete if you received the final payment this tax year.

27 Name, address, and taxpayer identifying number of related party

28 Did the related party resell or dispose of the property ("second disposition") during this tax year? Yes No

29 If the answer to question 28 is "Yes," complete lines 30 through 37 below unless one of the following conditions is met. Check the box that applies.

a The second disposition was more than 2 years after the first disposition (other than dispositions of marketable securities). If this box is checked, enter the date of disposition (month, day, year) ▶

b The first disposition was a sale or exchange of stock to the issuing corporation.

c The second disposition was an involuntary conversion and the threat of conversion occurred after the first disposition.

d The second disposition occurred after the death of the original seller or buyer.

e It can be established to the satisfaction of the Internal Revenue Service that tax avoidance was not a principal purpose for either of the dispositions. If this box is checked, attach an explanation (see instructions).

30 Selling price of property sold by related party (see instructions).	30	
31 Enter contract price from line 18 for year of first sale.	31	
32 Enter the smaller of line 30 or line 31.	32	
33 Total payments received by the end of your 2005 tax year (see instructions).	33	
34 Subtract line 33 from line 32. If zero or less, enter -0-	34	
35 Multiply line 34 by the gross profit percentage on line 19 for year of first sale.	35	
36 Enter the part of line 35 that is ordinary income under the recapture rules (see instructions).	36	
37 Subtract line 36 from line 35. Enter here and on Schedule D or Form 4797 (see instructions).	37	

BAA For Paperwork Reduction Act Notice, see separate instructions.

Form 6252 (2005)

FD121501L 050305

2/16/4