DEPARTMENT OF
GENERAL SERVICES

FACILITIES & REAL PROPERTY
MANAGEMENT DIVISION

CITY OF SACRAMENTO
CALIFORNIA

5730 24TH STREET
BUILDING 4
SACRAMENTO, CA
95822
PH 916-808-8251
FAX 916-808-8250

WO #: 260290
ACQE-08-12-03

December 18, 2008

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Larry and Marie McNally
2161 Ferran Avenue
Sacramento, CA 95832

SUBJECT: **OFFER TO PURCHASE** – APN: 052-0072-009 (portion of)
ADDRESS OR LOCATION: 2161 Ferran Avenue
PROJECT NAME: Meadowview Road Fence Improvements Project

Dear Mr. & Mrs. McNally:

The City of Sacramento (City) is seeking to acquire a Temporary Construction Easement over a small portion of your property for the Meadowview Road Fence Improvements Project. The proposed property right being acquired is a Temporary Construction Easement, hereinafter referred to as "Property Rights" for the purpose of constructing a masonry wall spanning Meadowveiw Road from Amherst Street to 24th Street. The City will be acquiring a temporary construction area of approximately 600 square feet on the northerly portion of your property. For more information on the Temporary Construction Easement, please refer to the Agreement for Acquisition of Temporary Construction Easement, as well as the Legal Description and Plat Map of the proposed Temporary Construction Easement area.

The Opinion of Value of the above referenced Property Rights has been completed, and staff is proposing to recommend to the City Manager of the City of Sacramento the acquisition of these rights. The Legal Description and Plat Map of the Property Rights under consideration for acquisition are enclosed. Also enclosed, please find a "Real Estate Acquisition Pamphlet" that describes the public acquisition process and your rights as a property owner.

The just compensation of real property rights to be acquired is **Two Hundred Fifty Dollars, ($250.00)** and the City is prepared to offer you this amount. Refer to the enclosed Opinion of Value for details on the just compensation determination. Should you choose to have your own appraisal done, a property owner is eligible to receive reimbursement from the City of up to $5,000 for reasonable

costs of an independent appraisal (pursuant to Civil Code of Procedure Section 1263.025(a)), subject to certain conditions including the review and acceptance by the City of the value.

No decision to acquire can be made until the City Manager formally acts to approve this acquisition. Nothing in this letter is meant to pre-commit the City Manager or otherwise limit the options available to the City Manager. Consequently this offer, if accepted, and the acquisition of the Property Rights is conditional upon and requires the approval of the City Manager.

Enclosed please find one original Agreement for Acquisition of Temporary Construction Easement, and one original Temporary Construction Easement. If you find this offer acceptable, please sign the original Agreement and the Temporary Construction Easement. The copy of the Agreement is being provided for your records. **The Temporary Construction Easement must be signed before a Notary Public.** Please be advised that there typically is a fee for notarization. The City will reimburse you for this fee upon receipt of the charge. For your convenience, the City can provide the Notary Public service to you at no charge. At a time that is convenient for you, we can set up a time to meet for you to sign the Agreement and Temporary Construction Easement.

If you prefer to have the Temporary Construction Easement notarized yourself, when done, please return the signed Agreement and the notarized Temporary Construction Easement, to my attention, in the enclosed self-addressed envelope. The Temporary Construction Easement will be recorded with the Sacramento County Recorders Office and a copy of the recorded Temporary Construction Easement will be mailed to you once recorded, along with a certified copy of the fully executed agreement.

If the signed Agreement and signed Temporary Construction Easement are not received by me at the address noted above within fifteen (15) days of your receipt of this offer, it will be deemed that this offer is rejected and the City will then explore alternative options of acquiring the right to enter upon your property.

Should you have any questions regarding this offer or the project, please contact me at 916-808-5752.

Sincerely,

Ken Hancock
Real Property Agent
Real Estate Services

Enclosures:
Agreement for Acquisition of Temporary Construction Easement
Temporary Construction Easement with Legal Description and Plat Map
Opinion of Value
Real Estate Acquisition Pamphlet

File No.: ACQE 08-12-03
PN/WO: T121/260290
Project: Meadowview Fence Improvements Project
Assessor Parcel No.: 052-0072-009

Grantor: **Larry D. McNally and Marie I. McNally**

Grantee: **CITY OF SACRAMENTO, a municipal corporation**

AGREEMENT FOR ACQUISITION OF
TEMPORARY CONSTRUCTION EASEMENT

WHEREAS, Larry D. McNally and Marie I. McNally (hereafter referred to as the "Grantor") own the real property (hereafter referred to as "Property") as is described in the Temporary Construction Easement (hereafter referred to as "TCE") attached as Exhibit "A" and;

WHEREAS, Grantor desires to convey and the City of Sacramento (hereafter referred to as "City") desires to acquire a Temporary Construction Easement in the Property, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the payment and other obligations set forth below, Grantor and City mutually agree as follows:

1. **Execution and Delivery of TCE.** Upon execution of this Agreement by Grantor, Grantor shall deliver Agreement and TCE to the City for full execution of Agreement and recordation of the TCE by the City at the office of the Sacramento County Recorder. A copy of the recorded instrument will be mailed to Grantor.

2. **Payment/Purchase Price.** Upon execution of this Agreement by both parties, City shall tender payment to the Grantor in the amount of **Two Hundred Fifty Dollars ($250.00)**, which is specifically agreed by the parties to be the full amount of compensation due and owing to Grantor for conveyance of the TCE to the City.

3. **Possession and Use of the TCE.** The City shall have the right of possession and use of the TCE including the right to remove and dispose of improvements and construct the above-named project commencing on the date that this Agreement is executed by both parties; provided that City makes no representation that the project shall be constructed, and no liability or obligation whatsoever shall be incurred by City by reason of any failure to construct the project for any reason. If the TCE subsequently is not acquired by City for any reason, City shall restore the TCE area to the condition existing prior to the City's possession or use hereunder, unless otherwise agreed by the parties.

4. **Eminent Domain.**

A. It is mutually understood that the acquisition of the TCE by City is for a public purpose, and therefore, the TCE is otherwise subject to taking by the power of eminent domain. The acquisition by and through this Agreement is in lieu of City's exercise of the power of eminent domain.

B. If any eminent domain action has been filed by the City for acquisition of the TCE, Grantor hereby agrees and consents to the dismissal of such action. The Grantor waives any and all

claims to any money that may have been deposited in the Superior Court or with the State Treasurer in any such action and waives any and all claims for damages or costs, including attorney's fees, arising by virtue of the abandonment of the action pursuant to Section 1268.510 of the California Code of Civil Procedure.

5. Amendment. This agreement may be modified, changed, or rescinded only by an instrument in writing executed by the parties hereto.

6. Just Compensation. Grantor agrees that performance of this Agreement by City, including the payment recited in section 2, above, shall constitute full and fair compensation and consideration for any and all claims that Grantor may have against City by reason of the acquisition, improvement, possession or occupancy of the TCE, and Grantor hereby waives any and all such claims, including claims for severance or taking compensation or damages on account of the acquisition of the TCE or the location, establishment, construction or operation of the above-named project within the TCE. The foregoing waiver shall include any and all rights or claims that Grantor may have under Article 1, section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation.

7. No Leases. Grantor warrants that there are no leases, on all or any portion of the Property, and the Grantor further agrees to hold the City harmless and reimburse the City for any of its losses and expenses occasioned by reason of any lease of all or any portion of the Property.

8. Grantor's Representations. Grantor makes the following representations and warranties:

A. Grantor certifies that it owns full legal title to the Property, and has full power and authority to convey all property rights described herein to City.

B. To the best of Grantor's knowledge there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Grantor which could (1) affect Grantor's title to the Property, or any portion thereof, (2) affect the value of the TCE, or any portion thereof, or (3) subject an owner of the TCE, or any portion thereof, to liability.

C. To the best of Grantor's knowledge there are no uncured notices which have been served upon Grantor from any governmental agency notifying Grantor of any violations of law, ordinance, rule or regulation which would affect the TCE or any portion thereof.

D. Grantor has no knowledge of the production, storage, disposal, presence, observance or release of any Hazardous Substances (as defined below) in, upon, about or below the Property.

E. To the best of Grantor's knowledge, there are no notices or other information giving Grantor reason to believe that any conditions existing on the Property or in the vicinity thereof subject or could subject an owner of the TCE to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use.

F. Grantor has no knowledge of any violation of any such law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement arising out of Grantor's ownership or use of the Property, nor of any legal, administrative or other action or proceeding, pending or threatened, affecting the Property and relating to environmental compliance.

G. To the best of Grantor's knowledge there is no license, permit, option, right of first refusal or other agreement, written or oral, which affects the Property or any portion thereof.

H. To the best of Grantor's knowledge conveyance of the property rights described herein will not constitute a breach or default under any agreement to which Grantor is bound and/or to which the Property is subject.

Each of the above warranties and representations is material and is relied upon by City. Each of the above representations shall be deemed to have been made as of the date that the TCE is recorded, and shall survive for a period of two years following the date that the TCE is recorded. If, before the recording of the TCE, Grantor discovers any information or facts that would materially change any of these warranties and representations, Grantor shall immediately give notice to City of such facts and information. If any of the foregoing warranties and representations ceases to be true before the recording of the TCE, Grantor shall be obligated either to remedy the problem before the recording of the TCE or deduct from the payments required by Section 2, above, as a credit to City, the amount reasonably required to remedy the problem.

As used in this Agreement, the term "Hazardous Substances" means any substance, material, waste or other pollutant or contaminant that is or becomes designated, classified and/or regulated as hazardous or toxic under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. Any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Property shall be governed by the provisions of section 12 below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by City.

8. Indemnification. Each party (hereafter the "Indemnifying Party") agrees and covenants to indemnify, defend (with counsel acceptable to the other party, which consent shall not be unreasonably withheld), and hold the other party, and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside or staff counsel), causes of action, claims, or judgments that arise by reason of any death, bodily injury, personal injury, property damage, or violation of any law or regulation resulting from any acts or omissions related to the performance of this Agreement or the occupancy or use of the Property (including, but not limited to, the use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Property), by the Indemnifying Party, its officers, employees, agents or any other person or entity employed by or acting on their behalf.

The parties further agree and understand as follows: a party does not, and shall not be deemed to, waive any rights against the other party which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any insurance coverage available; the scope of the aforesaid indemnity and hold harmless agreement is to be construed broadly and liberally to provide the maximum coverage in accordance with their terms; no specific term or word contained in this Section 12 shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided. The provisions of this Section 12 shall survive the recording of any deeds hereunder.

9. Attorney Fees. Either party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorney's fees.

10. Notices. Any notice that either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail, to the following address:

To City

Real Estate Services
City of Sacramento
5730 24th Street, Building 4
Sacramento, CA 95822
Attn: Supervisor, Real Estate Services

To Grantor

Larry and Marie McNally
2161 Ferran Avenue
Sacramento, CA 95832

11. Recording. Either party may record this Agreement in the Recorder's Office for Sacramento County.

12. Binding on Successors. This Agreement shall be binding on and shall inure to the benefit of the City and Grantor, and their respective successors, assigns, and their past, present and future officers, employees and agents; provided that this Agreement may only be assigned with the written consent of both parties, and any attempt to assign this Agreement without such consent shall be void.

13. Special Provisions. The Special Provisions attached hereto as Exhibit "B", are hereby incorporated and made a part of this Agreement by this reference. In the event of any conflict or inconsistency between this Agreement and the Special Provisions, the terms of the Special Provisions shall prevail.

14. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

15. Entire Agreement. The parties have herein set forth the whole of their Agreement. All prior oral discussions, representations, and/or agreements, if any, are specifically superseded by this Agreement, which is intended by the parties to contain all of the terms and conditions agreed to by them with regard to acquisition of the TCE by City.

16. Authority. Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

/
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/
/
/
/
/
/

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

Grantor(s):

Larry D. McNally

_____

Dated: _____

Marie I. McNally

_____

Dated: _____

Grantee:
CITY OF SACRAMENTO,
a municipal corporation

By: _____
Print Name: _____
Title: _____
For Ray Kerridge, City Manager

Dated: _____

RECOMMENDED FOR APPROVAL:

By: _____
Real Property Agent

By: _____
Supervisor, Real Estate Services Section

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

Exhibit "A"

TEMPORARY CONSTRUCTION EASEMENT

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF

CITY OF SACRAMENTO

NO FEE DOCUMENT
Govt Code 6103

WHEN RECORDED MAIL TO

CITY OF SACRAMENTO
Real Estate Services
5730 24th Street, Building 4
Sacramento, California 95822
Attn: Supervisor, Real Estate Services

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NO TRANSFER TAX DUE per R&T Code 11922
Grantee is a Government Agency

ACOE-08-12-03	052-0072-009	_____
RES File	APN (portion of)	Agreement #

TEMPORARY CONSTRUCTION EASEMENT

Larry D. McNally and Marie I. McNally, husband and wife as joint tenants

hereby grant(s) to

CITY OF SACRAMENTO, a municipal corporation,

in accordance with terms and conditions of that certain Agreement for Acquisition of Temporary Construction Easement dated_____, a temporary construction easement for purposes of construction, reconstruction, installation, improvement, repair, inspection, expansion, and maintenance of a masonry wall, together with all necessary appurtenant structures on, over, across, and under all that real property situated in the City of Sacramento, County of Sacramento, State of California, described as follows:

SEE ATTACHED LEGAL DESCRIPTION MARKED EXHIBITS 'A'
AND DIAGRAMED IN THE CORRESPONDING PLAT MAP ATTACHED AS EXHIBIT 'B'

CITY may move and/or remove any existing structures or improvements, but shall replace "in like kind" or restore such structures or improvements prior to the Easement's termination. Access to any improved parcels shall not be totally impaired. CITY may re-grade the underlying property to conform to the grade of the street frontage. The Easement herein described shall commence upon the City's written notification to Grantor of City's intent to proceed with construction on Grantor's property, and shall be effective for a four (4) week period, such period not to extend beyond March 1, 2010.

Larry D. McNally

_____

Dated: _____

Marie I. McNally

_____

Dated: _____

"Approved as to form – City Attorney"

EXHIBIT A
APN 052-0072-009
TEMPORARY EASEMENT DESCRIPTION

All that certain real property situated in the City of Sacramento, County of Sacramento, State of California, described as follows:

Parcel 1
All that portion of Lot 88, as shown on the official plat of "Meadowview Manor Unit No. 2" in Book 57 of Maps, Map No. 10, filed October 2, 1959, in the office of the Recorder of said county, described as follows:

Beginning at a point on the Southerly line of Meadowview Road, said point also being the Northwest corner of said Lot 88; thence from said Point of Beginning along the Northerly line of said lot to the Northeast corner of said lot, Easterly, 60.00 feet; thence along the Easterly line of said lot, Southerly, 10.00 feet; thence parallel with said Northerly line to the Westerly line of said lot, Westerly 60:00 feet; thence along the Westerly line of said lot, Northerly, 10.00 feet, to the Point of Beginning, containing 600.00 square feet, more or less.

LICENSED LAND SURVEYOR
ROY J. HEAVENSTON
No.
LS7356
REN. 12-31-2009
STATE OF CALIFORNIA

EXHIBIT B

PANORAMA VISTA UNIT NO. 1
57 BM 20

40.00'

℄ MEADOWVIEW ROAD

40.00'

10.00'

POB

60.00'

P. U. E.

10'

LICENSED LAND SURVEYOR
ROY J. HEAVENSTON
No. LS7356
REN. 12-31-2009
STATE OF CALIFORNIA

TOTAL AREA =
600.00 SQ. FT.

88

86

87

120.00'

89

SCALE
1" = 30'

MEADOWVIEW
MANOR UNIT NO. 2
57 BM 10

27.00'

℄ FERRAN AVE.

27.00'

129

128

NOV 2008

TEMPORARY
CONSTRUCTION EASEMENT
052-0072-009
CITY OF SACRAMENTO

Exhibit "B"

SPECIAL PROVISIONS

1) City construction work shall include the extension of the existing side-fencing to connect to masonry wall in a manner that conforms to the current design and appearance of existing side-fence.

2) Construction Contract Work Regarding Temporary Construction Easement area

   It is agreed that all work performed under this Agreement by City and situated within the Property shall be done in a good and workmanlike manner. All structures, improvements or other facilities when removed, relocated or reconstructed by City, shall be left in as good condition as found. However, unless otherwise expressly stated in this Agreement, all work performed under this Agreement by the City shall be done at a time and in a manner as the City, in its sole discretion, deems most appropriate for project purposes. Once the new masonry wall has been completed, maintenance and repair of masonry wall shall be the sole responsibility of the City.

3) Construction Contract Work Regarding Reconstruction of Grantor's Remainder Property

   City shall use reasonable efforts to complete any reconstruction work in as short a period as possible to minimize disruption to the site. City and its authorized agents and contractor are hereby granted permission to enter onto Grantor's remainder property to reconstruct Grantor's property, more specifically the side-fencing to be connected to the new masonry wall, (hereinafter referred to as "Remainder"), as necessary to conform same to the new masonry wall and street frontage improvements, including re-grading any affected areas. The cost of such reconstruction of the Remainder property shall be borne by City, at no expense to Grantor. Such reconstruction shall be done at a time and in a manner which the City, in its sole discretion, deems most appropriate for project purposes. Upon completion of such construction, any reconstruction shall hereinafter be considered Grantor's sole property and Grantor will be solely responsible for all maintenance and repair thereto.

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF

CITY OF SACRAMENTO

NO FEE DOCUMENT
Govt Code 6103

WHEN RECORDED MAIL TO

CITY OF SACRAMENTO
Real Estate Services
5730 24th Street, Building 4
Sacramento, California 95822
Attn: Supervisor, Real Estate Services

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NO TRANSFER TAX DUE per R&T Code 11922
Grantee is a Government Agency

ACQE-08-12-03	052-0072-009	_____
RES File	APN (portion of)	Agreement #

TEMPORARY CONSTRUCTION EASEMENT

Larry D. McNally and Marie I. McNally, husband and wife as joint tenants

hereby grant(s) to

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SEE ATTACHED LEGAL DESCRIPTION MARKED EXHIBITS 'A'
AND DIAGRAMED IN THE CORRESPONDING PLAT MAP ATTACHED AS EXHIBIT 'B'

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Larry D. McNally

_____

Dated: _____

Marie I. McNally

_____

Dated: _____

"Approved as to form – City Attorney"

EXHIBIT A
APN 052-0072-009
TEMPORARY EASEMENT DESCRIPTION

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LICENSED LAND SURVEYOR
ROY J. HEAVENSTON
No.
LS7356
REN. 12-31-2009
STATE OF CALIFORNIA

EXHIBIT B

PANORAMA VISTA UNIT NO. 1
57 BM 20

40.00'

℄ MEADOWVIEW ROAD

40.00'

10.00'

POB

60.00'

P. U. E.

10'

LICENSED LAND SURVEYOR
ROY J. HEAVENSTON
No.
LS7356
REN. 12-31-2009
STATE OF CALIFORNIA

TOTAL AREA =
600.00 SQ. FT.

88

120.00'

86

87

89

SCALE
1" = 30'

MEADOWVIEW
MANOR UNIT NO. 2
57 BM 10

27.00'

℄ FERRAN AVE.

27.00'

129

128

NOV 2008

TEMPORARY
CONSTRUCTION EASEMENT
052-0072-009
CITY OF SACRAMENTO

OPINION OF VALUE

Meadowview Fence Improvements Project

Property Owners: Larry D. and Marie I. McNally

Property Address: 2161 Ferran Avenue, Sacramento, CA 95832

Assessor's Parcel Numbers (s): 052-0072-009 (portion of)

Total Property Area: 600 square feet

Property to be Acquired: Full _____ Partial X Fee _____ Temporary Easement X

Basis of the Appraisal: The opinion of value for the property right proposed to be acquired by the City of Sacramento is based upon appraisal methods in accordance with accepted appraisal principles and procedures. The sales comparison approach was employed as the primary basis for the analysis and estimates of value necessary to the appraisal.

In developing the opinion of value for the proposed property right acquisition, an investigation was conducted that included: 1) a research of public records; 2) a review of pertinent maps, project environmental documents, zoning regulations, and preliminary title report; and 3) discussions with representatives of the City of Sacramento's General Services Department.

To estimate the value of the proposed property right acquisition, all relevant characteristics of the larger parcel were taken into account and compared to the most relevant market data available. The comparison took into account, but was not limited to the following items: 1) legal restrictions; 2) existing or potential highest and best use; 3) changes in market conditions since the sales dates; 4) location, and; 5) physical characteristics such as size, shape, access, identity, street improvements, availability of utilities, topography, and other relevant factors.

Effective Date of Value: The findings, conclusions, and the estimates of value are made valid as of 12/16/2008.

Interests Valued: Temporary Construction Easement

Current Property Use: Residential, Subdivision

Land Use Zoning (as indicated by public records): Res, Single Family in Subdivision

Highest and Best Use: City R1 – Single Family Residential

Parcel Description and Easement Description:

The proposed Temporary Construction Easement (TCE) is approximately 600 square feet of the larger parcel (APN: 052-0072-009), which is approximately 7,200 square feet. The subject property is currently a single family residence within a subdivision.

Damages and Specific Benefits: NONE

Conclusion of Value:

Total Property Area: 600 square feet o Full X Part; Including Access Rights X Yes o No

Calculation of Price/SF:

The value of the TCE area is calculated by multiplying the area required by a price per square foot (land value). This figure is further multiplied by an appropriate market rate of return, at which point the value is prorated to reflect the length of time required for the TCE.

Value of Required TCE

A total consideration of $250.00 is considered to be reasonable for the rights being acquired by the City in light of the marginal impact on the grantor's use of the indicated property within the TCE area.

Conclusion of Just Compensation:

Total Property Area: 600 square feet o Full X Part; Including Access Rights X Yes o No

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MARKET VALUE OF REQUIRED PROPERTY RIGHT (NOMINAL): $250.00

TOTAL OF JUST COMPENSATION (NOMINAL): $250.00

"I understand I am assigned as the Acquisition Agent for the parcel contained in this report, but this has not affected my professional judgment nor influenced my opinion of value".

By: _____ Date: _____