

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 TOWER HOMES, LLC, a Nevada
4 limited liability company;

5 Plaintiff,

6 vs.

7
8 WILLIAM H. HEATON, individually;
9 NITZ, WALTON & HEATON, LTD.,
10 a domestic professional corporation;
11 and DOES I through X, inclusive,

12 Defendants.
13

CASE NO.: 65755

Electronically Filed
Feb 05 2015 10:41 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

14 **APPELLANT TOWER HOMES, LLC'S APPENDIX**

15 **VOLUME 2**

16
17 Appellant, Tower Homes, LLC, by and through its attorneys of record, PRINCE |
18 KEATING, hereby concurrently files this Appendix in supplement to its Opening Brief.
19 This Appendix contains true and accurate portions of the district court record and other
20 sources that are essential to understand the matters set forth in the aforementioned
21 Petition.
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CHRONOLOGICAL APPENDIX OF DOCUMENTS

DOCUMENT	DATE	PAGE
Complaint	06/12/2012	Vol. 1 AA1-10
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Motion to Dismiss, or in the Alternative, Motion for Summary Judgment	07/19/2012	Vol. 1 AA11-173 Vol. 2 AA174-196
Plaintiff Tower Homes, LLC's Opposition to Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment	09/04/2012	Vol. 2 AA197-379 Vol. 3 AA380-424
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Reply to Opposition to Motion to Dismiss, or in the Alternative, Motion for Summary Judgment	09/19/2012	Vol. 4 AA425-465
Order Regarding Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment	11/01/2012	Vol. 4 AA466-468
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Renewed Motion to Dismiss	07/26/2013	Vol. 4 AA469-600
Plaintiff Tower Homes, LLC's Opposition to Defendants' Renewed Motion to Dismiss	08/16/2013	Vol. 5 AA601-704
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Reply to Plaintiff's Opposition to Renewed Motion to Dismiss	08/20/2013	Vol. 5 AA705-713
Order Denying Defendants' Renewed Motion to Dismiss	09/04/2013	Vol. 5 AA714-715
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Motion for Summary Judgment	02/18/2014	Vol. 5 AA716-846
Plaintiff Tower Homes, LLC's Opposition to Defendants' Motion for Summary Judgment	03/07/2014	Vol. 6 AA847-868
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Reply to Plaintiff's Opposition to Motion for Summary Judgment	03/14/2014	Vol. 6 AA869-891

1	Defendants William Heaton and the law	03/21/2014	Vol. 6 AA892-899
2	firm of Nitz, Walton & Heaton, Ltd.'s		
3	Supplemental Exhibit in Support of Motion		
4	for Summary Judgment		
5	Discovery Commissioner's Reports and	03/19/2014	Vol. 6 AA900-906
6	Recommendations on Plaintiff's Motion to		
7	Compel		
8	Minute Order Granting Defendants William	03/25/2014	Vol. 6 AA907-908
9	Heaton and the law firm of Nitz, Walton &		
10	Heaton, Ltd.'s Motion for Summary		
11	Judgment		
12	Order Granting Defendants' Motion for	05/15/2014	Vol. 6AA909-915
13	Summary Judgment		
14	Notice of Entry of Order	05/15/2014	Vol. 6 AA916-924
15	Notice of Appeal	05/28/2014	Vol. 6 AA925-926
16	Transcript of Proceedings on Defendants	12/02/2014	Vol. 6 AA927-948
17	William Heaton and the law firm of Nitz,		
18	Walton & Heaton, Ltd.'s Motion for		
19	Summary Judgment heard on March 21,		
20	2014		

DATED this 4th February, 2015.

PRINCE | KEATING



DENNIS M. PRINCE

Nevada Bar No. 5092

ERIC N. TRAN

Nevada Bar No. 11876

9130 West Russell Road, Suite 200

Las Vegas, Nevada 89148

Attorneys for Appellant

Tower Homes, LLC

Title Company. This Contract may be executed in multiple original counterparts, each of which shall be an original for all purposes.

NOTE: THIS CONTRACT SHALL NOT BE BINDING UPON SELLER UNLESS AND UNTIL EXECUTED BY SELLER.

PURCHASER MAY CANCEL THIS CONTRACT BY GIVING WRITTEN NOTICE OF SUCH CANCELLATION TO SELLER AT ANY TIME UNTIL MIDNIGHT OF THE FIFTH CALENDAR DAY FOLLOWING THE DATE ON WHICH THIS CONTRACT IS EXECUTED BY PURCHASER. A WRITTEN NOTICE OF SUCH CANCELLATION MUST BE DELIVERED PERSONALLY TO THE SELLER, OR SENT BY MAILING NOTICE THEREOF BY PREPAID UNITED STATES MAIL TO THE SELLER OR SELLER'S AGENT FOR SERVICE OF PROCESS. THIS RIGHT OF CANCELLATION DOES NOT APPLY IF PURCHASER HAS PERSONALLY INSPECTED THE UNIT BEFORE SIGNING THE CONTRACT. THE SELLER SHALL, WITHIN 15 DAYS AFTER RECEIPT OF A NOTICE OF CANCELLATION, RETURN ALL PAYMENTS MADE BY THE PURCHASER.

SELLER:

TOWER HOMES, LLC

By: _____
Rodney C. Yanke, Managing Member
Date: _____
Address: 4270 S. Decatur, Suite A-2
Las Vegas, Nevada 89103
Phone: 702-262-6138
Facsimile: _____

PURCHASER:

Name: _____
Name: _____
Date: _____
Address: _____
Home Phone: _____
Work Phone: _____
Facsimile: _____
E-Mail: _____

Attachments:

Exhibit A - Description of the Land
Exhibit B - Certificate of Acceptance
Addendum A

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL NO. 1: APN: 176-04-601-012

THE WEST HALF (W 1/2) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 4, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.B. & M.

PARCEL NO. 2: APN: 176-04-601-013

THE EAST HALF (E 1/2) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 4, TOWNSHIP 22 S., RANGE 60 EAST, M.D.B. & M.

PARCEL NO. 3: APN: 176-04-601-014

THE WEST HALF (W 1/2) OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 4, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.B. & M.

EXHIBIT "B"

CERTIFICATE OF ACCEPTANCE

The undersigned, (whether one or more, "Purchaser"), has inspected the condominium unit in Spanish View Tower Homes that Purchaser is purchasing (being Unit No. _____), and has had access and opportunity to inspect all portions of the Condominium building, common areas, parking facilities, driveways, and all other improvements located on the Land (as described in the Purchase Contract) with the exception of the interior of other individual units ("Improvements"), together with the opportunity to review all Plans and Specifications (as defined in the Purchase Contract) for the Improvements. Purchaser has found and certifies the Unit and Improvements to be in the condition required pursuant to the Purchase Contract under which the Unit will be purchased and all Improvements constructed in conformity with the applicable Plans and Specifications. Purchaser accordingly accepts the Unit and all Improvements in their present condition subject only to the punch list items on Schedule 1 attached hereto and hereby waives any claims regarding construction, design or any other architectural aspects of the Improvements and acknowledges that there is no warranty to the same except as set forth in the Seller's Limited Warranty, and Purchaser otherwise accepts all construction in its present condition.

EXECUTED ON THE _____ DAY OF _____, 200__

PURCHASER:

ADDENDUM "A"

Addendum to Purchase Contract between Tower Homes, LLC, as Seller, and _____
as Purchaser, covering the real property commonly known as Unit # _____, on the _____ floor of
Spanish View Tower Homes, Tower No. _____.

The following Forms are attached to and a part of this Contract:

- ☐ Airport Noise Disclosure
- ☐ Gaming Overlay Disclosure
- ☐ County Zoning Disclosure
- ☐ Duties Owed and Confirmation Regarding Real Estate Agent Relationship
- ☐ Addendum B Spanish View Tower Home Features

Date: _____

Date: _____

Tower Homes, LLC

Purchaser: _____

By: _____
Rodney C. Yanke, Managing Member

Purchaser: _____

Spanish View Tower Homes Addendum "A" to Purchase Contract

ADDENDUM TO PURCHASE CONTRACT

In reference to Purchase Contract executed by _____,
_____, as Purchaser(s), dated _____
covering the real property commonly known as Unit #_____, on the _____ floor of Spanish View Tower Homes,
Tower No. _____.

It is further agreed by both parties as follows:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no text or other markings on the paper.

THIS ADDENDUM, UPON ITS EXECUTION BY BOTH PARTIES IS HEREWITH MADE AN INTEGRAL PART OF THE AFOREMENTIONED PURCHASE CONTRACT. WHEN PROPERTY COMPLETED THIS IS A BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK COMPETENT LEGAL AID AND/OR COUNSEL BEFORE SIGNING

The undersigned Purchaser, having inspected the above described property on the terms and conditions herein stated and acknowledges receipt of a copy of this Addendum.

PURCHASER _____ DATE _____

<u>PURCHASER</u>	<u>TIME</u>
------------------	-------------

ACCEPTANCE OF OFFER TO PURCHASE

The undersigned Seller accepts the foregoing offer to purchase and agrees to sell the above described property on the terms and conditions as stated herein and acknowledges receipt of copy of this agreement.

SELLER _____ DATE _____

SELLER	TIME
--------	------

ADDENDUM "B": SPANISH VIEW TOWER HOMES FEATURES

EXTERIOR FEATURES

The Spanish View Tower Homes Condominium is to be built according to plans and specification by architects retained by Tower Homes, LLC ("Tower Homes") with modifications by Tower Homes during the construction process.

Exterior is EIFS and glass. Plans call for 8" of concrete between floors. The party walls are double wall construction with two layers of drywall, 3 layers of R-19, sound insulation between studs and 2 layers of sheetrock on each property owners side.

Detailed and varied balcony railings compliment the building.

Double thermo paned glass will vary in number and size due to the variety of floor plans. The amount of total glass area will vary depending on the floor plan selected.

The roof is a single ply system over tapered insulation on top of a 8" concrete deck.

The enclosed swimming pools are oversized with nearby whirlpool spas. There will be landscaping within the pool courtyard, the motor court and at the entrance. (Astro Turf)

15 acre guard gated community

Spectacular City and Mountain View

Inside parking

Health, Fitness and Weight Loss Center

Tennis courts

Racquetball courts

Putting Greens

Salon and Day Spa and Tanning Facilities

Horseshoe pit

Jogging/Walking Path

2 Dog Runs (Small dog & large dog area)

8 Acres of Recreational Facilities

Children's playground area

(Addendum B, Page 1 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m..

Initials Seller _____ Purchaser _____

BUILDING FEATURES

There is a Caterer's kitchen for private functions.

There is an 8000 square foot Events Room with kitchen in Tower Two.

There is a first class private health club with full time professional staff and state-of-the-art equipment included in HOA.

Ample storage rooms are available for purchase.

There is a concierge station in each lobby.

There are 102 guest-parking spaces plus street parking.

There are four floors of inside Parking. 2 below grade and 2 above grade. All units have 2, 10 foot wide parking spaces. There is a limited number of parking spaces, available as an option.

Access to the private parking garage is through controlled access gates. Each Homeowner will receive two transmitters.

Valet and Vehicle Appearance area in Towers One, Two and Three.

One waterless Automobile Detail per month included in HOA fee.

Pest Control included in HOA fee.

Water included in HOA fee.

Visitor access is through the lobby via a phone entry system that will also provide the Homeowner with video capability through their television.

24 Hour Armed Security (CPR and medical emergency trained).

There are 5 elevators. Dimensions: 6'8" wide x 5'5" deep and 9' tall are approximate. There is an express elevator to the top four floors. (**Note: Floor #13 is not counted.)

There are 3 stairway exits from the building.

(Addendum B, Page 2 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

BUILDING FEATURES (cont)

There is a maintenance work area for an on-site employee. His/Her duties will include but are not limited to:

Landscape
Cleaning garage area
Lighting Maintenance (on-site)

Cleaning the pool
Cleaning hallways
Trash duty

All structural floors will be constructed using plywood forms, thus there will be minor markings in the concrete ceilings.

The building has a fire sprinkler system for the common areas as well as the individual units.

Easy access to the 215 Beltway.

(Addendum B, Page 3 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

INTERIOR FEATURES

All residences will have a large covered terrace with ceramic tile floors. Total square footage varies with floor plans.

Ceilings are designed to be 11 feet on all floors except the top three floors which shall be 12 feet.

Mechanical plans call for most units to have two (2) AC units. (Water source heat pumps)

Units will have family rooms.

Large deluxe kitchens with breakfast nooks with granite and marble countertops and floors. Deluxe appliances – 42" refrigerator freezer, dishwasher, double oven, microwave, large cook top, garbage disposal, Insta-Hot, Walk in kitchen pantry and deluxe cabinets.

8 foot solid doors throughout.

Grand entry way with art galleries and marble floors.

Deluxe hardware, trim and baseboard.

Recessed lighting.

Master bath with Jacuzzi tub, his and hers sinks, separate showers with marble or slate walls, dressing vanity with marble or granite and deluxe plumbing fixtures and trim.

All bedrooms have bathrooms and walk in closets.

Pre-wired for alarm to security – service is optional.

Upgraded carpet or wood flooring (optional).

Plumbed for water softener and reverse osmosis units.

Oversized water heaters.

Laundry rooms with deluxe front-loading washer and dryer.

Powder room with ½ bath.

Large linen area cabinets.

Upgraded electrical fixtures.

All rooms wired for ceiling fans.

All rooms wired for cable TV

Cat 5 telephone and data wiring.

(Addendum B, Page 4 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

INTERIOR FEATURES (cont'd)

Internet high speed access T-1 (optional).

Select units (optional) gas fireplaces.

Built in vacuum systems

Intercom with CD player.

R-30 ceiling insulation.

R-22 exterior wall insulation.

R-50 Ceiling insulation, top three floors

All interior walls to be sound insulated.

Energy efficient – lower utility costs.

High performance dual pane deluxe windows and doors.

Windows will be sealed and designed to decrease outside noise and temperature transfer.

Large 12' x 8' windows in family view room

Large 12' x 8' bay windows in master bedroom.

(Addendum B, Page 5 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

MORE FEATURES

With the Customer in mind.....

Appliances are stainless steel and include a side by side refrigerator, dishwasher, convection oven, microwave, 30" warming drawer and a gas cook-top with down draft ventilation. Front loading washer/dryer is included.

Master bathrooms will have a 6' whirlpool tub and OVERSIZED shower with two (2) Speakman shower heads. Guest baths for most units will have a 3' shower or larger.

Mirrors above the bathroom vanity will typically be full height (up to the ceiling) with two or three lights, depending on floor plan. Bathrooms with pedestal sinks will not have a developer-supplied mirror.

Pedestal sinks are standard in Powder Rooms.

Plumbing fixtures are brass finished, as displayed in sales office.

The kitchen and bathroom cabinet finishes are available in several alternatives. Buyers choose from standard selections.

Lighting consists of recessed lights and other fixtures similar to or the same as the sales office.

The building will be wired for cable TV, multiple phones lines and high speed internet.

There is an oversized 80-gallon hot water heater for each unit.

Large walk-in-closets ideal for built-ins. Buyer is responsible for the design and construction of their own built-in and shelving.

Your Unit is sold with finished walls, with one coat of primer and painted. _____ Initial

The doors and wood trim surrounding door frames will be primed and painted. Frames are finger-jointed wood, suitable for painting, not staining. Because of the high ceilings and smooth walls (no texture), we recommend that the dry waller or painter view your unit prior to pricing if texture or smooth walls are desired.

(Addendum B, Page 6 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

UPGRADES

For which you pay a little more

Wine chillers may be available.

Several job stained hardwoods are available in a vast array of types, colors and prices.

Fireplaces are available on all floors.

Butted glass is available for most showers.

Homeowners may upgrade to a different style of carpet for an additional charge.

There is a vast selection of lighting available. (See sales office.)

Other special upgrades may be available, i.e. special stones, cabinet finishes and glass front cabinets. (See sales office)

(Addendum B, Page 7 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

The choices are yours.....

You may select from hardwood floor samples with varying stains. (See sales office)

The Kitchen Island will be slab granite. The island top is available to match you slab countertop choice. You may select from at least six (6) slab granite colors for your island kitchen counter tops. The back splash will be 12" x 12" tiles from the countertop to the bottom of the upper cabinet. Additionally, we have several granite upgrade choices for an additional cost.

You may select from various carpet styles and colors for the bedroom area. (See sales office)

You may select hard surfaces for the bathroom floors, vanities, shower and tub surround from the displays in the sales office, (i.e. marble or slate). Granite is available at an additional charge for these areas. You are allowed to mix and match these surfaces. Showers will be surfaced to the ceiling and whirlpool tubs will have a 2' high tile surround.

Pedestal sinks are available in most floor plans as an alternative selection.

****Tower Homes reserves the right to amend any feature due to necessary changes in design or construction.**

(Addendum B, Page 8 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

**AFFIDAVIT OF PURCHASER
CONDOMINIUM INFORMATION STATEMENT
SPANISH VIEW TOWER HOMES CONDOMINIUM**

STATE OF NEVADA

COUNTY OF CLARK

PURCHASER: _____

SELLER: Tower Homes, LLC

CONDOMINIUM: Spanish View Tower Homes

UNIT LEGAL DESCRIPTION: _____

PURCHASE CONTRACT DATE: _____

PURCHASE CONTRACT ADDENDUM DATE (if applicable): _____

PURPOSE: This affidavit is made for the following purposes: (i) to induce lenders to make mortgage loans in connection with the purchase of units in the Spanish View Tower Homes; (ii) to affirm Purchaser's understanding with respect to the nature and condition of the Unit; and (iii) to induce title insurance companies to issue title insurance policies on units in the Spanish View Tower Homes, knowing that the Seller, lenders, and title insurance companies will rely on the statements in this affidavit

BEFORE ME, the undersigned official, on this day appeared the above-named Purchaser, who is personally known to me, and first being duly sworn according to law upon Purchaser's oath deposed and said:

1. I am the person named above as Purchaser. I am over the age of 18 years and am fully competent to make this affidavit. I have personal knowledge of all statements, matters, and facts stated herein, and am able to swear that all are true and correct.

Affidavit of Purchaser
1 of 2

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

2. I signed the Purchase Contract to purchase the Unit located in the Spanish View Tower Homes (and Addendum to Purchase Contract, if applicable), as each is described above.

3. I received a Public Offering Information Statement from the Seller before I signed the Purchase Contract.

4. Even though I may have seen or been shown a furnished model, a Unit maintained by the Seller as a sales office, or a "typical unit" which has been newly decorated, I have received no promise or representation from the Seller or any of its representatives that I will receive as part of my purchase any such decorations or furnishings, except as completed in the Unit purchased by me.

5. I am purchasing the Unit for my own personal use, for residential and approved purposes, and, in purchasing the Unit, I have not sought out, nor am I relying upon, the skill or judgment of the Seller nor its representatives in advising me as to the suitability of the Unit for any particular commercial use or other purpose for which I am purchasing it.

6. I ☐ am ☐ not purchasing the Unit for my own occupancy. If the Unit is for my own occupancy, it will be my ☐ primary ☐ secondary home.

Name: _____

Name: _____

Signed and sworn to before me, the undersigned authority, on this ____ day of _____, 2005
by _____.

Notary Public of Nevada

Affidavit of Purchaser
2 of 2

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

EXHIBIT G

EXHIBIT G

FAX TRANSMISSION SHEET

**NITZ, WALTON & HEATON, LTD.
601 SOUTH TENTH STREET, SUITE 201
LAS VEGAS, NEVADA 89101**

W. OWEN NITZ
JAMES H. WALTON
WILLIAM H. HEATON
ASHLEY E. NITZ
STACEY K. NITZ-ALBREGTS
JAMES A. FONTANO

TELEPHONE
(702) 474-4004

TELECOPIERS
(702) 384-3011
(702) 387-7897

Date: August 23, 2006
To: Rodney Yanke
From: William H. Heaton, Esq.
Fax No.: (702) 739-7431
Subject: Robert and Ann Mueller

You should receive 5 pages (including this cover sheet).

COMMENTS:

Please see attached letter of August 23, 2006 and enclosure.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL, INTENDED ONLY FOR THE USE OF THE DESIGNATED RECIPIENT NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE (ABOVE-LISTED), AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE-LISTED ADDRESS VIA UNITED STATES POSTAL SERVICE. THANK YOU.

LAW OFFICES
NITZ, WALTON & HEATON, LTD.

601 SOUTH TENTH STREET, SUITE 201
LAS VEGAS, NEVADA 89101

W. OWEN NITZ
JAMES H. WALTON
WILLIAM H. HEATON
ASHLEY E. NITZ
STACEY K. NITZ-ALBRECHT
JAMES A. FONTANO

TELEPHONE
(702) 474-4004

TELECOPIERS
(702) 384-3011
(702) 387-7897

Email: wll@nwhltd.com

August 23, 2006

Via Facsimile

Fax No.: (702) 739-7431

Mr. Rodney C. Yanke
Tower Homes, LLC
8337 W. Sunset Road, Suite 300
Las Vegas, Nevada 89113

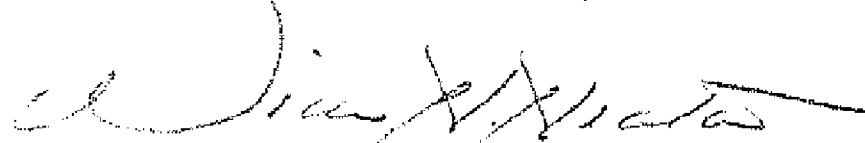
Re: Robert and Ann Mueller

Dear Rod:

Enclosed for your review and file is a copy of correspondence dated August 23, 2006 that I received from the Mueller's counsel, Paul Connaghan. After you have had an opportunity to review the enclosure, please give me a call.

Sincerely,

NITZ, WALTON & HEATON, LTD.



William H. Heaton

WHH:cmj
Enclosure

DEANER, DEANER, SCANN, MALAN & LARSEN
Attorneys at Law

Charles W. Deaner
J. Douglas Deaner (1944-1990)
Susan Williams Scann
Douglas R. Malan
Brent A. Larson

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Telephone (702) 382-6911
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www.ddsmllaw.com

Anthony Ciulla
Lawrence E. Kulp, Jr.
Paul R. Connaghan

August 23, 2006

*Via Fax - 387-7897
and First Class Mail*

Tower Homes, LLC &
Rodney C. Yanke, Managing Member
c/o William H. Heaton, Esq.
Nitz, Walton & Heaton
601 South Tenth Street, Suite 201
Las Vegas, NV 89101

RE: Mueller, Robert & Ann - vs - Tower Homes, LLC, aka Spanish View Tower Homes ("SVT")

Dear Will:

Thank you for your letter dated August 18, 2006. We appreciate your suggestion that the parties and their counsel think outside the "box" to gain the return of the Muellers' deposit of \$219,000.00. In that spirit, and in order to assist us in crafting a resolution, please note the Muellers' requests, below, in italics.

SVT's Contract with the Muellers states that SVT delivered a Public Offering Statement ("POS") to the Muellers. Presently, the Muellers do not have the POS. *Please immediately provide a copy of the POS, if and as it existed when the Muellers' signed the Contract on July 12, 2005, as well as copies of any and all attachments, and any and all amendments.*

Please let us know if and when SVT recorded a declaration (CC & Rs) and a final condominium map for the project.

Because the offering by SVT involves a POS, the Muellers are entitled to considerable transparency from SVT at least pursuant to Nevada Revised Statutes (NRS) Chapter 116, and Nevada Administrative Code (NAC) Chapter 116. The straightforward requests for information the Muellers made, by way of my letter to you as SVT's counsel, are reasonable and consistent with the their rights under NRS and NAC Chapter 116, particularly regarding their \$219,000.00 deposit. SVT could give the Muellers great comfort in the form of hard proof showing that their \$219,000.00, and all other Buyers' deposits, are being handled in accordance with NRS

William H. Heaton, Esq.
August 23, 2006
Page No. 2

116.411(1). Unfortunately, and contrary to NRS 116.411(1), I am informed that Mr. Yanke told the Muellers more than once that he put their \$219,000.00 in a London bank, but would not disclose which one. As such, Mr. Yanke made it appear as though he embezzled and/or misappropriated the money, and gave rise to our threat of criminal charges should Mr. Yanke not simply and properly account for the \$219,000.00. (NRS 205.320 does not apply to or prohibit such a threat.)

In an apparent effort to reassure the Muellers, you claim that their \$219,000.00 is on deposit with Business Bank of Nevada, and offer your client's sworn statement as proof. *It would be a step in the right direction, along the lines you proposed, to have Mr. Yanke swear, under oath, that the Muellers' \$219,000.00 and all other Buyer deposits have always been handled and are being handled in accordance with NRS 116.411(1), and all deposits remain on deposit with Business Bank of Nevada. Send the sworn statement to this office.*

Assuming SVT is as confident as you represent in its ability to timely deliver the unit within 2 years (in the face of the project's lack of progress and extraordinary cash outlay -- which you estimated at \$50 million to \$60 million, and its lien claims -- which you said were about another \$60 million) then SVT should happily reassure Buyers by responding to reasonable requests for information such as the Muellers'.

However, *assuming Mr. Yanke and SVT still refuse to disclose the information we requested in my August 11 letter, please suggest (in the spirit of thinking outside the "box", and in addition to the sworn statement from Mr. Yanke) an alternative to give the Muellers the hard proof that their entire \$219,000.00 and all other Buyer deposits have at all times been handled and are being handled in accordance with NRS 116.411(1), and remain on deposit with Business Bank of Nevada.*

Note that NRS 116.411(1) does not permit SVT or Mr. Yanke to borrow and place a lien against the Buyer's deposits. NRS 116.411(1) provides as follows:

1. Except as otherwise provided in subsections 2 and 3, a deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 *must* be placed in escrow and held either in this State or in the state where the unit is located in an account designated *solely for that purpose* by a licensed title insurance company, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until:

(a) Delivered to the declarant at closing;
(b) Delivered to the declarant because of the purchaser's default under a contract to purchase the unit;
(c) Released to the declarant for an additional item, improvement, optional item or alteration, but the amount so released:

(1) Must not exceed the lesser of the amount due the declarant from the purchaser at the time of the release or the amount expended by the declarant for the purpose; and

William H. Heaton, Esq.
August 23, 2006
Page No. 3

- (2) Must be credited upon the purchase price; or
(d) Refunded to the purchaser. (Emphasis added.)

Any provision contrary to NRS 116.411 in SVT's Contract with the Muellers is void as a matter of law. *Accordingly, we object to, reject and do not recognize any lien upon the Muellers' \$219,000.00 deposit, and hereby demand that you immediately pass this on to any and all present or prospective lenders who claim or may claim a security interest in the Muellers' \$219,000 deposit. If there are any such lenders, other than Business Bank of Nevada, please inform us of their names and addresses.*

You have suggested that the Muellers attempt to resell the unit or assign the Contract. *Without analyzing the information we request by way of this letter, it is premature for the Muellers to consider or agree to anything other than the assignment of the Contract to SVT, in exchange for the return of their \$219,000.00 deposit, plus interest and attorney fees.*

(Note that we are providing copies of this letter, your letter to me dated August 18, 2006, and my letter and enclosures dated August 11, 2006, to Business Bank of Nevada, the Nevada Real Estate Division, Attorney General's office, and U.S. Department of Housing and Urban Development – hereby urging the Division, the Attorney General's office and HUD to investigate SVT's offering, to take any action they deem fit and to re-examine the exemptions SVT claimed under NRS Chapter 119 and 15 U.S.C. 1701, et seq.)

We urge your and SVT's forthright and good faith reply to this letter on or before August 30, 2006. The Muellers reserve all rights and waive none at law and in equity.

Very truly yours,

DEANER, DEANER, SCANN
MALAN & LARSEN


Paul R. Connaghan, Esq.

PRC: pc
enclosures

cc. Gail Anderson, Real Estate Administrator, Nevada Real Estate Division
Department of Housing and Urban Development, Richard K. Rainey, Regional Director
Nevada Attorney General's Office, Bureau of Consumer Protection

TRANSMISSION VERIFICATION REPORT

TIME : 08/23/2006 15:43
NAME : NITZ, WALTON & HEATON
FAX : 7023877897
TEL : 7024744004
SER.# : BROF3J505573

DATE, TIME	08/23 15:42
FAX NO./NAME	7397431
DURATION	00:00:54
PAGE(S)	05
RESULT	OK
MODE	STANDARD ECM

FAX TRANSMISSION SHEET

NITZ, WALTON & HEATON, LTD.
601 SOUTH TENTH STREET, SUITE 201
LAS VEGAS, NEVADA 89101

W. OWEN NITZ
JAMES H. WALTON
WILLIAM H. HEATON
ASHLEY E. NITZ
STACEY K. NITZ-ALBREGTS
JAMES A. FONTANO

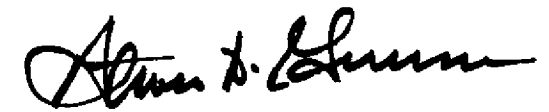
TELEPHONE
(702) 474-4004

TELECOPIERS
(702) 384-3011
(702) 387-7897

Date: August 23, 2006
To: Rodney Yanke
From: William H. Heaton, Esq.
Fax No.: (702) 739-7431
Subject: Robert and Ann Mueller

You should receive 5 pages (including this cover sheet).

COMMENTS:



CLERK OF THE COURT

OPPS
DENNIS M. PRINCE
Nevada Bar No. 5092
ERIC N. TRAN
Nevada Bar No. 11876
PRINCE & KEATING
3230 South Buffalo Drive
Suite 108
Las Vegas, Nevada 89117
Telephone: (702) 228-6800
Facsimile: (702) 228-0443
E-Mail: DPrince@PrinceKeating.com
ETran@PrinceKeating.com
Attorney for Plaintiffs
Tower Homes, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TOWER HOMES, LLC, a Nevada limited liability
company;

Plaintiff,

vs.

WILLIAM H. HEATON, individually;
NITZ, WALTON & HEATON, LTD., a domestic
professional corporation; and DOES I through X,
inclusive,

Defendants.

CASE NO.: A-12-663341-C
DEPT. NO.: XXVII

Date of Hearing: 09/20/12
Time of Hearing: 10:00 a.m.

TOWER HOMES, LLC's OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS OR IN THE ALTERNATIVE, MOTION
FOR SUMMARY JUDGMENT

Plaintiff Tower Homes, LLC, by and through their attorneys of record, Prince & Keating,
hereby submits this Opposition to Defendants William H. Heaton and Nitz, Walton & Heaton,
Ltd.'s Motion to Dismiss, or in the alternative, Motion for Summary Judgment.

1
2 This Opposition is made and based upon the papers and pleadings on file, the attached
3 Memorandum of Points and Authorities, and the arguments of counsel that may be entertained at
4 the date and time of the hearing of this Motion.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 **Background**

8
9 This is a legal malpractice action arising out of the failure of attorney William Heaton
10 (“Heaton”), and the law firm of Nitz, Walton & Heaton, Ltd. (“NWH”) (collectively referred to as
11 “Defendants”) to properly provide legal services to their clients Rodney C. Yanke (hereinafter
12 “Yanke”) and Tower Homes, LLC (“Tower”) in the drafting of Purchase Contracts for the sale of
13 condominium units in compliance with Nevada law.
14

15 Yanke is a licensed contractor in the State of Nevada who invested and developed real
16 property in and around Clark County, Nevada. On or about April 3, 2004, at the request of Yanke,
17 NWH caused or assisted in the formation of Tower Homes, LLC (“Tower”). Yanke was the
18 managing member of Tower. At that time, Yanke informed Heaton and NWH of his intent to
19 construct a residential common interest ownership project known as Spanish View Towers
20 Project (hereinafter referred to as the “Project”). Yanke, in his capacity as the manager of Tower,
21 informed Heaton and NWH that the Project was to consist of three 18 story condominium towers
22 combining for a total of 405 units located generally at the southwest corner of Interstate 215 and
23 south Buffalo Drive in Las Vegas, Nevada.
24

25 In addition to other legal services, Yanke requested that Heaton and NWH draft Purchase
26 Contracts for the sale of the individual condominium units. See Purchase Contract attached hereto
27 as **Exhibit A**. Prior to and during the initial phases of construction, Tower marketed the
28

1 individual units for sale to members of the public prior to the completion of construction.
2
3 Accordingly, Tower entered into written Purchase Contracts with numerous individual investors
4 (collectively referred to as the "Tower Homes Purchasers") prior to the completion of
5 construction. Each purchase was to give Tower a significant earnest money deposit. The
6 agreement between Tower and the Tower Home Purchasers called for the Project to be completed
7 within two years of the date of the Purchase Contract.
8

9 Unfortunately, there was insufficient financing available for the Project's completion and
10 thus, the Project failed. As a result of the Project's failure, there were over twenty five million
11 dollars in mechanic's lien filed for the work on the Project. In addition, many of the Tower
12 Homes Purchasers lost millions of dollars of their money deposits.
13

14 **Defendants Heaton and NWH's Duties to Tower**

15 Heaton and NWH were obligated to properly advise Tower of all applicable legal
16 requirements concerning the sale of the individual units, including the applicability of Chapter
17 116 of the Nevada Revised Statutes. Heaton and NWH knew that the Purchase Contracts they
18 drafted would be utilized by Tower for the sale of the individual units. Heaton and NWH also
19 knew that each pre-construction purchaser would be required to put up a substantial earnest
20 money deposit toward the purchase price of the individual unit.
21

22 Heaton and NWH knew that Tower had a legal obligation to each individual purchaser to
23 properly safeguard the earnest money deposits from mismanagement, theft or unlawful use as
24 required by Chapter 116 of the Nevada Revised Statutes. However, despite Heaton and NWH's
25 legal obligations, Heaton and NWH failed to properly advise Tower pursuant to NRS 116.411
26 that the earnest money deposits were required to be held by a third party and could only be
27 released for very limited purposes as allowed by the statute. In addition, Heaton and NWH drafted
28

1
2 the Purchase Contracts in specific contravention of the strict requirements of NRS 116.411 which
3 is designed for the protection of purchasers of common interest units such as the Project.

4 Based on the manner in which Heaton and NWH drafted the contracts, Tower was in
5 violation of NRS 116.411. In addition, by reason of the failure to properly advise Tower and draft
6 contracts in strict accordance with NRS 116.411, Heaton and NWH created the risk that the
7 earnest money deposits would be used for unlawful purposes to the detriment of Tower, Yanke,
8 and others affiliated with Tower and Yanke.

9
10 **The Underlying Litigation**

11 As a result of Heaton and NWH's failure to satisfy their legal obligations and duties to
12 Tower and Yanke, on or about May 23, 2007, certain Tower Homes Purchasers filed a Complaint
13 in the Eighth Judicial District Court, in Gaynor, et. al v. Tower Homes, LLC, et al., Case No.
14 A541668 against Tower, Yanke, and other Defendants including Prudential Real Estates
15 Affiliates, Inc., Mark L. Stark, Jeanine Cutter, and David Berg seeking the return of their earnest
16 money deposits. See Exhibit B. On or about October 23, 2007, the Tower Homes Purchasers
17 filed a First Amended Complaint naming additional Tower Homes Purchasers who entered into
18 the Purchase Contract with Tower, Yanke, and the other defendants seeking return of the earnest
19 money deposits. See Exhibit C. On or about March 31, 2009, Tower Homes Purchasers filed a
20 Second Amended Complaint once again naming additional individual Tower Homes Purchasers.
21 See Exhibit D.

22
23
24 **The Bankruptcy Proceeding**

25 On May 31, 2007, Bankruptcy proceedings in the United States Bankruptcy Court in the
26 District of Nevada pursuant to Chapter 11 of the United States Bankruptcy Code were initiated
27 against Tower. Among Tower's creditors were the individual Tower Home Purchasers. The
28

1 Tower Homes Purchasers collectively filed Proofs of Claims totaling \$3,560,000.00. There was
2 no timely objection to the amount of the Tower Purchasers Proofs of Claims. William A.
3 Leonard, Jr. is the post-confirmation Chapter 11 Trustee of the Tower bankruptcy estate. On
4 December 8, 2008, the Bankruptcy Court entered an "Order approving Disclosure Statement and
5 Confirming Plan of Reorganization." See **Exhibit E**.
6

7
8 During the bankruptcy proceeding, the Bankruptcy Court entered an "Order Granting
9 Motion to Approve Stipulation to Release Claims and Allow Marquis & Aurbach, as Counsel for
10 the Tower Homes Purchasers, To Pursue Claims on Behalf of Debtor" (herein after referred to as
11 the "Marquis Aurbach Order" attached hereto as **Exhibit F**). Pursuant to the Marquis Aurbach
12 Order, the Trustee, the law firm Marquis Aurbach Coffing, as well as the Tower Homes
13 Purchasers stipulated to release and assign certain claims of the debtor (Tower) and to allow
14 Marquis Aurbach Coffing, as counsel for the Tower Homes Purchasers, to pursue claims on
15 behalf of the debtor for the benefit of the Tower Homes Purchasers. Id. In particular, pursuant to
16 the Marquis Aurbach Order, Marquis Aurbach Coffing and the Trustee signed and agreed to allow
17 Marquis Aurbach Coffing, as counsel for the Tower Purchasers to pursue any and all claims on
18 behalf of the debtor against any individual or entity who may have any liability owed to the debtor
19 or others for the loss of the earnest money deposits provided by the purchasers of the units at
20 Spanish View and the Project. Id.
21

22 **The Settlement of the Underlying Litigation**

23 The trial in Gaynor, et. al v. Tower Homes, LLC, et. al was scheduled to commence on
24 May 9, 2011. In advance of the trial, a settlement agreement was reached between the Tower
25 Home Purchasers and Yanke, individually. On or about May 2, 2011, a Stipulation to Entry of
26 Order Granting Judgment Against Rodney C. Yanke and Dismissing Claims Against Rodney C.
27
28

1 Yanke was entered in Case No. A541668. See Exhibit G. As part of the Tower Homes
2 Purchasers' settlement with Yanke, the parties stipulated that the total sum of \$1,000,000.00
3 would be entered in favor of the Tower Homes Purchasers. Id. Despite this settlement, Yanke has
4 been unable to satisfy any amount of the \$1,000,000.00 judgment against him. In addition, on July
5 5, 2011, the Tower Homes Purchasers entered into a Stipulation and Order for Dismissal with
6 Prejudice with Mark L. Stark, Jeannine Cutter, and David Berg. See Stipulation and Order for
7 Dismissal with Prejudice attached hereto as **Exhibit H.** As part of Tower Homes Purchasers'
8 settlement with Mark L. Stark, Jeannine Cutter, and David Berg, all parties agreed that claims
9 asserted against Mark L. Stark, Jeannine Cutter, and David Berg be dismissed with Prejudice and
10 each party to bear their own attorneys' fees and costs. Id. Notably, Mark L. Stark, Jeannine Cutter,
11 and David Berg did not satisfy the entire balance of the earnest deposit monies owed to the Tower
12 Homes Purchasers.
13
14
15

16 **The Present Legal Malpractice Action**

17 On June 12, 2012, Plaintiff Tower filed this instant action against Defendants Heaton and
18 NWH alleging claims for legal malpractice and breach of fiduciary duty. On July 19, 2012,
19 Defendants filed their Motion to Dismiss, or in the alternative, Motion for Summary Judgment.
20 Because Defendants' Motion is without merit, Defendants' Motion must be denied.
21

22 **II. LEGAL ARGUMENT**

23 **A. LEGAL STANDARD FOR MOTIONS FOR SUMMARY JUDGMENT**

24 In ruling on a Motion to Dismiss for failure to state a claim, the court may take into
25 account any exhibits attached to the complaint and matters in the record. Breliant v. Preferred
26 Equities Corp., 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). However, when other "matters
27 outside the pleadings are presented to and not excluded by the court, a Motion to Dismiss
28

1
2 pursuant to NRCP 12(b)(5) shall be treated as one for summary judgment.” NRCP 12(b).

3 In this case, while Defendants titled their Motion as “Motion to Dismiss, or in the
4 alternative, Motion for Summary Judgment,” because Defendants are requesting that this Court
5 consider matters outside the pleadings including the Purchase Contract, previous Orders from the
6 United States Bankruptcy Court, transcripts from the 2004 Examination of Yanke, and other
7 numerous correspondences, Defendants are essentially filing a Motion for Summary Judgment
8 and thus, this Court should treat Defendants’ Motion as a Motion for Summary Judgment.
9 See Linthicum v. Rudi, 122 Nev. 1452, —, 148 P.3d 746, 748 (2006) (reviewing a motion to
10 dismiss as a motion for summary judgment because the district court considered matters outside
11 the parties’ pleadings, such as a guardianship order).

12
13 Summary judgment is appropriate when the pleadings and other evidence in the record
14 demonstrate that there is no genuine issue of material fact, and that the moving party is entitled to
15 judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031
16 (2005); NRCP 56(c). Under NRCP 56, the burden of proving that there is no genuine issue of
17 material fact lies with the moving party. Maine v. Stewart, 109 Nev. 721, 726–27, 857 P.2d 755,
18 758 (1993). A factual dispute is genuine when the evidence is such that a rational trier of fact
19 could return a verdict for the nonmoving party. Wood, 121 Nev. at 729, 121 P.3d at 1029.
20 “[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences
21 drawn from it, must be viewed in a light most favorable to the nonmoving party.” Id.

22
23 Defendants assert two arguments as to why this Court should grant their Motion for
24 Summary Judgment. First, Defendants argue that Tower lacks the capacity to bring this action
25 based on federal law and the orders entered in the bankruptcy proceedings. Second, Defendants
26 argue that this action is barred by the statute of limitations. However, taking all inferences in
27
28

1
2 favor of Plaintiff, Plaintiff does in fact have standing to bring this legal malpractice lawsuit and
3 Plaintiff's claim is not barred by the statute of limitation. As such, Defendants' Motion for
4 Summary Judgment is without merit and must be denied.

5 **B. TOWER DOES IN FACT HAVE CAPACITY TO BRING THIS ACTION**
6 **AGAINST DEFENDANTS**

7 Federal Bankruptcy law is clear that when a bankruptcy petition is filed, an "estate" is
8 created, consisting of all of the debtor's interests, both legal and equitable, in all property, both
9 tangible and intangible. Suter v. Goedert, 396 B.R. 535, 541 (D.Nev. 2008) (citations omitted).
10 The bankruptcy trustee is required to marshal all of the estate's property for the estate's benefit. In
11 re Mwangi, 473 B.R. 802, 808 (D.Nev. 2012) (citing 11 U.S.C. § § 541(a)). Property of
12 the bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the
13 commencement of the case." Id. The trustee becomes the representative of the estate, and the
14 debtor has an obligation to surrender all property to the trustee. Id.

15
16 Consistent with federal Bankruptcy law, on or about December 8, 2008, the Bankruptcy
17 Trustee filed an "Order Approving Disclosure Statement and Confirmation Plan of
18 Reorganization" ("Plan Confirmation"). See Exhibit E. Specifically, the Plan Confirmation Order
19 states in pertinent part as follows,
20

21 [T]he Trustee and the Estate shall retain all claims or Causes of Action that they
22 have or hold against any party, including against "insiders" of the Debtor (as that
23 term is Defined in Section 101(31) of the Bankruptcy Code), whether arising pre-
24 or post-petition, subject to applicable state law statutes of limitation and related
25 decisional law, whether sounding in tort, contract, or other theory or doctrine of
26 law or equity. Confirmation of the Plan effects no settlement, compromise, waiver
27 or release of any Cause of Action unless the Plan or Confirmation Order
28 specifically and unambiguously so provide. The non disclosure or nondiscussion
of any particular Cause of Action is not and shall not be construed as a settlement,
compromise, waiver or release of such Cause of Action. Upon the Effective Date,
the Trustee will be designated as representatives of the Estate under section
1123(b)(3) of the Bankruptcy code and shall, except otherwise provided herein,
have the right to assert any or all of the above Causes of Action post-confirmation

1
2 in accordance with applicable law.

3 Id.

4 As stated above, pursuant to the Plan Confirmation Order, the Trustee and the Estate
5 retained all claims that they had against any parties and have the right to assert any future
6 potential causes of action.
7

8 Thereafter, on June 3, 2012, the Trustee issued an "Order Granting Motion to Approve
9 Stipulation to Release Claims and Allow Marquis Aurbach, as Counsel for the Tower Homes
10 Purchasers, to Pursue Claims on behalf of the Debtor" ("Marquis Aurbach Order"). The Marquis
11 Aurbach Order states in pertinent part as follows,
12

13 1) **The Trustee has determined that he does not intend, and in any event, does not**
14 **have sufficient funds in the Estate to pursue claims on behalf of the Debtor** against
15 Rodney C. Yanke, Americana LLC dba Americana Group, Mark L. Stark, Jeannine
16 Cutter, David Berg, Equity Title of Nevada, LLC or any other individual or entity later
identified through discovery which has or may have liability to Debtor or others for the
loss of the earnest money deposit provide by purchasers for units in the Spanish View
Tower Homes condominium project.

17 3) **The Trustee hereby stipulates and agrees to release to the Tower Homes**
18 **Purchasers any and all claims on behalf of the Debtor** against Rodney C.
19 Yankee, Americana [,]LLC dba Americana Group, Mark L. Stark, Jeanine Cutter,
20 David Berg, Equity Title of Nevada, LLC or any other individual or entity later
21 identified through discovery which has or may have any liability or owed any duty
22 to Debtor or others for the loss of the Tower Homes Purchasers earnest money
deposits and all claims to any and all earnest money deposits provided by
purchasers for units in the Spanish View Tower Homes condominium project.

23 4) **The Trustee hereby stipulates and agrees to allow Marquis & Aurbach**, as
24 counsel for the Tower Homes Purchasers, **to pursue any and all claims on**
25 **behalf of the Debtor** against Rodney C. Yanke, Americana LLC dba Americana
26 Group, mark l. Start, Jeannine Cutter, David berg, Equity Title of Nevada, LLC **or**
27 **any other individual or entity later identified through discovery which has or**
may have any liability or owed any duty to Debtor or others for the loss earnest
money deposits provided by purchaser for units in the Spanish View Towers
Homes condominium project.

28 5) **The Trustee hereby stipulates and agrees to allow Marquis & Aurbach**, as
counsel for the Tower Homes Purchasers, to recover any and all earnest monies

1
2 deposits, damages, attorneys fees and costs, and interest thereon on behalf of the
3 Debtor and the Tower Homes Purchasers with respect to those claims released to
the Tower Homes Purchasers herein.

4 See Exhibit F.

5 As emphasized above, the Trustee released/abandoned his right to pursue claims on behalf
6 of the Debtor (Tower). In particular, the Trustee released to the Tower Homes Purchasers all
7 claims on behalf of Tower against third parties who may have been liable to Tower for lost of the
8 Tower Homes Purchasers' earnest deposit monies . Further, the Trustee agreed to allow Tower
9 Homes Purchasers' counsel, Marquis & Aurbach, to pursue all claims on behalf of Tower for the
10 benefit of the Tower Homes Purchasers.
11

12 With this framework in mind, Defendants argue that federal Bankruptcy law, the Plan
13 Confirmation Order, and the Marquis Aurbach Order does not authorize Tower to bring this
14 action against Defendants. Specifically, Defendants first argue that because the Marquis Aurbach
15 Order above expressly "released" all claims to the Tower Homes Purchasers, and not to Tower,
16 the Marquis Aurbach Order does not authorize Tower to file this action. Essentially, Defendants
17 argue that Tower is not the proper plaintiff in this legal malpractice litigation and instead, the
18 Tower Homes Purchasers are the proper plaintiff to this litigation. This argument is baseless and
19 must be rejected.
20
21

22 **1) Tower is the Proper Plaintiff is This Legal Malpractice Action because**
23 **Tower is The Only Entity That Had an Attorney Client Relationship with**
24 **Defendants.**

25 As an initial matter, it must be clearly stated that pursuant to the Marquis Aurbach Order,
26 the Trustee chose to release/abandon its right to pursue claims on behalf of the Debtor (Tower)
27 for the specific benefit of the Tower Homes Purchasers. Stated differently, the Marquis Aurbach
28 Order simply allowed claims held by Tower against third parties would remain for the benefit of

1 the Tower Homes Purchasers as it relates to the earnest money deposits. Thus, while the Marquis
2 Aurbach Order did release the rights to the legal malpractice claim to the Tower Homes
3 Purchasers, Tower is still the proper Plaintiff in this legal malpractice action against Defendants.
4 In fact, **Tower is the only entity with standing to pursue this legal malpractice action against**
5 **Defendants** because Tower is the entity that had an attorney-client relationship with Defendants.
6

7
8 As the Court is aware, to assert a legal malpractice claim, a plaintiff must prove the
9 following five elements: (1) an attorney-client relationship; (2) a duty owed to the client by the
10 attorney to use such skill, prudence, and diligence as lawyers of ordinary skill and capacity
11 possess in exercising and performing the tasks which they undertake; (3) a breach of that duty; (4)
12 the breach being the proximate cause of the client's damages; and (5) actual loss or damage
13 resulting from the negligence. Day v. Zubel, 112 Nev. 972, 976, 922 P.2d 536, 538 (1996).
14

15 An attorney-client relationship exists when (1) a person seeks advice or assistance from an
16 attorney, (2) the advice or assistance sought pertains to matters within the attorney's professional
17 competence, and (3) the attorney expressly or impliedly agrees to give or actually gives the
18 desired advice or assistance. Todd v. State, 113 Nev. 18, 24, 931 P.2d 721, 725 (1997). An
19 attorney-client relationship does not require the parties to execute a formal agreement. Williams
20 v. Waldman, 108 Nev. 466, 471, 836 P.2d 614, 618 (1992). Instead, an attorney-client
21 relationship can even arise from a contract, whether written or oral, implied or expressed. Purdy
22 v. Pacific Auto. Ins. Co., 57 Cal. App. 3d 59, 75, 203 Cal. Rptr. 524, 533 (Cal. App. 2 Dist.
23 1984).
24

25 In this case, an attorney-client relationship clearly existed between Tower and Defendants
26 and not between the Tower Homes Purchasers and Defendants. As previously discussed,
27 Defendants were retained to assist in the formation of Tower and to provide other legal services,
28

1 including drafting Purchase Contracts for the individual units. Once Defendants explicitly
2 accepted the representation of Tower, Defendants had the duty to advise Tower that Tower had a
3 legal obligation to each individual purchaser to properly safeguard the earnest money deposits
4 from mismanagement, theft or unlawful use as required by Chapter 116 of the Nevada Revised
5 Statutes. Because there was clearly an attorney-client relationship between Tower and
6 Defendants, Tower is the only entity with standing to pursue this claim for legal malpractice
7 against Defendants. Thus, Tower is the proper named plaintiff in this action.¹

8
9
10 Consistent with the Marquis Aurbach Order, if Tower is successful in this legal
11 malpractice action, Tower will not be the recipient of any award of damages. Instead, any award
12 of damages will be for the benefit of the Tower Homes Purchasers pursuant to the Marquis
13 Aurbach Order.

14
15 **2) The Law Firm of Prince & Keating can Bring This Legal Malpractice Action**
16 **Against Defendants On Behalf of Tower Because Marquis Aurbach**
17 **Associated the Law Firm of Prince & Keating into This Litigation.**

18 Second, Defendants argue that because the Marquis Aurbach Order only authorizes the
19 law firm of Marquis Aurbach to bring this action, and because the law firm Prince & Keating
20 actually brought this action instead on behalf of Tower, Tower somehow does not have standing.
21 This argument is baseless because while the Marquis Aurbach Order specifically states that the
22 law firm of Marquis Aurbach is allowed to pursue all claims on behalf of Tower, the law firm of
23 Marquis Aurbach associated the law firm of Prince & Keating in pursuing this legal malpractice
24 action against Defendants. See Affidavit of Dennis M. Prince attached hereto as **Exhibit I**.
25 Specifically, the Marquis Aurbach law firm represented the Tower Homes Purchasers in the
26

27
28 ¹ Notably, had the Tower Homes Purchasers been named as the Plaintiffs in this action, surely Defendants will assert
that the Tower Homes Purchasers lacked standing to pursue a legal malpractice action against Defendants because
there was clearly no attorney- client relationship between Tower Homes Purchasers and Defendants.

1
2 underlying litigation. Thus, because there were concerns that members of the Marquis Aurbach
3 law firm may be called as potential witnesses in this instant litigation which would inhibit
4 Marquis Aurbach's ability to prosecute this case, Marquis Aurbach associated the law firm of
5 Prince & Keating as lead counsel to conduct the litigation and trial of this case. Consequently, the
6 fact that the law firm of Prince & Keating have brought this action on behalf of Tower is
7 immaterial as to whether Tower has standing to bring this present action against Defendants.
8

9 **3) The Marquis Aurbach Order Provided an Illustrative List of People and**
10 **Entities That May Have Liability or Duties Owed to Tower and Was Not**
11 **Meant to Be an Exclusive List.**

12 Third, Defendants argue that even if the Marquis Aurbach Order did authorize Tower to
13 pursue this instant action, the Marquis Aurbach Order still only authorizes actions against the
14 expressly enumerated individuals and entities, as well as "any other individuals or entity later
15 identified through discovery which has or may have any liability or owed any duty to Debtor or
16 others for the loss of the Tower Homes Purchasers earnest money deposit." Thus, Defendants
17 argue that because at the time of the June 3, 2010 Marquis Aurbach Order, both the Tower Homes
18 Purchasers and the Marquis Aurbach law firm undisputedly knew that NWH represented Tower
19 in connections with the preparation of the contracts for the Project, NWH cannot be considered an
20 individual or entity "**later identified through discovery**" under the Marquis Aurbach Order.
21

22 Defendants' argument is entirely without merit as it is a desperate attempt to arbitrarily
23 restrict the scope of the Marquis Aurbach Order by implying that the Marquis Aurbach Order
24 provides an exhaustive list of individuals or entity which Tower may pursue claims against.
25 Defendants' interpretation of the language of the Marquis Aurbach Order is clearly erroneous.
26 Contrary to Defendants' assertion, the language of the Marquis Aurbach Order was meant to be
27 expansive, not restrictive. Specifically, the language of the Marquis Aurbach Order merely
28

1 provided an illustrative list of people and entities in which Tower may bring claims against and
2 was never meant to be interpreted as an exhaustive list. As such, the statement individual or entity
3 “**later identified through discovery**” under the Marquis Aurbach Order clearly also applies to
4 Defendants Heaton and NWH.
5

6 **C. TOWER’S LEGAL MALPRACTICE ACTIONS IS NOT BARRED BY THE**
7 **STATUTE OF LIMITATIONS PURSUANT TO NRS 11.207(1)**

8 NRS 11.207 (1) which governs the statute of limitation in legal malpractice actions
9 states in pertinent part as follows,
10

- 11 1. An action against an attorney or veterinarian to recover damages for
12 malpractice, whether based on a breach of duty or contract, must be
13 commenced within 4 years after the plaintiff sustains damage or within 2
14 years after the plaintiff discovers or through the use of reasonable
15 diligence should have discovered the material facts which constitute the
16 cause of action, whichever occurs earlier.

17 NRS 11.207 (1).

18 The statute of limitations in NRS 11.207(1) does not commence to run against a cause of
19 action for attorney malpractice until the conclusion of the underlying litigation wherein the
20 malpractice allegedly occurred. Kopicko v. Young, 114 Nev. 1333, 1338, 971 P.2d 789, 791-
21 792 (1998) (citing K.J.B., Inc. v. Drakulich, 107 Nev. 367, 370, 811 P.2d 1305, 1306 (1991)).
22 Pursuant to NRS 11.207(1), the statute of limitations will not commence to run until the
23 plaintiff *sustains damage* as a result of the attorney's conduct because “[w]here there has been no
24 final adjudication of the client's case in which the malpractice allegedly occurred, the element of
25 injury or damage remains speculative and remote, thereby making premature the cause of action
26 for professional negligence.” Semenza v. Nevada Med. Liability Ins. Co., 104 Nev. 666, 765 P.2d
27 184 (1988) (quoting Amfac Distribution Corp. v. Miller, 138 Ariz. 155, 673 P.2d 795, 796
28 ([Ariz.Ct.App.] 1983).

As an initial matter, because Defendants’ Motion must be treated as a Motion for

1
2 Summary Judgment, and because the question of whether or not Tower should have discovered
3 facts constituting the legal malpractice action is an issue of material fact, Defendants' Motion for
4 Summary Judgment must be denied. See Shinn v. Baxa Corp., 2011 WL 3419239 at *2 (D.Nev.
5 2011) (internal citations omitted) (stating that the question of whether plaintiff should have
6 discovered the breach of contract in 2003 or at a later date, presents a genuine issue of material
7 fact); see also Siragusa v. Brown 114 Nev. 1384, 1393, 971 P.2d 801, 807 (1998) (stating when
8 the plaintiff knew or in the exercise of proper diligence should have known of the facts
9 constituting the elements of [a conspiracy] cause of action is a question of fact for the trier of
10 fact."); see also Doyle v. Ripplinger, 2010 WL 3515601 at *1 (Nev. 2010) (concluding that that
11 appellants adequately established a material question of fact concerning when they knew
12 sufficient facts to be put on "inquiry notice" to commence the statute of limitations period).

13
14
15 **1) The Two Year Prong Does Not Bar Tower's Legal Malpractice Action**
16 **Against Defendants.**

17 With regards to the two year prong of NRS 11.207(1) which states that the statute of
18 limitations run "2 years after the plaintiff discovers or through the use of reasonable diligence
19 should have discovered the material facts which constitute the cause of action, whichever occurs
20 earlier," one of the "material facts which constitute the cause of action" is damage to the client.
21 Kopit v. White, 131 Fed.Appx. 107, 109, 2005 WL 1127065 at *1 (9th Cir. 2005). In general,
22 damage to the client for the purpose of a legal malpractice claim occurs at the time there is an
23 adverse resolution of the underlying action that is the subject of the malpractice claim. Clark v.
24 Robison, 113 Nev. 949, 944 P.2d 788, 789-90 (1997) (per curiam). More specifically, in Kopicko
25 v. Young, the Nevada Supreme Court rejected the proposition that damages exists as soon as an
26 attorney's negligence has caused a statute of limitations problem with the underlying lawsuit.
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2 Here, Defendants contend that Tower's action is barred by the two year prong of NRS 11.
3 207 (1) because drafts of the subject Purchase Contracts containing the defective provisions were
4 delivered to Tower in November 16, 2004 and thus, Tower was appraised of the questioned
5 provisions of the Purchase Contract as of November 2004. This argument is simply baseless.
6 Even if drafts of the Purchase Contracts were sent to Tower and Yanke in November of 16,
7 2004, Yanke is not an attorney and there was no way for Tower or Yanke to know that the
8 provisions of the Purchase Contract were deficient as drafted by Defendants.
9

10 In addition, Defendants also argue that Tower also received demand letters from Paul
11 Connaghan on August 11, 2006 and on August 23, 2006 which Defendants argue that Mr.
12 Connaghan explained in detail the reasons why he felt the Purchase Contract did not comply with
13 Nevada statute and violated NRS 116.411. This argument is also plainly false.
14

15 First, the letter from Mr. Connaghan on August 11, 2006 (attached as Exhibit D to
16 Defendants' Motion) was simply a letter providing notice to Defendant Heaton that Tower was in
17 default of the Purchase Contract because Tower cannot timely construct and deliver the Units at
18 Spanish Towers. See Exhibit D to Defendants' Motion at bate NWH0647. Notably, while
19 Defendants contend that Mr. Connaghan's letter described in detail the allegations that the
20 Purchase Contract violated NRS 116.411, Defendants failed to cite to any passage of Mr.
21 Connaghan's August 11, 2006 letter that supports Defendants' argument. Instead, Mr.
22 Connaghan's letter to Tower and Defendant Heaton simply informed that Tower was in default of
23 the Purchase Contract by the failure of Tower to complete the Units within 2 years after the
24 execution of the Purchase Contract. In addition, Mr. Connaghan's letter was seeking a return of
25 the Robert and Ann Muller's² deposited earnest money of \$219,000.00. Second, the August 23,
26
27
28

² Robert and Ann Muller are individual Tower Homes Purchasers.

1
2 2006 letter from Mr. Connaghan did not explain why the Purchase Contract did not comply with
3 Nevada Statute or why the Purchase Contract violated NRS 116.411. Rather, in the August 23,
4 2006 letter, Mr. Connaghan simply alleged that Yanke may be in violation of NRS 116.411. See
5 Exhibit G attached to Defendants' Motion. Thus, these letters from Mr. Connaghan did not
6 provide Tower or Yanke with notice that the Purchase Contracts violated NRS 116.411.
7

8 Further, Defendants argue that in Yanke's Rule 2004 examination conducted on October
9 3, 2007, Yanke was questioned repeatedly concerning the Purchase Contract by the Tower Homes
10 Purchasers' attorney and thus, there is no dispute that Tower knew of the material facts
11 constituting its cause of action against Heaton and NWH. This argument is also plainly false.
12

13 Once again, while Defendants attached portion of Yanke's Rule 2004 examination as an
14 Exhibit, Defendants failed to specifically cite to any portion of the transcript that somehow
15 substantiates their argument that Tower knew of the material facts constituting their legal
16 malpractice claim against Heaton and NWH. At best, Yanke was questioned regarding the
17 Purchase Contract as follows:
18

19 Q: Do you recognize this form of purchase contract?

20 A: Yes.

21 Q: Who prepared that contract?

22 A: Nitz, Walton & Heaton. Jim Walton.

23 Q: Who did they prepare the contract for?

24 A: Tower Homes, LLC.

25 Q: When this contract was prepared, did you ask to have it prepared in compliance
26 with Nevada Law?

27 A: Yes.

28 See Exhibit E attached to Defendants' Motion at 7:17-25

...

1
2 Q: Mr. Yanke, as a developer of Tower Homes, did you know whether or not Tower
3 Homes had to comply with Nevada Revised Statute Chapter 116 governing common
4 interest communities?

5 A: I have no idea what that statute is.

6 Q: Do you know how many laws that you had to comply with in order to sell units in a
7 condominium complex?

8 A: All paperwork was done by Nitz, Walton & Heaton and Lionel Sawyer. So you
9 know, do I know those types of laws? I instruct them to put together a contract that
10 would pass the state. They put together a contract that would pass the state and we got
11 a real estate exemption.

12 See Id. at 24:3-14.

13 Based on the portion of Yanke's transcript cited above, and contrary to Defendants'
14 argument, Yanke did not know or even had reason to know of the facts constituting Tower's legal
15 malpractice claim against Defendants at the time of Yanke's Rule 2004 examination on October
16 3, 2007. Yanke specifically stated that he had no idea what NRS 116.411 required because he
17 retained Defendants to draft the Purchase Contracts.

18 Here, the underlying litigation filed by the Tower Homes Purchasers commenced on May
19 23, 2007. However, on May 31, 2007, bankruptcy proceedings were initiated. Under Rule 11-
20 44(a) of the Federal Rules of Bankruptcy Procedure (FRBP), the filing of a bankruptcy petition
21 operates to stay other proceedings, pending the federal court's determination of the bankruptcy
22 petition. ³ Chubb Pacific Indem. Group v. Twin Lakes Village, Inc., 98 Nev. 521, 522-523, 654
23 P.2d 530, 530 (1982).

24
25 ³FRBP 11-44(a) provides:

26 (a) Stay of actions and lien enforcement. A petition filed under Rule 11-6 or 11-7 shall operate *as a stay of the*
27 *commencement or the continuation of any court or other proceeding against the debtor*, or the enforcement of
28 any judgment against him, or of any act or the commencement or continuation of any court proceeding to enforce
any lien against his property, or of any court proceeding, except a case pending under Chapter X of the Act, for
the purpose of the rehabilitation of the debtor or the liquidation of his estate. (Emphasis added).

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In this case, once Bankruptcy proceedings were initiated, there is a stay of any and all claims of Tower including any legal malpractice claims or proceedings against Defendants because only the Chapter 11 Trustee is authorized to take action on behalf of property in the bankruptcy estate. See 11 U.S.C. § 704(a); see also Greystone Bank v. Rosenson, 2011 WL 4346361, 2 (D.Nev. 2011) (stating that the filing of bankruptcy imposed the automatic stay on party's foreclosure proceedings). Once all other proceedings against Defendants were stayed, Tower was not able to conduct any discovery and there was no way for Tower to determine what damages it suffered as a result of Defendants' legal malpractice.

On May 02, 2011, the Court entered a Stipulation and Entry of Order Granting Judgment against Rodney C. Yanke in the amount of \$1,000,000.00 and Dismissing Claims against Rodney C. Yanke . See Exhibit G. However, despite this \$1,000,000.00 judgment against Yanke, Yanke has been unable to satisfy any amount of the judgment essentially making him judgment proof. In addition, the underlying litigation did not conclude until July 5, 2011 when the Court entered a Stipulation and Order for Dismissal with prejudice all claim against the remaining defendants in the underlying litigation: Mark L. Stark, Jeannine Cutter, and David Berg. Notably, until the entire underlying litigation regarding the remaining defendants was resolved, there was no way for Tower to even determine whether it suffered any damages because if the remaining defendants in the underlying litigation were ordered and able to pay the liabilities owed to the Tower Home Purchasers then Yanke and Tower would not have suffered any damages. However, because the remaining defendants did not pay the balance of the earnest monies owed to the Tower Homes Purchasers, Yanke and Tower indeed suffered damages as a result of Defendants Heaton and NWH.

1
2 In sum, the statute of limitations was tolled during the bankruptcy proceedings and only
3 began to run on July 5, 2011 once the underlying litigation regarding the remaining defendants
4 was resolved. At that juncture, it was determined that Tower and Yanke indeed suffered damages
5 because there was still a balance of earnest deposit money that remained unpaid to the Tower
6 Home Purchasers. Thus, because Tower filed this action against Defendants on June 12, 2012,
7 well within the 2 year statute of limitation after Tower sustained damages, Tower's suit against
8 Defendants is not time barred by the two year prong of NRS 11.207(1).
9

10 **2) The Four Year Prong Does Not Bar Tower's Legal Malpractice Action**
11 **Against Defendants.**

12 With respect to the four year prong of NRS 11.207(1), Defendants relies on Gonzales v
13 Stewart Title, 111 Nev. 1350, 905 P. 2d 176 (1995) and argue that Tower "sustained damages"
14 when a lawsuit caused by the alleged negligent transactional work is filed. In Gonzalez, the
15 plaintiff hired the defendant to draft a promissory note for the sale of property. The promissory
16 note was then discovered to be defective and the underlying lawsuit was initiated to determine its
17 construction. There, the Court held that the legal malpractice statute of limitations began to run on
18 the date of the commencement of the underlying lawsuit because that was the date the plaintiff
19 became aware of the malpractice. There, the Court held that because the plaintiff failed to file
20 their lawsuit within the four year statute of limitations from the date the underlying lawsuit was
21 filed, the plaintiff's complaint was time-barred.
22

23
24 Thus, Defendants argue that because Tower sustained damages on May 23, 2007 when the
25 underlying litigation was filed, and because Tower did not filed this action against Defendants
26 until June 12, 2012, Tower's legal malpractice action against Defendants is time barred by the
27 four year prong of NRS 11.217(1).
28

1
2 Defendants' reliance on Gonzalez however, is misplaced because Gonzalez is clearly
3 distinguishable from the present case. In the present case, unlike in Gonzalez, immediately after
4 the underlying litigation was filed by the Tower Homes Purchasers, bankruptcy proceedings were
5 initiated. Once a bankruptcy is initiated, there is a stay on all other proceedings, pending the
6 federal court's determination of the bankruptcy petition. Chubb Pacific Indem. Group v. Twin
7 Lakes Village, Inc., 98 Nev. 521, 522-523, 654 P.2d 530, 530 (1982).
8

9 In this case, once Bankruptcy proceedings were initiated, there was a stay of any and all
10 claims of Tower including any legal malpractice claims or proceedings against Defendants
11 because only the chapter 7 Trustee is authorized to take action on behalf of property in
12 the bankruptcy estate. See 11 U.S.C. § 704(a); see also Greystone Bank v. Rosenson, 2011 WL
13 4346361, 2 (D.Nev. 2011) (stating that the filing of bankruptcy imposed the automatic stay on
14 party's foreclosure proceedings). Once all other proceedings against Defendants were stayed,
15 Tower was not able to conduct any discovery and there was no way for Tower to determine what
16 damages it suffered as a result of Defendants' legal malpractice. As previously stated, on May 2,
17 2011 the Court entered a Stipulation and Entry of Order Granting Judgment against Rodney C.
18 Yanke in the amount of \$1,000,000.00 and Dismissing Claims against Rodney C. Yanke . See
19 **Exhibit G**. However, despite this \$1,000,000.00 judgment against Yanke, Yanke has been
20 unable to satisfy any amount of the judgment. Simply stated, Yanke is judgment proof. In
21 addition, the underlying litigation did not fully conclude until July 5, 2011 when the Court entered
22 a Stipulation and Order for Dismissal with Prejudice all claim against the remaining defendants in
23 the underlying litigation: Mark L. Stark, Jeannine Cutter, and David Berg. See Exhibit H.
24
25
26

27 Notably, in this case, unlike in Gonzalez, until the entire underlying litigation regarding
28 the remaining Defendants was resolved, there was no way for Tower to even determine whether it

1 suffered any damages because if the remaining defendants in the underlying litigation were
2 ordered and able to pay the liabilities owed to the Tower Home Purchasers then Yanke and Tower
3 would not have suffered any damages. However, because the remaining defendants did not pay
4 the balance of the earnest monies owed to the Tower Home Purchasers pursuant to the July 5,
5 2011 stipulation, Yanke and Tower indeed discovered on July 5, 2011 that they suffered damaged
6 as a result of Defendants Heaton and NWH's legal malpractice. Accordingly, because Tower filed
7 this instant matter against Defendants on June 12, 2012, well within the 4 year statute of
8 limitation, after Tower sustained damages, Tower suit is not time barred by the 4 year prong of
9 NRS 11.207(1).
10
11

12 **D. TOWER'S BREACH OF FIDUCIARY DUTY CAUSE OF ACTION AGAINST**
13 **IS VALID AS A MATTER OF LAW**

14 As previously discussed, the elements of a legal malpractice action are "the existence
15 of an attorney-client relationship, the existence of a duty on the part of a lawyer, failure to
16 perform the duty, and the negligence of the lawyer [as a] proximate cause of damage to the
17 client." Warmbrodt v. Blanchard, 100 Nev. 703, 707, 692 P.2d 1282, 1285 (1984) (citing Hansen
18 v. Wightman, 14 Wash.App. 78, 538 P.2d 1238, 1246 (1975). It is the "contractual relationship
19 creating a duty of due care upon an attorney [which is] the primary essential to a recovery for
20 legal malpractice." Id. (citing Ronnigen v. Hertogs, 294 Minn. 7, 199 N.W.2d 420, 421
21 (1972)); See also Houston General Ins. Co. v. Superior Court, 108 Cal.App.3d 958, 166 Cal.Rptr.
22 904 (1980). Furthermore, the attorney must be employed in such a capacity as to impose a duty of
23 care with regard to the particular transaction connected to the malpractice claim. Id. (citing
24 Shropshire v. Freeman, 510 S.W.2d 405 (Tex.Civ.App.1974)).
25
26

27 Under the Restatement (Second) of Torts, a "fiduciary relation exists between two
28 persons when one of them is under a duty to act for or to give advice for the benefit of another

1 upon matters within the scope of the relation.” Stalk v. Mushkin, 125 Nev. 21, 29, 199 P.3d 838,
2 843 (2009) (citing Restatement (Second) of Torts § 874 cmt. a (1979)). Thus, a breach of
3 fiduciary duty claim seeks damages for injuries that result from the tortious conduct of one who
4 owes a duty to another by virtue of the fiduciary relationship. Id.
5

6 In this case, there is no dispute that an attorney-client relationship existed between Tower
7 and Defendants. As previously discussed, Defendants were retained to assist in the formation of
8 Tower. In addition to other legal services, Defendants Heaton and NWH were retained to draft
9 Purchase Contracts for the individual units. Heaton and NWH knew that Tower had a legal
10 obligation to each individual purchaser to properly safeguard the earnest money deposits from
11 mismanagement, theft or unlawful use as required by Chapter 116 of the Nevada Revised
12 Statutes. Defendants explicitly accepted the representation of Tower when Defendants agreed to
13 advise Tower. However, Defendants breached their duty when they failed to properly advise
14 Tower pursuant to NRS 116.411 that the earnest money deposits were required to be held by a
15 third party and could only be released for very limited purposes as allowed by the statute. This
16 resulted in damages to Tower. Because there was clearly an attorney-client relationship between
17 Tower and Defendants, Defendants owed fiduciary duties to Tower. When Defendants breached
18 their fiduciary duties owed to Tower, this gave rise to Tower’s breach of fiduciary duties claim
19 against Defendants.
20
21
22

23 In Defendants’ Motion, Defendants cite to Stalk v. Mushkin, 125 Nev. 21, 29, 199 P.3d
24 838, 843 (2009) and argues that Stalk stands for the proposition that Tower’s breach of fiduciary
25 duties claim is nothing more than a claim for legal malpractice because a claim for breach of
26 fiduciary duty is subsumed within a claim for legal malpractice. Thus, Defendants argue that
27 Tower’s breach of fiduciary duty claim does not exist as a matter of law.
28

1
2 Defendants' interpretation of Stalk is erroneous and nothing more than an attempt to
3 misled the Court. In particular, Stalk states as follow,

4 Thus, NRS 11.207, which sets forth the statute of limitations for "[m]alpractice
5 actions against attorneys," is applicable to legal malpractice claims, whether based
6 on breach of contractual obligations or breach of fiduciary duties: . . .

7 Id. at 29, 199 P.3d at 843.

8 Stalk also concludes as follows:

9 Accordingly, the district court's conclusion that NRS 11.190(4)(e) applied to
10 Stalk's breach of fiduciary duty claim was in error. Based on our assessment of the
11 true nature of Stalk and Urban Construction's claim, we likewise reject the parties'
12 contention that NRS 11.190(3)(d) governs the breach of fiduciary duty claim at
13 issue here . . . Accordingly, we clarify now that **claims for breach of fiduciary**
14 **duty arising out of an attorney-client relationship are legal malpractice**
15 **claims subject to NRS 11.207(1)'s limitation period, and claims for breach of**
16 **fiduciary duty based on fiduciary relationships other than attorney-client are**
17 **akin to fraud claims, subject to the limitation period set forth under NRS**
18 **11.190(3)(d).**

19 Id. at 30, 199 P.3d at 844 (emphasis added).

20 As emphasized above, Stalk **does not** stand for the proposition that a plaintiff cannot bring
21 a claim for breach of fiduciary duties in addition to legal malpractice because these claims are
22 subsumed in a legal malpractice claim. Instead, Stalk simply holds that a cause of action for legal
23 malpractice whether based on breach of contract or breach of fiduciary duties arising from an
24 attorney-client relationship is still governed by NRS 11.201(1)'s statute of limitation period set
25 forth for legal malpractice claims and not subject to different statute of limitations for contract (6
26 years pursuant to NRS 11.190(1)) or negligence (2 years pursuant to NRS 11.190(4)). Id. at 30,
27 199 P.3d at 844

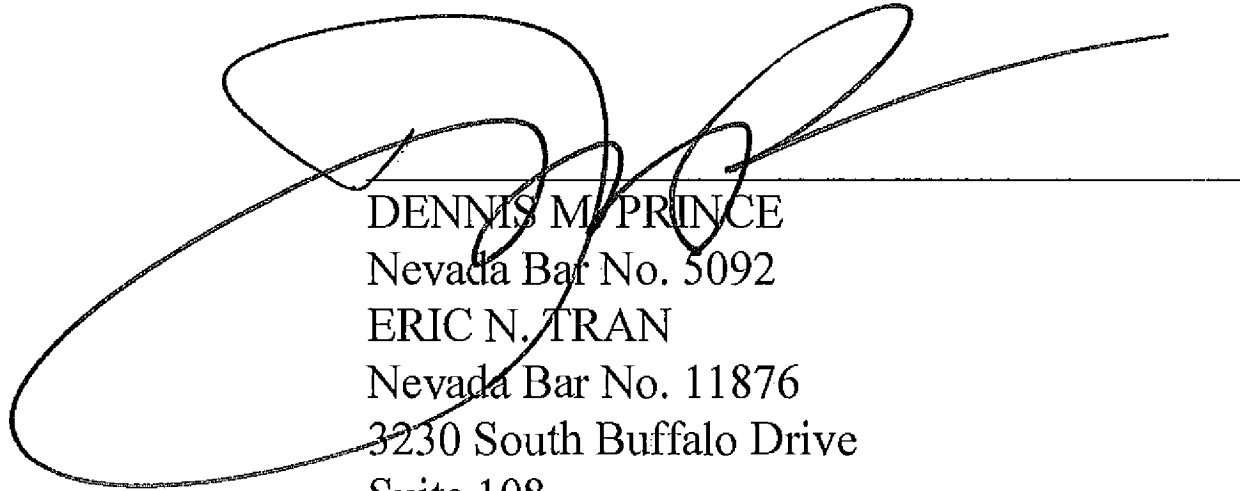
28 III. CONCLUSION

Based on the foregoing, Tower respectfully requests that this Court deny Defendants'
Motion for Summary Judgment. As discussed above, Tower is the only entity with legal capacity

1
2 and standing to bring this cause of action for legal malpractice against Defendants. Tower's claim
3 is not barred by the statute of limitations and Tower's breach of fiduciary duties claim is valid as a
4 matter of law.

5 DATED this 4 day of September, 2012.

6
7 **PRINCE & KEATING**

8
9 
10 DENNIS M. PRINCE
11 Nevada Bar No. 5092
12 ERIC N. TRAN
13 Nevada Bar No. 11876
14 3230 South Buffalo Drive
15 Suite 108
16 Las Vegas, Nevada 89117
17 Attorney for Plaintiff
18 *Tower Homes, LLC*
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CERTIFICATE OF MAILING

I hereby certify that on the 4 day of September, 2012, I caused service of the foregoing
PLAINTIFF TOWER HOMES, LLC's OPPOSITION TO DEFENDANTS' MOTION TO
DISMISS OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT to be
made by depositing a true and correct copy of same in the United States Mail, postage fully
prepaid, addressed to the following:

Jeffrey Olster, Esq.
Lewis Brisbois Bisgaard & Smith
6385 South Rainbow Boulevard
Suite 600
Las Vegas, NV 89118
Attorneys for Defendants


An employee of PRINCE & KEATING

EXHIBIT "A"

EXHIBIT "A"

PURCHASE CONTRACT

THIS IS A BINDING CONTRACT BY WHICH YOU AGREE TO PURCHASE AN INTEREST IN REAL PROPERTY. YOU SHOULD EXAMINE YOUR RIGHTS OF REVOCATION CONTAINED ELSEWHERE IN THIS CONTRACT. THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES AND SHOULD BE READ THOROUGHLY AND UNDERSTOOD PRIOR TO SIGNING. IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS OR RESPONSIBILITIES UNDER THIS DOCUMENT, YOU MAY WISH TO CONSULT AN ATTORNEY.

BY YOUR EXECUTION OF THIS DOCUMENT, YOU ACKNOWLEDGE RECEIPT OF THE PUBLIC OFFERING STATEMENT ("POS") FOR SPANISH VIEW TOWER HOMES. IT IS RECOMMENDED THAT YOU READ THE PUBLIC OFFERING STATEMENT BEFORE EXECUTING THIS CONTRACT.

1. Parties/Property Description. The undersigned _____ (the "Purchaser", whether one or more), agrees to purchase from Tower Homes, LLC (the Seller), and Seller agrees to sell, upon the terms and conditions of this Purchase Contract ("Contract"), the following described real estate:

Unit No.# _____, on the _____ floor of Spanish View Tower Homes, Tower No. _____ (the "Unit"), a building to be constructed and submitted to a condominium regime and located on the land described in Exhibit A attached hereto and made a part hereof ("Land"), as same is shown, located and defined in the POS, together with the undivided interest in the Common Elements of the condominium regime that is associated with such Unit, all as more particularly described in the Declaration of Spanish View Tower Homes ("Declaration") proposed to be created, together with the exclusive use of the following as Limited Common Elements: Garage Parking Spaces #s _____ and _____ and Storage Space No. _____. Terms used in the Declaration when used in this Contract shall have the same meaning as they have set forth in the Declaration unless otherwise specifically indicated. The above-described Unit and related rights thereto described above are referred to as the "Property", and the Spanish View Tower Homes regime is referred to as the "Condominium". Purchaser acknowledges that Seller has the right to modify or amend any of the documents required for the establishment of the condominium regime, including without limitation those attached to or referred to in the POS.

2. Purchase Price/Closing Costs/Pre-Sale Condition.

(a) Purchase Price. The purchase price is set forth as follows:

(i)	Property	\$ _____
(ii)	Storage Room No. _____ (optional)	\$ _____
(iii)	Extra garage space No. _____ (optional)	\$ _____
(iv)	Other (specify) _____	\$ _____
(iii)	Total Purchase Price ("Purchase Price")	\$ _____

1

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

(b) Terms of Payment. The Purchase Price shall be paid by Purchaser to Seller as follows:

- (i) A series of initial payments (the "Initial Payments") shall be paid as provided in Section 2(c) below.
- (ii) The balance of the Purchase Price shall be deposited by Purchaser with the Title Company (defined below) in immediately available funds prior to the Closing which shall be paid in immediately available funds to Seller through the Title Company upon the transfer of title to the Property (the "Closing"). If a portion of the Purchase Price is to be derived by Purchaser from a loan (the "Loan"), Purchaser will pay the lender, at Closing, all required prepaid items (points, prepaid interest, taxes and insurance) and pay all Closing costs except for the cost of the Owner's Policy of Title Insurance, any tax certificates and real property transfer taxes and prorations applicable to Seller.

(c) The Initial Payments. Purchaser shall deliver the Initial Payments to Equity Title Co. (the "Title Company"), 7360 W. Flamingo Rd. Las Vegas, Nevada 89147 (Attn: _____). The Initial Payments shall be delivered to the Title Company as follows:

- (i) Before commencement of construction of the Condominium:
 - (1) 10% of the Purchase Price upon execution of this Contract by Purchaser;
 - (2) An additional 15% of the Purchase Price within ten (10) business days of notice from Seller of commencement of construction; and
 - (3) An additional 15% of the Purchase Price within ten (10) business days of notice from Seller that the construction of the Condominium has "topped-out" (meaning that construction has reached the final floor of the Condominium).
- (ii) After construction of the Condominium has been commenced:
 - (1) If at the time of execution of this Contract by Purchaser construction has already commenced on the Condominium, then Purchaser shall deliver 25% of the Purchase Price upon execution of this Contract by Purchaser;
 - (2) An additional 15% of the Purchase Price shall be delivered within ten (10) business days of notice that Seller has "topped-out" (as defined above).
- (iii) Purchase after construction of the Condominium has reached the "topped-out" phase.

- (1) If Purchaser is executing this Contract after the construction of the Condominium has "topped-out" (as defined above), then Purchaser shall deliver the entire 40% of the Purchase Price upon execution of this Contract.

(d) Subject to availability, if Purchaser desires to have a storage room or an extra garage space as part of the Limited Common Elements appurtenant to the Unit, the Purchase Price shall be increased by five thousand dollars (\$5,000.00) for each such room or space, which additional amount will be payable at Closing.

(e) Any Initial Payment delivered to the Title Company within five (5) days of the "Purchaser's Execution Date" (which is the date in which this Contract is executed by Purchaser), shall be held in escrow at the Title Company pending the expiration of the Purchaser's five (5) day right of cancellation provided below. If Purchaser gives Seller a written notice of cancellation by midnight of the fifth calendar day following Purchaser's Execution Date, then Seller shall immediately advise Title Company of such cancellation and of the date such cancellation notice was received by Seller (the "Seller's Notice Date") and Title Company shall refund such Initial Payment to Purchaser within fifteen (15) days after the Seller's Notice Date. If within ten (10) days following the Purchaser's Execution Date, the Title Company has not received notice from Seller that Purchaser has timely cancelled this Contract, then, except as provided in Paragraph 3 below, the Title Company shall deliver such Initial Payment to the "Seller's Depository" (defined below) for deposit into an interest bearing trust account (the "Trust Account") designated solely for the purpose of holding Initial Payments received from purchasers of units in the Condominium, where such Initial Payment shall be held or distributed as provided below. The Seller's Depository shall be Business Bank of Nevada (or another depository designated by Seller, whose accounts are insured by a governmental agency or instrumentality). Except as provided in Paragraph 3 below, all Initial Payments received by Title Company more than five (5) days after the Purchaser's Execution Date shall be delivered to Seller's Depository for deposit into the Trust Account where such Initial Payments shall also be held or distributed as provided below. The parties agree that the Initial Payments from all purchasers of units in the Condominium may be pooled and held by the Depository in the same Trust Account. The Title Company shall cause the Initial Payments delivered to it, to be delivered to whichever party shall become entitled thereto pursuant to the terms of this Contract, promptly after such party becomes so entitled to such delivery. All interest on Initial Payments deposited into the Trust Account shall be deemed to be part of such Initial Payments. In the event the Initial Payments are refunded to Purchaser in accordance with this Contract, then such interest shall also be refunded to Purchaser. In the event the Initial Payments are turned over to Seller, then the interest on such Initial Payments shall also be turned over to Seller. Upon Closing, the Initial Payments and the interest accrued thereon shall be delivered to Seller as part of the Purchase Price, and applied to the Purchase Price. For purposes of this Contract, the "Initial Payments" shall refer for purposes of any given time, only to the portion of the sums described by such term in subparagraph (a) above as have been paid by Purchaser to the Title Company by such time, together with accrued interest thereon.

The Trust Account may be pledged by Seller as security for a line of credit to be issued to Seller by the Depository, which line of credit may, among other things, be used by Seller towards construction of the Condominium; provided, however, that the Depository shall:

- (i) release and deliver the Initial Payments (and all accrued interest thereon) to Seller at Closing.
- (ii) release and deliver the Initial Payments (and all accrued interest thereon) to Seller upon Purchaser's default and Seller's cancellation of this Contract pursuant to the provisions of Paragraph 18 below.
- (iii) release and deliver the Initial Payments (and all accrued interest thereon) to Purchaser in the event Seller defaults under this Contract, pursuant to the provisions of Paragraph 18 below.

The Initial Payments shall not be refundable to Purchaser except as provided in Sections 3 or 18, or upon cancellation of this Contract by Seller.

(f) At Closing, Purchaser agrees to pay to the homeowner's association of the Condominium, through the Title Company, an initial Common Expense assessment that will be based on the size of the unit, which shall be a monthly expense, pro-rated for the first month from the date of Closing, plus one (1) full monthly assessment (pre-paid), together with a non-refundable initial reserve assessment in an amount equal to two (2) monthly assessments as a reserve for capital expenditures.

3. Loan Application and Approval. In the event any portion of the Purchase Price as set forth in Paragraph 2 is to be financed by a Loan, Purchaser and Seller agree to the following additional terms and conditions:

(a) Purchaser shall apply for the Loan from a lender acceptable by both the Purchaser and Seller ("Lender") within three (3) business days after the Effective Date of this Contract.

(b) Purchaser agrees to comply with all requirements of the loan application process with Lender and agrees and authorizes Seller to obtain any information on the status of Purchaser's loan application from Lender at any time.

(c) Purchaser shall obtain a written commitment from Lender for the Loan and provide written documentation of such loan approval to Seller within twenty (20) days from the Effective Date of this Contract. The date that such loan approval documentation is provided to Seller is referenced as the "Loan Approval Date". It is understood and agreed that such loan approval will be conditioned on the approval of additional information or other events, which Purchaser agrees to provide and/or perform accordingly;

(d) Once Purchaser has provided Seller with written documentation of loan approval, whether conditional or not, this Contract becomes unconditional insofar as financing is concerned and Purchaser becomes personally liable to close this transaction; and

(e) In the event loan approval is conditional and/or expires during the term of this Contract, Purchaser represents and warrants to Seller that Purchaser will fulfill any and all further requirements and conditions, including without limitation, any renewal, replacement or reinstatement of such loan commitment prior to Closing and will accept all terms and conditions of such Loan at the time of Closing. Changes in Purchaser's financial circumstances and/or economic market conditions shall not excuse Purchaser from closing this transaction.

(f) The Initial Payments shall not be delivered to the Seller's Depository prior to the Loan Approval Date.

(g) Any appraisals shall be paid for by Purchaser.

Purchaser's failure to timely apply for the Loan, execute and furnish all required documentation related thereto, and provide to Seller evidence of loan approval, whether conditional or not, within twenty (20) days from the Effective Date of this Contract, shall constitute a breach of contract. In the event Purchaser fails to cure such breach within three (3) days following Seller's written notice of such breach, Seller may, at Seller's option, cancel this Contract and Seller shall be entitled to all remedies set forth herein with the exception that in the event Purchaser is unable to obtain loan approval within said twenty (20) day period after diligent and reasonable effort and following written notification to Seller, Purchaser will be entitled to a refund of the Initial Payments, less Two Thousand Dollars (\$2,000.00), which shall be paid to Seller as consideration for Seller's removing the Unit from the market and administrative expenses, and the parties shall have no further obligations to each other.

4. Selection of Materials/Alteration of Unit. Purchaser agrees to make selections of materials, fixtures and finishes within one hundred twenty (120) days from the Effective Date of this Contract unless extended in writing by Seller or the general contractor selected by Seller in its sole and absolute discretion ("General Contractor"). Absent timely, written selections being made, Seller is authorized, at its option, to use its own pre-selected, standard materials, fixtures and finishes to maintain its normal construction schedules. Purchaser acknowledges that this Contract does not contemplate the construction of an individually designed Unit except to the extent that special features or upgrades are specifically set forth herein or in a subsequent written amendment to this Contract agreed to by both Purchaser and Seller. The Purchaser therefore, agrees that Purchaser shall not seek or demand additional features and amenities, adjustments in the Plans and Specifications, or the expansion of warranties beyond the terms of this Contract or any written amendments. If Purchaser violates the agreements in this paragraph, that violation shall be a material breach of this Contract and shall entitle Seller immediately to cancel this Contract and receive or retain the Initial Payments, and all other sums paid by Purchaser pursuant to this Contract as liquidated damages. It is further noted that Seller's use of model units or reference to other construction by Seller is intended only to demonstrate the quality of finish detail, the basic floor plans and styles of the units available for purchase. The Unit may not conform, except as herein noted, to any model unit in any respect, or contain some or all of the amenities featured, such as finishings. Until such time as all of the units in the Condominium have been sold, Seller reserves the right to make such use of the unsold units and the Common Elements as are necessary for its sales program. Such use, however, shall not unreasonably interfere with the enjoyment of the Condominium by the other owners of units. Seller reserves the right to lease or rent all remaining unsold units to such persons and upon such terms as Seller may provide in its sole discretion.

5. Change Orders/Upgrades/Customizing. NO CHANGES, UPGRADES, OR CUSTOMIZING will be allowed after this Contract is signed by both Purchaser and Seller unless a change order is signed by both Purchaser and Seller and such Change Order is paid in full prior to commencement of the work. All approved changes, upgrades and customizing will require drawing revisions provided by the Purchaser's Architect and signed by both Purchaser and Seller's General Contractor, regardless of

how minimal the change. Payment for changes, upgrades and customizing will be required to be paid directly to Seller (and not through Title Company) prior to commencement of the work. Also, the General Contractor will provide project milestone date requirements for all of the following:

- A. Purchaser changes and customizing.
- B. Purchaser furnished materials.
- C. Purchaser furnished work.

In the event that any change, material substitutions, or customizing work will not be available by the milestone date, the building standard material will be installed so as not to delay the Issuance of a Certificate of Occupancy. Purchaser will then have to customize or install special order materials that did not arrive by the milestone date after Closing.

All changes, upgrades and customizing shall be completed (drawing approved and signed by the Purchaser and Seller) no later than such date approved by the General Contractor.

Due to certain project constraints, such as base building systems, design, and schedule, the Seller reserves the right to disallow requested changes, upgrades and/or customizing.

6. Insulation. The Unit will have insulation installed in accordance with applicable building codes.

7. Activities by Purchaser/Construction Hazards/Indemnity. The Purchaser, unless otherwise agreed to by Seller in writing, shall not do or cause to be done any work, or alter or cause the alteration of any portion of the work, whether complete or incomplete, on the Property or in the Unit before Closing. This prohibition includes actions by Purchaser individually, as well as requests by Purchaser for work to be done by third parties or requests directly to Seller's employees or subcontractors. Purchaser, or anyone acting on behalf of Purchaser, shall coordinate all activities to which Seller does agree with Seller's Project Manager to ensure that any work performed does not damage, restrict or delay Seller's construction activities. Any damages by Purchaser or Purchaser's agents to work done by Seller, or delay caused by Purchaser or its agents, shall be reflected in a Change Order and paid by Purchaser upon presentation. Because of potential safety and health hazards present during construction of the Unit, the Purchaser agrees to restrict Purchaser's entry onto the Property or in the Unit prior to Closing. Purchaser's entry onto the property or into the Unit prior to closing shall be by appointment only and not more often than Saturdays and Sundays during regular office hours of the Sales Office. Should Purchaser, its agents, representatives, or invitees enter onto the Property or into the Unit prior to Closing, **PURCHASER SHALL AND HEREBY AGREES TO INDEMNIFY AND HOLD SELLER AND SELLER'S GENERAL CONTRACTOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS OR CAUSES OF ACTION ARISING IN FAVOR OF PURCHASER, OR ANY THIRD PARTY WHO ENTERS ONTO THE PROPERTY WITH OR AT THE REQUEST OF PURCHASER, ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY IN ANY WAY OCCURRING OR INCIDENT TO THE CONDITION OF THE PROPERTY AND/OR THE UNIT. THIS INDEMNITY IS GIVEN TO SELLER REGARDLESS OF WHETHER SELLER OR ITS AGENTS OR EMPLOYEES ARE NEGLIGENT IN WHOLE OR IN PART AND EVEN WHEN THE INJURY, DEATH OR DAMAGE IS CAUSED BY THE SOLE NEGLIGENCE OF SELLER.**

8. Construction Schedule/Effects of Building Activities. The unit is or will be constructed substantially in accordance with plans and specifications to be prepared by Seller's architect (the "Plans and Specifications") based on the preliminary plans and specifications proposed by Seller's architect, and reviewed by Purchaser and any Change Orders, subject to normal and acceptable tolerances and pursuant to standard building practices found in residential construction in Las Vegas, Clark County, Nevada. The construction of the Unit is also subject to any changes in the Plans and Specification, materials, fixtures or methods as are required by federal, state or local governmental authority, and other amendments and adjustments to the Plans and Specifications by Seller that do not affect the fair market value of the Property or the Unit. In constructing the Unit, Seller shall employ its normal construction schedule, which shall be subject to change orders, delays by third parties or Purchaser, and other conditions beyond the Seller's control. Seller and Purchaser recognize it is not possible to agree to a specific date of completion of the Unit. Purchaser expressly acknowledges Seller has not represented, warranted, guaranteed or committed to any completion date or schedule other than as set forth herein. Accordingly, any failure to complete the Unit by Purchaser's desired or anticipated completion date shall not excuse Purchaser from performance or give Purchaser the right to terminate this Contract, and Seller shall not be liable to Purchaser for any damages resulting from Seller's inability or failure to complete the Unit except for those provided for in Paragraph 18 of this Contract. Purchaser recognizes that the construction of the Condominium imposes an inherent risk to health of landscaping presently located on the Property, if any, and hereby acknowledges that Seller cannot guarantee the viability of any such landscaping. Purchaser further recognizes that at the time of Closing and for a reasonable period of time thereafter, the Common Elements and amenities for the Condominium may not be completed (for example, the swimming pool, lobby, landscaping, corridor finishes, carpeting, etc.), which may be damaged by the process of unit owners moving in. The incompleteness of any such construction shall not affect the final inspection, approval of the Purchaser's Unit, and execution of the Certificate of Acceptance as hereinafter set forth.

9. Final Inspection and Approval of Unit. If any portion of the Unit has been completed at the time this Contract is executed, Purchaser acknowledges that Purchaser has inspected and has had the opportunity to have the Unit, all improvements and the Land inspected by a licensed inspector, engineer, or other professional of Purchaser's choice (which inspections shall be at Purchaser's expense and shall be strictly by appointment scheduled through Seller's Project Manager or Building Supervisor) and hereby accepts the Unit and Condominium building, together with all improvements on the Land as built. If the Unit has not been completed as of the date of this Contract, Purchaser agrees promptly to comply with Seller's request for Purchaser to conduct a final walk-through inspection of the Unit and Condominium building, together with all improvements on the Land prior to Closing, and to certify in writing on the Certificate of Acceptance and Final Punch List form attached as Exhibit B (the "Certificate of Acceptance") that the Unit and Condominium building, together with all improvements on the Land have been completed in substantial conformity with the applicable Plans and Specifications and this Contract. Purchaser's failure or refusal to execute the Certificate of Acceptance shall constitute and unqualified acceptance of the Unit, and shall relieve Seller of any obligation to remedy all deficiencies and nullify any of the warranties referenced in Paragraph 12 of this Contract. Additionally, Seller may, at its option, treat Purchaser's refusal to execute the Certificate of Acceptance as a material breach of this Contract, entitling Seller to cancel this Contract and retain all deposits and payments (including without limitation the Initial Payments). Purchaser is encouraged to perform a comprehensive inspection at the time of the

walk-through since this inspection will be Purchaser's only opportunity to identify for Seller those items requiring correction or adjustment. Any exceptions noted on the Certificate of Acceptance by Purchaser during that inspection shall not delay the Closing, but shall be substantially remedied by Seller as soon as practicable, subject to delays caused by the weather, availability of materials and labor, and other occurrences beyond the control of Seller. Purchaser shall provide Seller with written confirmation that the exceptions have been remedied.

10. CLOSING PROCEDURE.

A. THE CLOSING OF THIS TRANSACTION SHALL OCCUR IN ACCORDANCE WITH THE FOLLOWING TERMS AND CONDITIONS:

1. PURCHASER SHALL SCHEDULE AND COMPLETE A FINAL PRE-CLOSING WALK THROUGH INSPECTION AND EXECUTE A FINAL PUNCH LIST WITHIN FIVE (5) BUSINESS DAYS FOLLOWING NOTIFICATION TO PURCHASER BY FACSIMILE OR PERSONAL DELIVERY FROM SELLER OR SELLER'S GENERAL CONTRACTOR THAT A CERTIFICATE OF OCCUPANCY OR ITS EQUIVALENT FOR THE UNIT HAS BEEN OBTAINED BY SELLER OR EARLIER BY MUTUAL AGREEMENT BETWEEN SELLER AND PURCHASER. THE PUNCH LIST SHALL BE SIGNED AND DATED BY SELLER AND PURCHASER AND ATTACHED AS AN EXHIBIT TO THE CERTIFICATE OF ACCEPTANCE REFERENCED HEREIN ABOVE IN PARAGRAPH 9.

2. WITHIN FIVE (5) BUSINESS DAYS FOLLOWING THE DATE OF EXECUTION OF THE PUNCH LIST, PURCHASER SHALL CAUSE PURCHASER'S LENDER, IF ANY, TO SCHEDULE AND PERFORM LENDER'S FINAL INSPECTION.

3. CLOSING SHALL OCCUR WITHIN FIVE (5) BUSINESS DAYS FOLLOWING THE LENDER'S FINAL INSPECTION, OR IN THE EVENT THERE IS NO LENDER, CLOSING SHALL OCCUR WITHIN FIVE (5) BUSINESS DAYS FROM THE DATE OF EXECUTION OF THE PUNCH LIST.

B. PURCHASER AGREES TO PAY TO SELLER AT CLOSING THE CASH SUM OF TWO HUNDRED FIFTY DOLLARS (\$250.00) PER DAY FOR EACH DAY CLOSING AND FUNDING DOES NOT OCCUR AFTER TEN (10) DAYS FROM THE DATE SELLER AND PURCHASER EXECUTE THE PUNCH LIST, AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, FOR PURCHASER'S DELAY IN CLOSING. PURCHASER AND SELLER AGREE THAT SELLER'S DAMAGES FOR PURCHASER'S DELAYED CLOSING ARE DIFFICULT TO ASCERTAIN AT THE EXECUTION OF THIS CONTRACT AND THE DAILY LIQUIDATED DAMAGES ARE A REASONABLE ESTIMATE OF SUCH DAMAGES.

C. THE GENERAL CONTRACTOR OF SELLER SHALL COMPLETE THE FINAL PUNCH LIST ITEMS WITHIN THIRTY (30) BUSINESS DAYS AFTER THE DATE OF CLOSING OR THE DATE OF THE PUNCH LIST WALK THROUGH, WHICHEVER IS LATER, AND SHALL BE EXTENDED AS REASONABLY NECESSARY DUE TO ANY DELAY CAUSED BY ANY ENTITY OR PERSON OTHER THAN SELLER AND GENERAL CONTRACTOR, INCLUDING WITHOUT LIMITATION, THE LEAD TIME REQUIRED FOR ORDERING MATERIALS, ACTS OR OMISSIONS OF THIRD PARTIES PROVIDING WORK FOR PURCHASER OR THE UNIT, OR ANY LIMITATIONS ON ACCESS TO THE UNIT.

8

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

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D. POSSESSION OF THE PROPERTY SHALL BE DELIVERED BY SELLER TO PURCHASER UPON CLOSING AND FUNDING. PRIOR TO SUCH DATE, PURCHASER SHALL HAVE NO RIGHT OF POSSESSION, INCLUDING, BUT NOT LIMITED TO ANY RIGHT TO THE PERFORMANCE OF ANY WORK, MODIFICATIONS OR CHANGES OF ANY KIND TO THE PROPERTY. FURTHER, IT IS UNDERSTOOD AND AGREED PURCHASER MAY NOT OCCUPY THE PROPERTY AS A RESIDENCE UNTIL THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY ON THE BUILDING SHELL AND A BUILDING FINAL INSPECTION OF THE UNIT (OR ITS EQUIVALENT) HAVE BEEN ISSUED.

E. IMMEDIATELY UPON THE CLOSING, TITLE COMPANY SHALL PAY TO SELLER IN IMMEDIATELY AVAILABLE FUNDS THE PURCHASE PRICE AND ALL OTHER SUMS TO BE PAID TO SELLER AT CLOSING PURSUANT TO THIS PURCHASE CONTRACT, LESS ANY PORTION OF THE PURCHASE PRICE THAT HAS PREVIOUSLY BEEN PAID TO SELLER, OR WHICH IS TO BE PAID TO SELLER BY THE DEPOSITORY AT CLOSING FROM THE TRUST ACCOUNT.

F. THE FOLLOWING SHALL SURVIVE CLOSING: UPON CLOSING, PURCHASER WILL BE DEEMED TO HAVE WAIVED ALL CLAIMS TO THE EXTENT PERMITTED BY LAW AND TO HAVE ACKNOWLEDGED THAT SELLER HAS FULFILLED ALL ITS CONTRACTUAL OBLIGATIONS EXCEPT FOR PERFORMANCE OF ITEMS ON THE CERTIFICATE OF ACCEPTANCE AND ANY WARRANTY CLAIMS COVERED IN SELLER'S LIMITED WARRANTY (SEE PARAGRAPH 12).

11. Conveyance of Title and Closing Costs.

(a) Seller agrees to convey the Property to Purchaser by a grant, bargain and sale deed, free and clear of all liens except those created incident to the funding of the Loan and free of all other limitations except the Declaration, and other encumbrances, easements, future ad valorem taxes and assessments and other matters of record affecting the Property that are common to the platted subdivision of which the Property is part, as well as minor encroachments that do not unreasonably restrict the use of the Property and whatever easements and restriction indentures Seller deems necessary for maintenance and servicing of sanitary and storm sewers, streets, and maintenance and operation of all common facilities and common areas (collectively referred to as the "Permitted Exceptions"). Current year's ad valorem taxes will be prorated by the total number of Units to the date of Closing and Purchaser shall at Closing pay the current installment of the current year's ad valorem taxes. Purchaser must change the name on the tax rolls and split out the account on the Unit.

(b) At the Closing, Seller shall furnish at its expense, the grant bargain and sale deed and a CLTA Standard Form Owner's Title Insurance Policy from the Title Company insuring the title to the Property for the full Purchase Price and shall pay any transfer taxes imposed in connection with the recordation of the deed. The title policy shall contain only the usual standard exceptions and the Permitted Exceptions. The County Assessor has the authority to re-assess the Property, as newly constructed property, at the time the Property is conveyed to Purchaser. At that time, the Assessor may issue a supplemental tax bill to Purchaser for the tax difference resulting from that re-assessment. Purchaser shall be solely obligated for payment of such difference to the County. All prorations of taxes as provided in Section 11(a), shall be based on the pre-closing taxes for the Property and Seller shall have no responsibility for any subsequent adjustment.

12. Limited Warranty on Unit. Seller warrants the Unit against defects in workmanship and material but only in accordance with, and as limited by, the limited warranty (the "Seller's Limited Warranty") provided by Seller and delivered to Purchaser at Closing, a copy of which is attached to the POS. Seller's Limited Warranty shall not become effective, however, until Purchaser has paid to Seller the total Purchase Price, plus all sums due and not previously paid under any Change Order, and Purchaser has satisfied all of Purchaser's obligations under this Contract, including execution of the Certificate of Acceptance. **IT IS UNDERSTOOD AND AGREED THAT SELLER'S LIABILITY UNDER THIS CONTRACT FOR THE CONSTRUCTION OF THE UNIT ON THE PROPERTY DESCRIBED HEREIN IS LIMITED TO THE REMEDIES PROVIDED IN SELLER'S LIMITED WARRANTY AND ENFORCEABLE SOLEY THROUGH THE ARBITRATION PROCEDURES PRESCRIBED HEREIN.** As to items not of Seller's manufacture, such as any air conditioner, water heater, refrigerator, range, dishwasher and other appliances, equipment or "consumer products", as defined by the Federal Trade Commission, Seller agrees to pass along to Purchaser the manufacturer's warranty, without recourse. Purchaser acknowledges that Purchaser has been provided an opportunity to review the warranties for all consumer products to be included within the Unit and realizes that Seller itself is making no warranty on such items. If any consumer products with manufacturer's or supplier's written warranties have not been installed in the Unit as of the date of this Contract, Seller, as representative only of the manufacturer or supplier, agrees to make those warranties, if any, available to Purchaser upon Purchaser's request before such products are installed. **SELLER'S LIMITED WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THIS PURCHASE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING UNDER STATE LAW OR THE MAGNUSON-MOSS WARRANTY ACT, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF GOOD AND WORKMANLIKE CONSTRUCTION, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY OR HABITABILITY, ARE DISCLAIMED AND EXCLUDED. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES BASED ON ALLEGED DIMINUTION IN THE VALUE OF THE PROPERTY OR THE UNIT. AS TO ANY WARRANTY WHICH CANNOT BE DISCLAIMED ENTIRELY, AND AS TO ANY EXPRESS WARRANTY THE TIME IN WHICH A JUDICIAL OR ARBITRATION PROCEEDING FOR BREACH OF ANY SUCH WARRANTY MAY BE BROUGHT SHALL BE TWO (2) YEARS FROM THE TIME THE CAUSE OF ACTION ACCRUES.** The provisions of this Paragraph 12 shall survive the Closing.

13. Notice of Reliance on Written Information from Third Parties and Government Agencies. Seller has relied upon written information from various third parties and governmental agencies concerning the selection of the Property as a home site and the materials, components and construction techniques incorporated into the Unit. Generally, this written information concerns matters about which these third parties and governmental agencies have special expertise, or which is provided to Seller or disseminated to the public pursuant to specific statutory, regulatory or other legal requirements. This written information pertains to the flood zone characterization of the Property, soil characteristics, the suitability of the Property and the surrounding subdivision for habitation, the propriety of construction techniques, and the suitability of the materials and components incorporated into the Unit.

14. Land Use. Seller has informed Purchaser and Purchaser acknowledges, recognizes and agrees to the following:

(a) Seller has no control over and is not responsible for any easements on, adjacent to, or in the vicinity of the Property and Purchaser understands that individuals, corporations and/or utilities may have specific rights granted by those easements, if any, including, but not limited to, access and use of the property described by the easements, which easement rights may exist whether or not such easements are being utilized at the present time;

(b) Seller has no control over the land which is not owned by it that is neighboring or in the vicinity of the Property and makes no representation as to what subdivision or project amenities may be provided or what use is or will be made of neighboring land. Without limiting the generality of the foregoing, views from the Unit may be obstructed by future development of neighboring land and Seller disclaims any representation that views from the Unit will not be altered or obstructed by development of neighboring land; and

(c) Seller reserves the right to alter, change, and/or discontinue its prices and building program on any units.

15. Environmental Conditions Disclaimer. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, ABOUT ANY EXISTING OR FUTURE HEALTH HAZARD OR ANY OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY, IN THE UNIT OR FROM ADJACENT SOURCES, INCLUDING, BUT NOT LIMITED TO, MOLD AND/OR MILDEW, EXPOSURE TO ELECTRIC AND MAGNETIC FIELDS, SHIFTING OR INSTABILITY OF SOIL CONDITIONS AND POSSIBLE PRESENT OR FUTURE POLLUTION OF THE AIR, WATER OR SOIL (INCLUDING RADON GAS) FROM AN SOURCES OR IN ANY MANNER.

16. Soil Conditions, Foundations and Landscaping. Seller discloses and represents to Purchaser that the foundation plans for the Condominium will have been signed and sealed by a Registered Public Engineer of the State of Nevada and approved for construction as designed and supervised during construction by the applicable municipal or governmental authority. Due to the soil conditions in and around Clark County, Nevada containing significant amounts of expansive clays which expand dramatically if there is water penetration or seepage in the immediate proximity or under the foundation and contract significantly if there is an absence of moisture content in the immediate proximity or under the foundation, Seller cannot have responsibility for foundation cracks, shifts, damage, or worse, due to the soil conditions and the presence or absence of water in, under or around the foundation. These expansion and contraction characteristics of the soil can and will cause foundation cracks, shifts, damage and/or worse. THIS CIRCUMSTANCE OF THE SOIL CONDITIONS AND POTENTIAL FOUNDATION PROBLEMS RELATED TO WATER OR THE ABSENCE THEREOF ARE NOT COVERED BY THE ATTACHED SELLER'S LIMITED WARRANTY. SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES EXPRESSED OR IMPLIED, WHETHER ARISING UNDER STATE LAW OR THE MAGNUSON-MOSS WARRANTY ACT, INCLUDING BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF GOOD AND WORKMANLIKE CONSTRUCTION, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY OR HABITABILITY. PURCHASER EXPRESSLY AGREES THAT IF SELLER IS EVER FOUND OR DETERMINED TO BE LIABLE FOR DAMAGES TO PURCHASER BY VIRTUE OF ANY CONDUCT, ACT OR OMISSION RELATED, DIRECTLY OR INDIRECTLY, TO THE FOUNDATION, THAT SELLER'S LIABILITY SHALL BE STRICTLY LIMITED TO THE REPAIR OF THE FOUNDATION AND THE UNIT AND THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE, INCLUDING,

WITHOUT LIMITATION, ANY DAMAGES FOR DIMINUTION IN THE MARKET VALUE OF THE PROPERTY OR UNIT.

17. Continuation of Agreements and Understandings. None of the representations, warranties, covenants, agreements and disclaimers of Seller and Purchaser that are contained in this Contract shall survive and remain in effect after the Closing unless otherwise specifically provided.

18. Stipulated Damages/Default. If Purchaser fails to perform any of Purchaser's obligations under the Contract (including making the Initial Payments, scheduled deposits and other payments) Purchaser will be in "default". If Purchaser is still in default ten (10) days after Seller sends Purchaser notice thereof, Seller shall be entitled to the remedies provided herein. If, however, Purchaser's default is in failing to close on the scheduled date, then Seller shall have the absolute right in its sole discretion, to cancel this Contract without giving Purchaser any prior (or subsequent) notification or opportunity to close at a later date.

Upon Purchaser's default (and the expiration of any notice period, if applicable), all Purchaser's rights under this Contract will end and Seller can resell the Property without any accounting to Purchaser. Purchaser understand that because Seller has taken the Property off the market in contemplation of Purchaser's faithful performance of the terms of this Contract, has spent money on sales, advertising, promotion and construction and has incurred other costs incident to this sale, Purchaser's default will damage Seller. As compensation for this damage in the event Seller cancels this Contract because of Purchaser's default, (including, without limitation, Purchaser's failure to close on the scheduled date), Purchaser agrees to turn over to Seller and authorizes Seller to keep the Initial Payments and all deposits and other pre-closing advance payments (including, without limitation, those on options, extras, upgrades and the like) Purchaser has then made (and which could have been required to have been made had Purchaser not defaulted) and all interest which was, or would have been, earned on them, all as liquidated damages (and not as a penalty). Purchaser and Seller specifically agree that Seller's damages for Purchaser's default are difficult to ascertain at the execution of this Contract and that there is no other precise method of determining Seller's damages, and Purchaser and Seller agree that this is a reasonable estimate of Seller's actual damages.

Alternatively, Seller will have the right to specifically enforce this Contract, but will not sue Purchaser for any other damages. If Purchaser defaults, Purchaser promises not to sue for the return of any part of the Initial Payments, Purchaser's deposits or other payments. Any damage or loss that occurs to the Property while Purchaser is in default will not affect Seller's right to liquidated damages.

Upon receiving written notification from Seller in the form of a "Notice of Default Under Purchase Contract", the Depository and the Title Company are explicitly, expressly and irrevocable authorized, instructed and directed by Purchaser to immediately release the Initial Payments and all deposits and other pre-closing advance payments, and all interest accrued thereon, to the Seller without any further instruction from the Purchaser, and to do so without regard to any subsequent or future objection to such release by the Purchaser. Purchaser agrees that, in connection with such release to the Seller by the Depository or the Title Company, Purchaser releases, remises and relinquishes the Depository and the Title Company from and against any and all responsibility and/or liability to Purchaser as a result of the delivery of the Initial Payments and deposit/advance payments to Seller as set forth hereinabove.

If Seller defaults under this Contract, Purchaser will give Seller thirty (30) days written notice of it and if Seller has not cured the default within such period or, if the cure cannot be completed within thirty (30) days and Seller has not begun to cure the default within such thirty (30) day period, Purchaser shall have the right to request and receive a return of the Initial Payments and all of the Purchaser's deposits named hereunder, and all accrued interest thereon, and shall be entitled to reimbursement of reasonable out-of-pocket expenses incurred in connection with this transaction up to, but not to exceed five hundred dollars (\$500.00). The remedy afforded Purchaser in this paragraph as a result of a default by Seller constitutes Purchaser's sole and exclusive remedy and Purchaser agrees that Purchaser will not sue for specific performance or for any other claim, or otherwise pursue Seller for any other damages.

This Paragraph 18 will survive Closing.

19. Arbitration/Limitation of Claims. All claims, including, without limitation, construction defects, breach of this Contract, breach of warranty, or otherwise, are limited solely to the specific remedies provided for herein, including Paragraph 18 above, and Paragraph 24 below. Purchaser and Seller hereby further agree that any controversy, claim or dispute arising out of or relating to (a) this Contract, (b) any breach thereof, (c) the sales transaction reflected in this Contract, (d) the construction of the residence which is the subject of this Contract, and/or (e) any representations or warranties, express or implied, relating to the Property and the Unit, shall be decided by mandatory and binding arbitration. Seller and Purchaser agree the following shall apply: (a) the arbitration shall be decided by one (1) arbitrator. The Parties shall choose a mutually acceptable arbitrator, and in the event the parties cannot agree on the selection of the arbitrator, each party shall choose an arbitrator and those two (2) arbitrators shall agree upon the appointment of a third arbitrator who shall be the sole arbitrator; (b) the fees for the arbitration shall be shared equally by the parties and reimbursed to the prevailing party by the non-prevailing party, and such fees shall be consistent with the fees currently charged by arbitrators in Clark County, Nevada without regard to the amount in controversy; (c) a final binding award by the arbitrator shall be made within thirty (30) days from the date of the first notice of the dispute unless extended by mutual agreement or good reason by the arbitrator; and (d) the arbitrator shall be required to enforce the terms of this Contract and apply applicable law to support the arbitration decision.

All decisions by the arbitrator shall be final, and any judgment upon the award rendered by the arbitrator may be confirmed, entered and enforced in any court having proper jurisdiction. Any action, regardless of form, arising out of the transactions under this Contract must be brought by Purchaser within two (2) years from the date the cause of action accrues.

20. Brokerage and Finder's Fees. Seller has retained, by a separate written agreement a licensed real estate broker ("Listing Broker") to represent Seller. Any other Broker is Purchaser's Agent. Except for the brokers previous listed, Seller and Purchaser hereby represent and warrant to the other that neither has contracted with any real estate broker, finder or other party in connection with the purchase of the Property, and that no other third party (including Purchaser) shall be entitled to payment of any fee or compensation as a result of Purchaser's acquiring the Property. Seller shall pay Listing Broker the fee specified by separate agreement between Listing Broker and Seller. Listing Broker shall pay any other broker three percent (3%) of the sales price out of their commission, unless agreed to otherwise, upon Closing and funding. Each party hereby agrees to indemnify and hold the other harmless from

any loss, liability, damage, cost or expense (including reasonable attorney's fees) resulting from the breach of the foregoing representations and warranties.

21. Attorney's Fees. If either party employs an attorney or attorneys to enforce the terms of this Contract, either by arbitration, litigation or negotiation, the losing party agrees to reimburse the prevailing party for reasonable attorney's fees, arbitration fees, court costs and expenses incurred.

22. Fire and Casualty. Should the Unit be partially or wholly destroyed by fire, windstorm, vandalism, terrorism, Act of God, the result of a construction accident or other unanticipated event or casualty prior to Closing, Seller shall have the option to rebuild the Unit as soon as practicable, or cancel this Contract and return any Initial Payments to Purchaser. Seller's decision to rebuild the Unit or cancel the Contract shall be communicated to Purchaser in writing within forty-five (45) days of the loss. Purchaser acknowledges that Purchaser shall have no claim to or interest in any insurance proceeds attributable to the loss, and Purchaser shall remain obligated to purchase the Property upon completion of the repairs or construction.

23. Notices. All notices required or permitted hereunder shall be in writing and shall be sent by messenger or first-class mail to Purchaser or Seller at the addresses indicated in this Contract. Time limits specified in this Contract shall commence on delivery or three (3) days after mailing, whichever is less.

24. Miscellaneous Provisions. Time is of the essence of each and every provision of this Contract. All remedies of Seller under this Contract shall be cumulative. No waiver of a right provided by this Contract shall be effective unless stated in writing and signed by the party against whom enforcement of the waiver is sought. No waiver by Seller or Purchaser of any breach of any provision of this Contract shall be construed as a waiver of any later breach. Subject to the next sentence, this Contract is binding upon the heirs, executors, administrations, successors and assigns, of the respective parties. Purchaser's rights under this Contract may not be assigned, transferred, pledged, mortgaged or, encumbered by Purchaser without the prior written consent of Seller and any attempt to do so shall be void and of no effect. Seller's failure to give its consent to an assignment shall not give rise to any claims or damages against Seller. Furthermore, this Contract shall not be recorded. Purchaser shall not market, list or advertise the Unit for sale or lease in any public medium, whether print or electronic media multiple listing service or any other publicly available method or form until said unit is closed and funded. The preceding sentence is not intended to limit Purchaser's right to convey and transfer the Unit after Closing, but rather to limit public marketing of the Unit that competes with Seller for a limited period of time. Purchaser acknowledges that Seller would not sign this Contract but for Purchaser's promises in this Section 24.

In the event Seller damages any Purchaser-furnished item or work, Seller may at its option either replace same or repair same in a reasonable manner and to a reasonable extent; provided however, in no event shall Seller be required to expend more than five hundred dollars (\$500.00) to repair or replace any Purchaser-furnished item or work.

PURCHASER ACKNOWLEDGES RECEIPT OF THE PUBLIC OFFERING STATEMENT AND ALL ATTACHMENTS THERETO AND AS A PART OF THE CONSIDERATION HEREIN, AGREES TO BE BOUND BY ALL TERMS AND CONDITIONS CONTAINED THEREIN WHICH SHALL SURVIVE CLOSING.

14

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

526

25. Contract Represents Entire Agreement. This Contract contains the entire agreement between Seller and Purchaser with respect to the purchase of the Property and the construction of the Unit, and replaces all prior agreements or understandings, if any. Seller is not bound by any statement, promise, condition or stipulation not specifically set forth in this Contract. **NO SALESPERSON OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO MAKE ANY ORAL STATEMENTS OR AGREEMENTS THAT MODIFY, ADD TO OR CHANGE THE TERMS AND CONDITIONS OF THIS CONTRACT, AND PURCHASER ACKNOWLEDGES THAT PURCHASER HAS NOT RECEIVED ANY PROMISE OR BEEN ADVISED OF ANY MATERIAL FACT NOT SPECIFICALLY SET FORTH IN THIS CONTRACT.** The verbal statements made to Purchaser on behalf of the Seller are not intended to, and do not, form any part of any agreement between Seller and Purchaser, as they were understood and agreed to have been merely made in the course of negotiations of the parties. No advertising or promotional activities made or conducted by Seller or Seller's agents or representatives shall be binding upon Seller unless the same are expressly set forth in this Contract or in a subsequent written agreement executed by Seller and Purchaser. Neither this Contract nor any memorandum thereof shall be recorded in the Official Public Records of Real Property of Clark County, Nevada. In the event of recordation by Purchaser, this Contract may be terminated at the option of Seller upon notice by Seller to Purchaser, and the Initial Payments shall be retained by Seller herein.

26. Special Provisions, if any (if none, write "None"):

27. Performance of Acts on Business Days. As used herein, the term "business days" shall mean Monday through Friday, unless any of such days is a U.S. federal holiday. Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. In the event that the final date for payment of any amount or performance of any act hereunder falls on a Saturday, Sunday or holiday, such payment may be made or act performed on the next succeeding business day.

28. Counterparts and Fax Signatures. This Contract and related documents may be executed in any number of counterparts, with each counterpart being deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. Fax signatures on documents will be treated the same as original signatures, however, each party agrees that they will promptly forward originally executed documents to the other party if requested.

29. Addendum A and Addendum B are incorporated herein as part of this Contract.

IN WITNESS HEREOF, the parties have executed this contract. The "Effective Date" of this Contract shall be the date on which the later to sign of Seller or Purchaser shall execute this Contract and deliver at least one fully executed counterpart to the other party hereto or to the

Title Company. This Contract may be executed in multiple original counterparts, each of which shall be an original for all purposes.

NOTE: THIS CONTRACT SHALL NOT BE BINDING UPON SELLER UNLESS AND UNTIL EXECUTED BY SELLER.

PURCHASER MAY CANCEL THIS CONTRACT BY GIVING WRITTEN NOTICE OF SUCH CANCELLATION TO SELLER AT ANY TIME UNTIL MIDNIGHT OF THE FIFTH CALENDAR DAY FOLLOWING THE DATE ON WHICH THIS CONTRACT IS EXECUTED BY PURCHASER. A WRITTEN NOTICE OF SUCH CANCELLATION MUST BE DELIVERED PERSONALLY TO THE SELLER, OR SENT BY MAILING NOTICE THEREOF BY PREPAID UNITED STATES MAIL TO THE SELLER OR SELLER'S AGENT FOR SERVICE OF PROCESS. THIS RIGHT OF CANCELLATION DOES NOT APPLY IF PURCHASER HAS PERSONALLY INSPECTED THE UNIT BEFORE SIGNING THE CONTRACT. THE SELLER SHALL, WITHIN 15 DAYS AFTER RECEIPT OF A NOTICE OF CANCELLATION, RETURN ALL PAYMENTS MADE BY THE PURCHASER.

SELLER:

TOWER HOMES, LLC

By: _____
Rodney C. Yanke, Managing Member
Date: _____
Address: 4270 S. Decatur, Suite A-2
Las Vegas, Nevada 89103
Phone: 702-262-6138
Facsimile: _____

PURCHASER:

Name: _____
Name: _____
Date: _____
Address: _____
Home Phone: _____
Work Phone: _____
Facsimile: _____
E-Mail: _____

Attachments:

Exhibit A - Description of the Land
Exhibit B - Certificate of Acceptance
Addendum A

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL NO. 1: APN: 176-04-601-012

THE WEST HALF (W 1/2) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 4, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.B. & M.

PARCEL NO. 2: APN: 176-04-601-013

THE EAST HALF (E 1/2) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 4, TOWNSHIP 22 S., RANGE 60 EAST, M.D.B. & M.

PARCEL NO. 3: APN: 176-04-601-014

THE WEST HALF (W 1/2) OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 4, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.B. & M.

EXHIBIT "B"

CERTIFICATE OF ACCEPTANCE

The undersigned, (whether one or more, "Purchaser"), has inspected the condominium unit in Spanish View Tower Homes that Purchaser is purchasing (being Unit No. _____), and has had access and opportunity to inspect all portions of the Condominium building, common areas, parking facilities, driveways, and all other improvements located on the Land (as described in the Purchase Contract) with the exception of the interior of other individual units ("Improvements"), together with the opportunity to review all Plans and Specifications (as defined in the Purchase Contract) for the Improvements. Purchaser has found and certifies the Unit and Improvements to be in the condition required pursuant to the Purchase Contract under which the Unit will be purchased and all Improvements constructed in conformity with the applicable Plans and Specifications. Purchaser accordingly accepts the Unit and all Improvements in their present condition subject only to the punch list items on Schedule 1 attached hereto and hereby waives any claims regarding construction, design or any other architectural aspects of the Improvements and acknowledges that there is no warranty to the same except as set forth in the Seller's Limited Warranty, and Purchaser otherwise accepts all construction in its present condition.

EXECUTED ON THE _____ DAY OF _____, 200__

PURCHASER:

ADDENDUM "A"

Addendum to Purchase Contract between Tower Homes, LLC, as Seller, and _____
as Purchaser, covering the real property commonly known as Unit #_____, on the _____ floor of
Spanish View Tower Homes, Tower No. _____.

The following Forms are attached to and a part of this Contract:

- ☐ Airport Noise Disclosure
- ☐ Gaming Overlay Disclosure
- ☐ County Zoning Disclosure
- ☐ Duties Owed and Confirmation Regarding Real Estate Agent Relationship
- ☐ Addendum B Spanish View Tower Home Features

Date: _____

Date: _____

Tower Homes, LLC

Purchaser: _____

By: _____
Rodney C. Yanke, Managing Member

Purchaser: _____

Spanish View Tower Homes Addendum "A" to Purchase Contract

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

The undersigned Purchaser, having inspected the above described property on the terms and conditions herein stated and acknowledges receipt of a copy of this Addendum.

PURCHASER	TIME
-----------	------

The undersigned Seller accepts the foregoing offer to purchase and agrees to sell the above described property on the terms and conditions as stated herein and acknowledges receipt of copy of this agreement.

SELLER	TIME
--------	------

ADDENDUM "B": SPANISH VIEW TOWER HOMES FEATURES

EXTERIOR FEATURES

The Spanish View Tower Homes Condominium is to be built according to plans and specification by architects retained by Tower Homes, LLC ("Tower Homes") with modifications by Tower Homes during the construction process.

Exterior is EIFS and glass. Plans call for 8" of concrete between floors. The party walls are double wall construction with two layers of drywall, 3 layers of R-19, sound insulation between studs and 2 layers of sheetrock on each property owners side.

Detailed and varied balcony railings compliment the building.

Double thermo paned glass will vary in number and size due to the variety of floor plans. The amount of total glass area will vary depending on the floor plan selected.

The roof is a single ply system over tapered insulation on top of a 8" concrete deck.

The enclosed swimming pools are oversized with nearby whirlpool spas. There will be landscaping within the pool courtyard, the motor court and at the entrance. (Astro Turf)

15 acre guard gated community

Spectacular City and Mountain View

Inside parking

Health, Fitness and Weight Loss Center

Tennis courts

Racquetball courts

Putting Greens

Salon and Day Spa and Tanning Facilities

Horseshoe pit

Jogging/Walking Path

2 Dog Runs (Small dog & large dog area)

8 Acres of Recreational Facilities

Children's playground area

(Addendum B, Page 1 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m..

Initials Seller _____ Purchaser _____

BUILDING FEATURES

There is a Caterer's kitchen for private functions.

There is an 8000 square foot Events Room with kitchen in Tower Two.

There is a first class private health club with full time professional staff and state-of-the-art equipment included in HOA.

Ample storage rooms are available for purchase.

There is a concierge station in each lobby.

There are 102 guest-parking spaces plus street parking.

There are four floors of inside Parking. 2 below grade and 2 above grade. All units have 2, 10 foot wide parking spaces. There is a limited number of parking spaces, available as an option.

Access to the private parking garage is through controlled access gates. Each Homeowner will receive two transmitters.

Valet and Vehicle Appearance area in Towers One, Two and Three.

One waterless Automobile Detail per month Included in HOA fee.

Pest Control included in HOA fee.

Water included in HOA fee.

Visitor access is through the lobby via a phone entry system that will also provide the Homeowner with video capability through their television.

24 Hour Armed Security (CPR and medical emergency trained).

There are 5 elevators. Dimensions: 6'8" wide x 5'5" deep and 9' tall are approximate. There is an express elevator to the top four floors. (**Note: Floor #13 is not counted.)

There are 3 stairway exits from the building.

(Addendum B, Page 2 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

BUILDING FEATURES (cont)

There is a maintenance work area for an on-site employee. His/her duties will include but are not limited to:

Landscape
Cleaning garage area
Lighting Maintenance (on-site)

Cleaning the pool
Cleaning hallways
Trash duty

All structural floors will be constructed using plywood forms, thus there will be minor markings in the concrete ceilings.

The building has a fire sprinkler system for the common areas as well as the individual units.

Easy access to the 215 Beltway.

(Addendum B, Page 3 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

INTERIOR FEATURES

All residences will have a large covered terrace with ceramic tile floors. Total square footage varies with floor plans.

Ceilings are designed to be 11 feet on all floors except the top three floors which shall be 12 feet.

Mechanical plans call for most units to have two (2) AC units. (Water source heat pumps)

Units will have family rooms.

Large deluxe kitchens with breakfast nooks with granite and marble countertops and floors. Deluxe appliances – 42" refrigerator freezer, dishwasher, double oven, microwave, large cook top, garbage disposal, Insta-Hot, Walk In kitchen pantry and deluxe cabinets.

8 foot solid doors throughout.

Grand entry way with art galleries and marble floors.

Deluxe hardware, trim and baseboard.

Recessed lighting.

Master bath with Jacuzzi tub, his and hers sinks, separate showers with marble or slate walls, dressing vanity with marble or granite and deluxe plumbing fixtures and trim.

All bedrooms have bathrooms and walk in closets.

Pre-wired for alarm to security – service is optional.

Upgraded carpet or wood flooring (optional).

Plumbed for water softener and reverse osmosis units.

Oversized water heaters.

Laundry rooms with deluxe front-loading washer and dryer.

Powder room with ½ bath.

Large linen area cabinets.

Upgraded electrical fixtures.

All rooms wired for ceiling fans.

All rooms wired for cable TV

Cat 5 telephone and data wiring.

(Addendum B, Page 4 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

INTERIOR FEATURES (cont'd)

Internet high speed access T-1 (optional).

Select units (optional) gas fireplaces.

Built in vacuum systems

Intercom with CD player.

R-30 ceiling insulation.

R-22 exterior wall insulation.

R-50 Ceiling insulation, top three floors

All interior walls to be sound insulated.

Energy efficient – lower utility costs.

High performance dual pane deluxe windows and doors.

Windows will be sealed and designed to decrease outside noise and temperature transfer.

Large 12' x 8' windows in family view room

Large 12' x 8' bay windows in master bedroom.

(Addendum B, Page 5 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

MORE FE U ES

With the Customer in mind.....

Appliances are stainless steel and include a side by side refrigerator, dishwasher, convection oven, microwave, 30" warming drawer and a gas cook-top with down draft ventilation. Front loading washer/dryer is included.

Master bathrooms will have a 6' whirlpool tub and OVERSIZED shower with two (2) Speakman shower heads. Guest baths for most units will have a 3' shower or larger.

Mirrors above the bathroom vanity will typically be full height (up to the ceiling) with two or three lights, depending on floor plan. Bathrooms with pedestal sinks will not have a developer-supplied mirror.

Pedestal sinks are standard in Powder Rooms.

Plumbing fixtures are brass finished, as displayed in sales office.

The kitchen and bathroom cabinet finishes are available in several alternatives. Buyers choose from standard selections.

Lighting consists of recessed lights and other fixtures similar to or the same as the sales office.

The building will be wired for cable TV, multiple phones lines and high speed internet.

There is an oversized 80-gallon hot water heater for each unit.

Large walk-in-closets ideal for built-ins. Buyer is responsible for the design and construction of their own built-in and shelving.

Your Unit is sold with finished walls, with one coat of primer and painted. _____ Initial

The doors and wood trim surrounding door frames will be primed and painted. Frames are finger-jointed wood, suitable for painting, not staining. Because of the high ceilings and smooth walls (no texture), we recommend that the dry waffer or painter view your unit prior to pricing if texture or smooth walls are desired.

(Addendum B, Page 6 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

UPGRADES

For which you pay a little more

Wine chillers may be available.

Several job stained hardwoods are available in a vast array of types, colors and prices.

Fireplaces are available on all floors.

Butted glass is available for most showers.

Homeowners may upgrade to a different style of carpet for an additional charge.

There is a vast selection of lighting available. (See sales office.)

Other special upgrades may be available, i.e. special stones, cabinet finishes and glass front cabinets. (See sales office)

(Addendum B, Page 7 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

The choices are yours.....

You may select from hardwood floor samples with varying stains. (See sales office)

The Kitchen Island will be slab granite. The island top is available to match your slab countertop choice. You may select from at least six (6) slab granite colors for your island kitchen counter tops. The back splash will be 12" x 12" tiles from the countertop to the bottom of the upper cabinet. Additionally, we have several granite upgrade choices for an additional cost.

You may select from various carpet styles and colors for the bedroom area. (See sales office)

You may select hard surfaces for the bathroom floors, vanities, shower and tub surround from the displays in the sales office, (i.e. marble or slate). Granite is available at an additional charge for these areas. You are allowed to mix and match these surfaces. Showers will be surfaced to the ceiling and whirlpool tubs will have a 2' high tile surround.

Pedestal sinks are available in most floor plans as an alternative selection.

****Tower Homes reserves the right to amend any feature due to necessary changes in design or construction.**

(Addendum B, Page 8 of 8)

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

AFFIDAVIT OF PURCHASER
CONDOMINIUM INFORMATION STATEMENT
SPANISH VIEW TOWER HOMES CONDOMINIUM

STATE OF NEVADA

COUNTY OF CLARK

PURCHASER: _____
SELLER: Tower Homes, LLC

CONDOMINIUM: Spanish View Tower Homes

UNIT LEGAL DESCRIPTION: _____
PURCHASE CONTRACT DATE: _____

PURCHASE CONTRACT ADDENDUM DATE (if applicable): _____

PURPOSE: This affidavit is made for the following purposes: (i) to induce lenders to make mortgage loans in connection with the purchase of units in the Spanish View Tower Homes; (ii) to affirm Purchaser's understanding with respect to the nature and condition of the Unit; and (iii) to induce title insurance companies to issue title insurance policies on units in the Spanish View Tower Homes, knowing that the Seller, lenders, and title insurance companies will rely on the statements in this affidavit

BEFORE ME, the undersigned official, on this day appeared the above-named Purchaser, who is personally known to me, and first being duly sworn according to law upon Purchaser's oath deposed and said:

1. I am the person named above as Purchaser. I am over the age of 18 years and am fully competent to make this affidavit. I have personal knowledge of all statements, matters, and facts stated herein, and am able to swear that all are true and correct.

Affidavit of Purchaser
1 of 2

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

2. I signed the Purchase Contract to purchase the Unit located in the Spanish View Tower Homes (and Addendum to Purchase Contract, if applicable), as each is described above.

3. I received a Public Offering Information Statement from the Seller before I signed the Purchase Contract.

4. Even though I may have seen or been shown a furnished model, a Unit maintained by the Seller as a sales office, or a "typical unit" which has been newly decorated, I have received no promise or representation from the Seller or any of its representatives that I will receive as part of my purchase any such decorations or furnishings, except as completed in the Unit purchased by me.

5. I am purchasing the Unit for my own personal use, for residential and approved purposes, and, in purchasing the Unit, I have not sought out, nor am I relying upon, the skill or judgment of the Seller nor its representatives in advising me as to the suitability of the Unit for any particular commercial use or other purpose for which I am purchasing it.

6. I ☐ am ☐ not purchasing the Unit for my own occupancy. If the Unit is for my own occupancy, it will be my ☐ primary ☐ secondary home.

Name: _____

Name: _____

Signed and sworn to before me, the undersigned authority, on this ____ day of _____, 2005
by _____.

Notary Public of Nevada

Affidavit of Purchaser
2 of 2

All Rights Reserved
Tower Homes LLC
11/15/04 @ 4:50 p.m.

Initials Seller _____ Purchaser _____

EXHIBIT “B”

EXHIBIT “B”

1 **COMP**2 **Marquis & Aurbach**3 **TERRY A. COFFING, ESQ.**

4 Nevada Bar No. 4949

5 **BRIAN R. HARDY, ESQ.**

6 Nevada Bar No. 10068

7 10001 Park Run Drive

8 Las Vegas, Nevada 89145

9 (702) 382-0711

10 Attorneys for Plaintiffs

11 **DISTRICT COURT**12 **CLARK COUNTY, NEVADA**13 ALLISON GAYNOR, an individual; BARBARA
14 CHANDLER, individually and as TRUSTEE OF
15 THE SARALEE M. BOWERS TRUST, and on
16 behalf of others similarly situated,

17 Plaintiffs,

18 vs.

19 TOWER HOMES, LLC., a Nevada limited
20 liability company; RODNEY C. YANKE, an
21 individual; PRUDENTIAL REAL ESTATE
22 AFFILIATES, INC., a Delaware Corporation;
23 AMERICANA LLC dba AMERICANA
24 GROUP; Nevada limited liability company;
25 MARK L. STARK, an individual in his capacity
26 as a broker; JEANNINE CUTTER, an individual
27 in her capacity as an agent; DAVID BERG, an
28 individual in his capacity as an agent DOE
REAL ESTATE AGENTS I through X,
individually, DOE REAL ESTATE BROKERS I
through X, individually, ROE REAL ESTATE
CORPORATIONS I through X, inclusive,

Defendants

FILED

MAY 23 8 52 AM '07

CLERK OF THE COURT

Case No:

A 541668

Dept. No.:

XIII

(Business Court Requested)

COMPLAINT

Plaintiffs Allison Gaynor and Barbara Chandler, individually and on behalf of the Saralee M. Bowers Trust (hereinafter collectively the "Plaintiffs"), by and through their attorney record, the law firm of Marquis & Aurbach, hereby complain and allege, on behalf of themselves and person similarly situated as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction in this suit because Plaintiffs seek damages in excess

1 of the minimum jurisdictional requirements of this Court.

2 2. This Court has personal jurisdiction over the Defendants for the following
3 reasons:

- 4 a. Upon information and belief, the Defendants conduct business in Nevada,
5 were fiduciaries or recipients of funds held in Nevada, participated and/or
6 engaged in transactions which injured Nevadans, engaged in tortious
7 behavior in Nevada, caused injuries and damages to Nevadans, and/or they
8 are citizens or domiciliaries of this state. In addition, the claim stated in
9 this Complaint arises under Defendants' contacts with this state.
- 10 b. The Defendants have had such minimum contacts with the State of
11 Nevada that a Nevada court's exercise of personal jurisdiction over the,
12 would not offend traditional notions of fair play and substantial justice,
13 and the claims stated in this Complaint arise under those minimum
14 contacts.

15 3. Venue is proper in Clark County, Nevada for the following reasons:

- 16 a. Upon information and belief, Defendants are residents of Clark County,
17 Nevada, they transact business in Clark County, Nevada.
- 18 b. The issues and claims alleged in this Complaint revolve around property
19 located in Nevada.
- 20 c. Clark County, Nevada, is the county where all or substantially all of the
21 events giving rise to the Plaintiffs' claims occurred.

22 **II. PARTIES**

23 4. Allison Gaynor, is and was at all times relevant hereto, a party to an agreement to
24 purchase real property located in Clark County, State of Nevada.

25 5. Barbara Chandler, is and was at all times relevant hereto, a party to an agreement
26 to purchase real property located in Clark County, State of Nevada.

27 6. Saralee M. Bowers Trust, is and was at all times relevant hereto, a party to an
28 agreement to purchase real property located in Clark County, State of Nevada.

1 7. The class that Plaintiffs represent is comprised of all consumers, individuals or
2 otherwise, who entered into written Purchase Contracts with Defendant Tower Homes, LLC
3 ("Tower") and/or its agents, partners, successors or assigns, to purchase a common interest
4 ownership unit in the Spanish View Tower Homes Project ("Spanish View Project") to be
5 constructed by Defendants Tower and Rodney C. Yanke ("Yanke") (collectively hereinafter the
6 "Tower Defendants") on Assessors Parcel No. 176-04-601-019 in the County of Clark, State of
7 Nevada.

8 8. Tower is, and was at all times relevant hereto, a Nevada limited liability company,
9 doing business in Clark County, State of Nevada.

10 9. Yanke is, and was at all times relevant hereto, a resident of Clark County, State of
11 Nevada.

12 10. Prudential Real Estate Affiliates, Inc. ("Prudential") is, and was at all times
13 relevant hereto, a Delaware corporation, doing business in Clark County, State of Nevada.

14 11. AMERICANA LLC dba AMERICANA GROUP ("Americana") is, and was at all
15 times relevant hereto, a Nevada limited liability company, doing business in Clark County, State
16 of Nevada.

17 12. Mark L. Stark ("Stark") is, and was at all times relevant hereto, a resident of and
18 real estate broker in Clark County, State of Nevada.

19 13. Jeannine Cutter ("Cutter") is, and was at all times relevant hereto, a resident of
20 and real estate agent in Clark County, State of Nevada.

21 14. David Berg ("Berg") is, and was at all times relevant hereto, a resident of and real
22 estate agent in Clark County, State of Nevada.

23 15. Prudential, Americana, Stark, Cutter and Berg are hereinafter collectively referred
24 to as the Agent Defendants.

25 16. That the true names or capacities, whether individual, corporate, associate or
26 otherwise of the Defendants named herein as DOES 1 through X, inclusive, and ROE
27 CORPORATIONS I through X, inclusive, are unknown to Plaintiffs who, therefore, sue said
28 Defendants by such fictitious names. Plaintiffs allege that each Defendant designated herein as a

DOE or ROE CORPORATION is negligently, willfully, contractually, intentionally or otherwise legally responsible for the events and happenings herein referred to and proximately caused injury and damage thereby to the Plaintiffs as herein alleged. Plaintiffs shall ask leave of this Court to amend the Complaint to insert the true names and capacities of each Defendant named as DOES and/or ROE CORPORATIONS, when the same have been ascertained, and will further seek leave to join said Defendants in these proceedings.

III. GENERAL FACTUAL ALLEGATIONS

SPANISH VIEW PROJECT

17. Tower is a company set up by Yanke for the sole purpose of building the Spanish View Project.

18. The Spanish View Project is proposed to have three 18-story condominium towers, combining for 405 units, located at the southwest corner of Interstate-215 and S. Buffalo Road in Las Vegas, Nevada.

19. The Plaintiffs entered into written Purchase Contracts with the Tower Defendants which provided that their units located on or above the fifth floor of Tower A would be completed in or before July, 2007.

20. Moreover, according to oral promises made by the Tower Defendants and the Agent Defendants the first tower in the Spanish View Project was to be complete in June or July 2006.

21. To date, the first tower has not been completed nor is it near substantial completion. In fact, to date, Tower A does not even contain a ground level floor. Accordingly, it is impossible for the Tower Defendants to have a completed tower within the next forty-five (45) days.

22. Upon information and belief, construction on the Spanish View Project has ceased and there is presently no financing available for its completion.

23. Upon information and belief, there are approximately nine (9) lawsuits pending against the Tower Defendants and the Spanish View Project which effectively cloud title to the property.

1 24. Upon information and belief, there are over twenty-five million dollars in
2 mechanics liens which have been filed for work on the Spanish View project.

3 **INDUCEMENT INTO UNCONSCIONABLE AGREEMENT**

4 25. Plaintiffs meet with one or more of the Agent Defendants regarding the Spanish
5 View project. At the meeting with one or more of the Agent Defendants, it was represented to
6 the Plaintiffs that the first tower would be completed in June or July of 2006.

7 26. Based upon the assurances of the Agent Defendants, the Plaintiffs provided the
8 Tower Defendants with deposit monies in excess of \$10,000 to reserve a unit in the Spanish
9 View Project.

10 27. Based upon the assurances of the Agent Defendants, the Plaintiffs entered into a
11 Purchase Contract with the Tower Defendants to purchase a unit in the Spanish View Project.

12 28. The Purchase Contract provided that the Plaintiffs would place their purchase
13 monies into escrow account and that after five (5) days the escrow company would deposit the
14 purchase monies into Tower's company bank account.

15 29. The Purchase Contract provided a time is of the essence clause.

16 30. The Tower Defendants failed to meet their completion dates and will be unable to
17 meet any future contract dates.

18 31. Upon information and belief, the Spanish View Project presently has neither
19 financing available nor the resources necessary for its completion. Moreover, the first tower has
20 not been completed nor is it near substantial completion.

21 **FIRST CAUSE OF ACTION**
22 **(Breach of Contract – the Tower Defendants)**

23 32. The Plaintiffs repeat, re-allege and incorporate by reference each and every
24 allegation contained above, inclusive, as if fully set forth herein.

25 33. The Plaintiffs, each of them, entered into a into written Purchase Contracts with
26 the Tower Defendants and/or their agents, partners, successors or assigns, to purchase a common
27 interest ownership unit in the Spanish View Project

28 34. The Purchase Contract provided a time is of the essence clause.

1 35. The first tower in Spanish View was to be complete in June or July 2006.

2 36. To date, the first tower has not been completed nor is it near substantial
3 completion.

4 37. The Tower Defendants Plaintiffs have failed and/or refused to return Plaintiffs
5 deposit monies in excess of \$10,000.

6 38. As a direct and proximate result of the Tower Defendants' breach, the Plaintiffs
7 have been damaged an amount in excess of \$10,0000, plus interest thereon.

8 39. 35. As a direct and proximate result of the aforementioned acts, it has become
9 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
10 recover fees and costs incurred herein pursuant to the terms of the Purchase Contract.

11 **SECOND CAUSE OF ACTION**
12 **(Breach of the Covenant of Good Faith and Fair Dealing – the Tower Defendants)**

13 40. The Plaintiffs repeat, re-allege and incorporate by reference each and every
14 allegation contained above, inclusive, as if fully set forth herein.

15 41. All contracts in Nevada contain an implied covenant of good faith and fair
16 dealing.

17 42. The Tower Defendants, breached the covenant of good faith and fair dealing by
18 refusing to honor their contractual obligations.

19 43. As a direct and proximate cause of the Tower Defendants' breach, the Plaintiffs
20 have been damaged in excess of \$10,000, plus interest thereon.

21 44. As a direct and proximate result of the aforementioned acts, it has become
22 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
23 recover fees and costs incurred herein pursuant to the terms Purchase Contract.

24 **THIRD CAUSE OF ACTION**
(Declaratory Relief – the Tower Defendants)

25 45. The Plaintiffs repeat, re-allege and incorporate by reference each and every
26 allegation contained above, inclusive, as if fully set forth herein.

27 46. A justiciable controversy exists between the Plaintiffs and the Defendants relative
28 to their legal rights and duties under the above-mentioned Purchase Contract.

1 47. The controversy between the Plaintiffs and Defendants is adverse.

2 48. Plaintiffs seek a declaration from this Court setting forth the particular rights and
3 obligations of each party with regard to Purchase Contract.

4 49. A judicial determination of the Plaintiffs rights under the above referenced
5 Purchase Contract is necessary and appropriate at this time in order to avoid additional and
6 unnecessary litigation.

7 50. As a direct and proximate result of the aforementioned acts, it has become
8 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
9 recover fees and costs incurred herein pursuant to the terms Purchase Contract.

10 **FOURTH CAUSE OF ACTION**
11 **(Unjust Enrichment – all Defendants)**

12 51. The Plaintiffs repeat, re-allege and incorporate by reference each and every
13 allegation contained above, inclusive, as if fully set forth herein.

14 52. The Plaintiffs conferred upon Defendants, each of them, certain monetary
15 benefits.

16 53. Defendants appreciated the benefits conferred upon them by the Plaintiffs.

17 54. Defendants accepted and retained the benefits under circumstances where it
18 would be unjust and inequitable for them to retain the benefits.

19 55. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have
20 been damaged in excess of \$10,000.00, plus interest thereon.

21 56. As a direct and proximate result of the aforementioned acts, it has become
22 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
23 recover fees and costs incurred herein pursuant to the terms of the Purchase Contract.

24 **FIFTH CAUSE OF ACTION**
25 **(Deceptive and Unfair Trade Practices in Violation of NRS 598 Et. Seq.)**
26 **(Agent Defendants)**

27 57. The Plaintiffs repeat, re-allege and incorporate by reference each and every
28 allegation contained above, inclusive, as if fully set forth herein.

58. Upon information and belief, in or around February 2005, Cutter was intimately

1 involved and living with Yanke, the owner of Tower and developer of the Spanish View Project.

2 59. Upon information and belief, in or around February 2005, Cutter had a financial
3 interest in the Spanish View Project.

4 60. Cutter, as the onsite agent at the Spanish View Project, had contact with each and
5 every one of the Plaintiffs.

6 61. Cutter failed to disclose to the Plaintiffs, each of them, material facts in
7 connection with her solicitation to purchase an interest in land in the state of Nevada in violation
8 of NRS 598.0903 et. seq. and NRS 599A.010 et. seq.

9 62. Cutter's actions and conduct constitute a deceptive and unfair trade practice in
10 violation of NRS 598.0903 et. seq. and NRS 599A.010 et. seq.

11 63. Cutter works as a Sellers agent for sales in the Spanish View Project and does so
12 as an agent of Stark who is the Sellers broker for all sales in the Spanish View Project.

13 64. Upon information and belief, Cutter and Stark are employed by Prudential and
14 Americana.

15 65. Consequently, Prudential and Americana failed to disclose material facts in
16 connection with a solicitation to purchase an interest in land in the state of Nevada in violation of
17 NRS 598.0903 et. seq. and NRS 599A.010 et. seq.

18 66. NRS 598.0999(3) provides that a "person, firm, or any officer or managing agent
19 of any corporation or association who knowingly and willfully engages in a deceptive trade
20 practice" may be required to "pay to the aggrieved party damages on all profits derived from the
21 knowing and willful engagement in a deceptive trade practice and treble damages on all damages
22 suffered by reason of the deceptive trade practice."

23 67. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have
24 been damaged in excess of \$10,000.00, plus interest thereon.

25 68. As a direct and proximate result of the aforementioned acts, it has become
26 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
27 recover fees and costs incurred herein as well as treble damages pursuant to NRS 598.0999(3).
28

SIXTH CAUSE OF ACTION
(Violation of NRS 645)
(Agent Defendants)

69. The Plaintiffs repeat, re-allege and incorporate by reference each and every allegation contained above, inclusive, as if fully set forth herein.

70. Pursuant to NRS 645.990(4) any officer or agent of a corporation, or member or agent of a limited-liability company, partnership or association, who personally participates in or is an accessory to any violation of NRS chapter 645 is subject to the penalties prescribed therein.

71. Pursuant to NRS 645.260, where any person, limited liability company, partnership, association or corporation, in consideration for (or expectation of) a commission, directly or indirectly engages in any single act defined under NRS 645.030, such as negotiating a sale or soliciting prospective buyers, that person or entity is acting within the capacity of a real estate broker or real estate salesman.

72. Pursuant to NRS 645.252(1), Defendants Cutter, Stark, Americana and/or Prudential were required to disclose: 1) any material and relevant facts, data or information which they knew, or should have known, relating to the property, 2) each source from which they would receive compensation as a result of the transaction, and 3) that they had an interest in a principal to the transaction.

73. Pursuant to NRS 645.320, a licensee is prohibited from dealing with any party to a real estate transaction in a manner which is deceitful, fraudulent, or dishonest.

74. Upon information and belief, in or around February 2005, Cutter was intimately involved and living with Yanke, the owner of Tower and developer of the Spanish View Project.

75. Upon information and belief, in or around February 2005, Cutter and Americana had a financial interest in the Spanish View Project.

76. Defendants Cutter, Stark, Americana and/or Prudential failed to disclose these material facts in connection with their solicitation to purchase an interest in land in the state of Nevada in violation of NRS 645 et. seq.

77. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have been damaged in excess of \$10,000.00, plus interest thereon.

1 78. As a direct and proximate result of the aforementioned acts, it has become
2 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
3 recover all fees and costs incurred herein.

4 **SEVENTH CAUSE OF ACTION**
5 **(Civil RICO - Yanke)**

6 79. The Plaintiffs repeat, re-allege and incorporate by reference each and every
7 allegation contained above, inclusive, as if fully set forth herein.

8 80. Yanke engaged in racketeering activity as defined in NRS 207.390.

9 81. Upon information and belief, Yanke committed a predicate act when was
10 involved in a scheme in which he took buyers and lenders monies for completed houses without
11 the intent or ability to complete said houses in violation of NRS 207.360.

12 82. Upon information and belief, Yanke was sued as a result of his activities in Case
13 No.: 86-A-245508-C and Case No. 06-A-528584-C in the Eighth Judicial District Court in Clark
14 County, Nevada.

15 83. Upon information and belief, the aforementioned cases were initiated after July 1,
16 1983 and Yanke has continued engaging in related acts of racketeering which have the same or
17 similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise
18 interrelated by distinguishing characteristics.

19 84. Yanke's racketeering actions are not isolated incidents.

20 85. Yanke has utilized a Purchase Contract in relation to the Spanish View Project
21 which provides that potential purchasers must place their purchase monies into escrow account
22 which, after five (5) days, pursuant to Yankes instructions is deposited into Yanke's company
23 bank account.

24 86. Upon information and belief, Yanke is not utilizing said money to complete the
25 Spanish View Project.

26 87. Upon information and belief, Yanke committed a subsequent predicate act when
27 prior to Yanke accepting the Plaintiffs purchase monies he accepted purchase monies from other
28 purchasers under false pretenses.

1 88. The Plaintiffs entered into a Purchase Contract and provided Yanke with deposit
2 monies in excess of \$10,000.

3 89. The Plaintiffs deposit monies have been removed from the escrow account and
4 deposited in Yanke business account.

5 90. Upon information and belief, Yanke is continuing to take purchase monies from
6 other potential purchasers, knowing that the Spanish View Project cannot be completed or
7 receive financing.

8 91. As a direct and proximate result of Defendants' racketeering activities, the
9 Plaintiffs have been damaged in excess of \$10,000.

10 92. The Plaintiffs are entitled to treble damages.

11 93. The Plaintiffs have been forced to retain the services of an attorney to prosecute
12 this matter and are entitled recover reasonable costs and attorneys fees incurred herein as special
13 damages.

14 **EIGHTH CAUSE OF ACTION**
15 **(Conversion – the Tower Defendants)**

16 94. The Plaintiffs repeat, re-allege and incorporate by reference each and every
17 allegation contained above, inclusive, as if fully set forth herein.

18 95. The Tower Defendants have misappropriated, unlawfully exercised domain over,
19 and converted for their use and benefit the Plaintiffs purchase money to the detriment of the
20 Plaintiffs.

21 96. By keeping the above-referenced funds, the Tower Defendants' possession and
22 use of the funds demonstrates a claim of ownership which is inconsistent with the proper and
23 rightful ownership thereof.

24 97. The Plaintiffs have been forced to retain the services of an attorney to prosecute
25 this matter and are entitled recover reasonable costs and attorneys fees incurred herein as special
26 damages

27 WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

28 1. For Breach of Contract damages in excess of \$10,000, plus interest thereon;

- 1 2. For general damages in excess of \$10,000.00, plus interest thereon;
- 2 3. For declaratory relief setting forth the particular rights and obligations of each
- 3 party with regard to Purchase Contract.
- 4 4. For statutory treble damages;
- 5 5. For attorney's fees and costs incurred herein as damages pursuant NRS
- 6 598.0999(3);
- 7 6. For attorney's fees and costs incurred herein as damages pursuant Purchase
- 8 Contract;
- 9 7. For punitive damages; and
- 10 8. For such other and further relief as the Court deems just and proper in its
- 11 premises.

12 Dated this 22nd day of May, 2007.


MARQUIS & AURBACH

By: 

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Nevada Bar No. 4949
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Attorneys for Plaintiffs

EXHIBIT “C”

EXHIBIT “C”


CLERK OF THE COURT

COMP
Marquis & Aurbach
TERRY A. COFFING, ESQ.
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BRIAN R. HARDY, ESQ.
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10001 Park Run Drive
Las Vegas, Nevada 89145
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

ALLISON GAYNOR, an individual; BARBARA
CHANDLER, individually and as TRUSTEE OF
THE SARALEE M. BOWERS TRUST;
MELVA NEVADA BROWN, an individual;
RICHARD GOODALL, an individual;
HAROLD & CAROL HERZLICH, individuals;
ROBERT EMBLETON, an individual; DAHN
MIDORA, an individual; ARTHUR
WILLIAMS, an individual; LARRY & JUDY
SHIFFMAN, individuals; EDWIN & GAIL
EDEJER, individuals; JUDGE ANGEL
COOLEY, an individual; DEBRA JONES, an
individual; and ABE SIEMENS, an individual,

Plaintiffs,

vs.

TOWER HOMES, LLC., a Nevada limited
liability company; RODNEY C. YANKE, an
individual; AMERICANA LLC dba
AMERICANA GROUP; Nevada limited liability
company; MARK L. STARK, an individual in
his capacity as a broker; JEANNINE CUTTER,
an individual in her capacity as an agent; DAVID
BERG, an individual in his capacity as an agent
DOE REAL ESTATE AGENTS I through X,
individually, DOE REAL ESTATE BROKERS I
through X, individually, ROE REAL ESTATE
CORPORATIONS I through X, inclusive,

Defendants

Case No: A541668

Dept. No.: XI

FIRST AMENDED COMPLAINT

Plaintiffs Allison Gaynor, Barbara Chandler, individually and on behalf of the Saralee M.
Bowers Trust, Melva Nevada Brown, Richard Goodall, Harold & Carol Herzlich, Robert

1 Embleton, Dahn Midora, Arthur Williams, Larry & Judy Shiffman, Edwin & Gail Edejer, Judge
2 Angel Cooley, Debra Jones, and Abe Siemens (hereinafter collectively the "Plaintiffs"), by and
3 through their attorney record, the law firm of Marquis & Aurbach, hereby complain and allege as
4 follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has jurisdiction in this suit because Plaintiffs seek damages in excess
7 of the minimum jurisdictional requirements of this Court.

8 2. This Court has personal jurisdiction over the Defendants for the following
9 reasons:

10 a. Upon information and belief, the Defendants conduct business in Nevada,
11 were fiduciaries or recipients of funds held in Nevada, participated and/or
12 engaged in transactions which injured Nevadans, engaged in tortious
13 behavior in Nevada, caused injuries and damages to Nevadans, and/or they
14 are citizens or domiciliaries of this state. In addition, the claim stated in
15 this Complaint arises under Defendants' contacts with this state.

16 b. The Defendants have had such minimum contacts with the State of
17 Nevada that a Nevada court's exercise of personal jurisdiction over the,
18 would not offend traditional notions of fair play and substantial justice,
19 and the claims stated in this Complaint arise under those minimum
20 contacts.

21 3. Venue is proper in Clark County, Nevada for the following reasons:

22 a. Upon information and belief, Defendants are residents of Clark County,
23 Nevada, they transact business in Clark County, Nevada.

24 b. The issues and claims alleged in this Complaint revolve around property
25 located in Nevada.

26 c. Clark County, Nevada, is the county where all or substantially all of the
27 events giving rise to the Plaintiffs' claims occurred.
28

II. PARTIES

4. Allison Gaynor, is and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

5. Barbara Chandler, is and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

6. Saralee M. Bowers Trust, is and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

7. Melva Nevada Brown, is and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

8. Richard Goodall, is and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

9. Harold & Carol Herzlich, are and were at all times relevant hereto, party to an agreement to purchase real property located in Clark County, State of Nevada.

10. Robert Embleton, is and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

11. Dahn Midora, is and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

12. Arthur Williams, is and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

13. Larry & Judy Shiffman, are and were at all times relevant hereto, party to an agreement to purchase real property located in Clark County, State of Nevada.

14. Edwin & Gail Edejer, are and were at all times relevant hereto, party to an agreement to purchase real property located in Clark County, State of Nevada.

15. Judge Angel Cooley, is and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

16. Debra Jones, is and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

17. Abe Siemens, is and was at all times relevant hereto, a party to an agreement to

1 purchase real property located in Clark County, State of Nevada.

2 18. Plaintiffs are purchasers, consumers, individuals or otherwise, who entered into
3 written Purchase Contracts with Defendant Tower Homes, LLC ("Tower") and/or its agents,
4 partners, successors or assigns, to purchase a common interest ownership unit in the Spanish
5 View Tower Homes Project ("Spanish View Project") to be constructed by Defendants Tower
6 and Rodney C. Yanke ("Yanke") (collectively hereinafter the "Tower Defendants") on
7 Assessors Parcel No. 176-04-601-019 in the County of Clark, State of Nevada.

8 19. Tower is, and was at all times relevant hereto, a Nevada limited liability company,
9 doing business in Clark County, State of Nevada.

10 20. Yanke is, and was at all times relevant hereto, a resident of Clark County, State of
11 Nevada.

12 21. AMERICANA LLC dba AMERICANA GROUP ("Americana") is, and was at all
13 times relevant hereto, a Nevada limited liability company, doing business in Clark County, State
14 of Nevada.

15 22. Mark L. Stark ("Stark") is, and was at all times relevant hereto, a resident of and
16 real estate broker in Clark County, State of Nevada.

17 23. Jeannine Cutter ("Cutter") is, and was at all times relevant hereto, a resident of
18 and real estate agent in Clark County, State of Nevada.

19 24. David Berg ("Berg") is, and was at all times relevant hereto, a resident of and real
20 estate agent in Clark County, State of Nevada.

21 25. Americana, Stark, Cutter and Berg are hereinafter collectively referred to as the
22 Agent Defendants.

23 26. That the true names or capacities, whether individual, corporate, associate or
24 otherwise of the Defendants named herein as DOES 1 through X, inclusive, and ROE
25 CORPORATIONS I through X, inclusive, are unknown to Plaintiffs who, therefore, sue said
26 Defendants by such fictitious names. Plaintiffs allege that each Defendant designated herein as a
27 DOE or ROE CORPORATION is negligently, willfully, contractually, intentionally or otherwise
28 legally responsible for the events and happenings herein referred to and proximately caused

1 injury and damage thereby to the Plaintiffs as herein alleged. Plaintiffs shall ask leave of this
2 Court to amend the Complaint to insert the true names and capacities of each Defendant named
3 as DOES and/or ROE CORPORATIONS, when the same have been ascertained, and will further
4 seek leave to join said Defendants in these proceedings.

5 **III. GENERAL FACTUAL ALLEGATIONS**

6 **SPANISH VIEW PROJECT**

7 27. Tower is a company set up by Yanke for the sole purpose of building the Spanish
8 View Project.

9 28. The Spanish View Project is proposed to have three 18-story condominium
10 towers, combining for 405 units, located at the southwest corner of Interstate-215 and S. Buffalo
11 Road in Las Vegas, Nevada.

12 29. The Plaintiffs entered into written Purchase Contracts with the Tower Defendants
13 which provided that their units would be completed within two (2) years.

14 30. Moreover, according to oral promises made by the Tower Defendants and the
15 Agent Defendants the first tower in the Spanish View Project was to be complete in June or July
16 2006.

17 31. To date, the first tower has not been completed nor is it near substantial
18 completion. In fact, to date, Tower A does not even contain a ground level floor. Accordingly,
19 it is impossible for the Tower Defendants to have a completed tower within a reasonable time
20 period.

21 32. Upon information and belief, construction on the Spanish View Project has ceased
22 and there is presently no financing available for its completion.

23 33. Upon information and belief, there are approximately nine (9) lawsuits pending
24 against the Tower Defendants and the Spanish View Project which effectively cloud title to the
25 property.

26 34. Upon information and belief, there are over twenty-five million dollars in
27 mechanics liens which have been filed for work on the Spanish View project.
28

INDUCEMENT INTO UNCONSCIONABLE AGREEMENT

35. Plaintiffs meet with one or more of the Agent Defendants regarding the Spanish View project. At the meeting with one or more of the Agent Defendants, it was represented to the Plaintiffs that the first tower would be completed in or around July 2006.

36. Based upon the assurances of the Agent Defendants, the Plaintiffs provided the Tower Defendants with deposit monies in excess of \$10,000 to reserve a unit in the Spanish View Project.

37. Based upon the assurances of the Agent Defendants, the Plaintiffs entered into a Purchase Contract with the Tower Defendants to purchase a unit in the Spanish View Project.

38. The Purchase Contract provided a time is of the essence clause.

39. The Tower Defendants failed to meet their completion dates and will be unable to meet any future contract dates.

40. Upon information and belief, the Spanish View Project presently has neither financing available nor the resources necessary for its completion. Moreover, the first tower has not been completed nor is it near substantial completion.

FIRST CAUSE OF ACTION
(Breach of Contract – the Tower Defendants)

41. The Plaintiffs repeat, re-allege and incorporate by reference each and every allegation contained above, inclusive, as if fully set forth herein.

42. The Plaintiffs, each of them, entered into a into written Purchase Contracts with the Tower Defendants and/or their agents, partners, successors or assigns, to purchase a common interest ownership unit in the Spanish View Project.

43. The Purchase Contract provided a time is of the essence clause.

44. The first tower in Spanish View was to be complete in June or July 2006.

45. To date, the first tower has not been completed nor is it near substantial completion.

46. Moreover, Pursuant to Section 2(e) of the Purchase Contract the Tower Defendants were obligated to place all Plaintiffs deposit monies into an interest bearing trust

1 account designated solely for the purpose of holding the purchasers deposit monies.

2 47. Pursuant to Section 2(e) the Purchase Contract the Plaintiffs' deposit monies were
3 not to be released from the interest bearing trust account until: 1) closing; 2) Purchaser's default;
4 or 3) Sellers default.

5 48. Plaintiffs neither defaulted under their Purchase Contract nor closed on their
6 respective units. Accordingly, Plaintiffs deposit monies should remain in the interest bearing
7 trust account.

8 49. Upon information and belief, Yanke, without the authorization of the Plaintiffs,
9 transferred substantially all of Plaintiffs deposit monies.

10 50. Upon information and belief, Plaintiffs deposit monies were transferred into
11 accounts which were used to pay, among other things, the personal expenses of the Yanke, Berg,
12 and Cutter.

13 51. Despite repeated requests, the Tower Defendants have failed and/or refused to
14 return Plaintiffs deposit monies.

15 52. As a direct and proximate result of the Tower Defendants' breach, the Plaintiffs
16 have been damaged an amount in excess of \$10,0000, plus interest thereon.

17 53. As a direct and proximate result of the aforementioned acts, it has become
18 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
19 recover fees and costs incurred herein pursuant to the terms of the Purchase Contract.

20 **SECOND CAUSE OF ACTION**

21 **(Breach of the Covenant of Good Faith and Fair Dealing – the Tower Defendants)**

22 54. The Plaintiffs repeat, re-allege and incorporate by reference each and every
23 allegation contained above, inclusive, as if fully set forth herein.

24 55. All contracts in Nevada contain an implied covenant of good faith and fair
25 dealing.

26 56. The Tower Defendants, breached the covenant of good faith and fair dealing by
27 refusing to honor their contractual obligations.

28 57. As a direct and proximate cause of the Tower Defendants' breach, the Plaintiffs

1 have been damaged in excess of \$10,000, plus interest thereon.

2 58. As a direct and proximate result of the aforementioned acts, it has become
3 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
4 recover fees and costs incurred herein pursuant to the terms Purchase Contract.

5 **THIRD CAUSE OF ACTION**
6 **(Declaratory Relief – the Tower Defendants)**

7 59. The Plaintiffs repeat, re-allege and incorporate by reference each and every
8 allegation contained above, inclusive, as if fully set forth herein.

9 60. A justiciable controversy exists between the Plaintiffs and the Defendants relative
10 to their legal rights and duties under the above-mentioned Purchase Contract.

11 61. The controversy between the Plaintiffs and Defendants is adverse.

12 62. Plaintiffs seek a declaration from this Court setting forth the particular rights and
13 obligations of each party with regard to Purchase Contract.

14 63. A judicial determination of the Plaintiffs rights under the above referenced
15 Purchase Contract is necessary and appropriate at this time in order to avoid additional and
16 unnecessary litigation.

17 64. As a direct and proximate result of the aforementioned acts, it has become
18 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
19 recover fees and costs incurred herein pursuant to the terms Purchase Contract.

20 **FOURTH CAUSE OF ACTION**
21 **(Unjust Enrichment – all Defendants)**

22 65. The Plaintiffs repeat, re-allege and incorporate by reference each and every
23 allegation contained above, inclusive, as if fully set forth herein.

24 66. The Plaintiffs conferred upon Defendants, each of them, certain monetary
25 benefits.

26 67. Defendants, each of them, appreciated the benefits conferred upon them by the
27 Plaintiffs.

28 68. Defendants, each of them, accepted and retained the benefits under circumstances

1 where it would be unjust and inequitable for them to retain the benefits.

2 69. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have
3 been damaged in excess of \$10,000.00, plus interest thereon.

4 70. As a direct and proximate result of the aforementioned acts, it has become
5 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
6 recover fees and costs incurred herein pursuant to the terms of the Purchase Contract.

7 **FIFTH CAUSE OF ACTION**
8 **(Deceptive and Unfair Trade Practices in Violation of NRS 598 Et. Seq. and 599A Et. Seq.)**
9 **(Agent Defendants)**

10 71. The Plaintiffs repeat, re-allege and incorporate by reference each and every
11 allegation contained above, inclusive, as if fully set forth herein.

12 72. Upon information and belief, in or around 2005, Cutter was intimately involved
13 and living with Yanke, the owner of Tower and developer of the Spanish View Project.

14 73. Upon information and belief, in or around 2005, the Agent Defendants had direct
15 financial interests in the Spanish View Project.

16 74. Upon information and belief, Cutter and Berg were receiving monthly salaries
17 from Tower.

18 75. Cutter and Berg, as the onsite agents at the Spanish View Project, had contact
19 with each and every one of the Plaintiffs.

20 76. NRS 598.0923 provides that a person engages in a deceptive trade practice when
21 in the course of their business or occupation they knowingly fail to disclose a material fact in
22 connection with the sale or lease of goods or services.

23 77. NRS 599A.060 provides that it is an unfair practices for any person to
24 misrepresent or conceal any material fact or to make any false or deceptive statements while
25 offering to sell an option, interest, or reservation in land.

26 78. Cutter and Berg, while providing services as real estate agents, failed to disclose
27 to the Plaintiffs, each of them, material facts in connection with their solicitation to purchase an
28 interest in land in the state of Nevada in violation of NRS 598.0903 et. seq. and NRS 599A.010
et. seq.

1 79. Cutter and Berg, while providing services as real estate agents, made
2 misrepresentations of material fact to the Plaintiffs, each of them, in connection with their
3 solicitation to purchase an interest in land in the state of Nevada in violation of NRS 598.0903 et.
4 seq. and NRS 599A.010 et. seq.

5 80. Cutter and Berg's actions and conduct constitute a deceptive and unfair trade
6 practice in violation of NRS 598.0903 et. seq. and NRS 599A.010 et. seq.

7 81. Cutter and Berg work as agents for sales in the Spanish View Project and do so as
8 agents of Stark who is the authorized broker for all sales in the Spanish View Project.

9 82. Upon information and belief, Cutter and Stark are agents of Americana.

10 83. Consequently, Americana through its agents failed to disclose material facts and
11 made material misrepresentations in connection with a solicitation to purchase an interest in land
12 in the state of Nevada in violation of NRS 598.0903 et. seq. and NRS 599A.010 et. seq.

13 84. NRS 598.0999(3) provides that a "person, firm, or any officer or managing agent
14 of any corporation or association who knowingly and willfully engages in a deceptive trade
15 practice" may be required to "pay to the aggrieved party damages on all profits derived from the
16 knowing and willful engagement in a deceptive trade practice and treble damages on all damages
17 suffered by reason of the deceptive trade practice."

18 85. Plaintiffs are entitled to treble damages against the Agent Defendants.

19 86. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have
20 been damaged in excess of \$10,000.00, plus interest thereon.

21 87. As a direct and proximate result of the aforementioned acts, it has become
22 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
23 recover fees and costs incurred herein as well as treble damages pursuant to NRS 598.0999(3).

24 **SIXTH CAUSE OF ACTION**
25 **(Violation of NRS 645)**
 (Agent Defendants)

26 88. The Plaintiffs repeat, re-allege and incorporate by reference each and every
27 allegation contained above, inclusive, as if fully set forth herein.

28 89. Pursuant to NRS 645.990(4) any officer or agent of a corporation, or member or

1 agent of a limited-liability company, partnership or association, who personally participates in or
2 is an accessory to any violation of NRS chapter 645 is subject to the penalties prescribed therein.

3 90. Pursuant to NRS 645.260, where any person, limited liability company,
4 partnership, association or corporation, in consideration for (or expectation of) a commission,
5 directly or indirectly engages in any single act defined under NRS 645.030, such as negotiating a
6 sale or soliciting prospective buyers, that person or entity is acting within the capacity of a real
7 estate broker or real estate salesman.

8 91. Pursuant to NRS 645.252(1), the Agent Defendants were required to disclose to
9 the Plaintiffs: 1) any material and relevant facts, data or information which they knew, or should
10 have known, relating to the property, 2) each source from which they would receive
11 compensation as a result of the transaction, and 3) that they had an interest in a principal to the
12 transaction.

13 92. Pursuant to NRS 645.320, a licensee is prohibited from dealing with any party to
14 a real estate transaction in a manner which is deceitful, fraudulent, or dishonest.

15 93. Upon information and belief, in or around 2005, Cutter was intimately involved
16 and living with Yanke, the owner of Tower and developer of the Spanish View Project.

17 94. Upon information and belief, Cutter and Berg were receiving monthly salaries
18 from Tower.

19 95. Upon information and belief, in or around 2005, the Agent Defendants had a
20 direct financial interest in the Spanish View Project.

21 96. The Agent Defendants failed to disclose material facts in connection with their
22 solicitation to purchase an interest in land in the state of Nevada in violation of NRS 645 et. seq.

23 97. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have
24 been damaged in excess of \$10,000.00, plus interest thereon.

25 98. As a direct and proximate result of the aforementioned acts, it has become
26 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
27 recover all fees and costs incurred herein.
28

SEVENTH CAUSE OF ACTION
(Violation of NRS 116 and Associated Punitive Damages– all Defendants)

99. The Plaintiffs repeat, re-allege and incorporate by reference each and every allegation contained above, inclusive, as if fully set forth herein.

100. NRS 116.411(1) provides that a deposit made in connection with the purchase or reservation of a condominium unit must be placed in an escrow account designated solely for that purpose until said monies are: (a) delivered to the seller at closing; (b) delivered to the seller because of the purchaser's default under a contract to purchase the unit; (c) released to the seller for an additional item, improvement, optional item or alteration; or (d) refunded to the purchaser.

101. NRS 116.411(3) provides that in lieu of placing a deposit in escrow a seller may furnish a bond in a principal sum equal to the amount of the deposit as surety.

102. The Plaintiffs, each of them, entered into a into written Purchase Contracts with the Tower Defendants and/or their agents, partners, successors or assigns, to purchase a common interest ownership unit in the Spanish View Project.

103. Plaintiff, each of them provided deposit monies in connection with their purchase.

104. Upon information and belief, Tower never posted a bond for said deposits pursuant to NRS 116.411(3).

105. Upon information and belief, Tower never placed the Plaintiffs deposits in an escrow account designated solely for that purpose until said monies were to be: (a) delivered to the seller at closing; (b) delivered to the seller because of the purchaser's default under a contract to purchase the unit; (c) released to the seller for an additional item, improvement, optional item or alteration; or (d) refunded to the purchaser.

106. Upon information and belief, Yanke, without the authorization of the Plaintiffs, transferred substantially all of Plaintiffs deposit monies into accounts which were used to pay, among other things, the personal expenses of the Yanke, Berg, and Cutter.

107. Despite repeated requests, the Defendants have failed and/or refused to return Plaintiffs deposit monies.

108. NRS 116.4117(3) provides that punitive damages may be awarded for a willful

1 and material failure to comply with NRS 116.

2 109. The Defendants have failed willfully and materially failed to comply with NRS
3 116.

4 110. As a direct and proximate result of the Defendants activities, the Plaintiffs have
5 been damaged in excess of \$10,000.

6 111. The Plaintiffs are entitled to punitive damages.

7 112. The Plaintiffs have been forced to retain the services of an attorney to prosecute
8 this matter and are entitled recover reasonable costs and attorney fees incurred herein as special
9 damages.

10 **EIGHTH CAUSE OF ACTION**
11 **(Civil RICO - Yanke)**

12 113. The Plaintiffs repeat, re-allege and incorporate by reference each and every
13 allegation contained above, inclusive, as if fully set forth herein.

14 114. Yanke engaged in racketeering activity as defined in NRS 207.390.

15 115. Upon information and belief, Yanke committed a predicate act when was
16 involved in a scheme in which he took buyers and lenders monies for completed houses without
17 the intent or ability to complete said houses in violation of NRS 207.360.

18 116. Upon information and belief, Yanke was sued as a result of his activities in Case
19 No.: 86-A-245508-C and Case No. 06-A-528584-C in the Eighth Judicial District Court in Clark
20 County, Nevada.

21 117. Upon information and belief, the aforementioned cases were initiated after July 1,
22 1983 and Yanke has continued engaging in related acts of racketeering which have the same or
23 similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise
24 interrelated by distinguishing characteristics.

25 118. Yanke's racketeering actions are not isolated incidents.

26 119. Yanke has utilized a Purchase Contract in relation to the Spanish View Project
27 which provides that potential purchasers must place their purchase monies into escrow account
28 which, after five (5) days, pursuant to Yanke's instructions is deposited into Yanke's company

1 bank account.

2 120. Upon information and belief, Yanke is not utilizing said money to complete the
3 Spanish View Project.

4 121. Upon information and belief, Yanke committed a subsequent predicate act when
5 prior to Yanke accepting the Plaintiffs purchase monies he accepted purchase monies from other
6 purchasers under false pretenses.

7 122. The Plaintiffs entered into a Purchase Contract and provided Yanke with deposit
8 monies in excess of \$10,000.

9 123. The Plaintiffs deposit monies have been removed from the escrow account and
10 deposited in Yanke business account.

11 124. Upon information and belief, Yanke is continuing to take purchase monies from
12 other potential purchasers, knowing that the Spanish View Project cannot be completed or
13 receive financing.

14 125. As a direct and proximate result of Defendants' racketeering activities, the
15 Plaintiffs have been damaged in excess of \$10,000.

16 126. The Plaintiffs are entitled to treble damages.

17 127. The Plaintiffs have been forced to retain the services of an attorney to prosecute
18 this matter and are entitled recover reasonable costs and attorney fees incurred herein as special
19 damages.

20
21 **EIGHTH CAUSE OF ACTION**
(Conversion – the Tower Defendants)

22 128. The Plaintiffs repeat, re-allege and incorporate by reference each and every
23 allegation contained above, inclusive, as if fully set forth herein.

24 129. The Tower Defendants have misappropriated, unlawfully exercised domain over,
25 and converted for their use and benefit the Plaintiffs purchase money to the detriment of the
26 Plaintiffs.

27 130. By keeping the above-referenced funds, the Tower Defendants' possession and
28 use of the funds demonstrates a claim of ownership which is inconsistent with the proper and

1 rightful ownership thereof.

2 131. The Plaintiffs have been forced to retain the services of an attorney to prosecute
3 this matter and are entitled recover reasonable costs and attorney fees incurred herein as special
4 damages

5 WHEREFORE, Plaintiffs pray for a judgment against the Defendants as follows:

- 6 1. For Breach of Contract damages in excess of \$10,000, plus interest thereon;
7 2. For general damages in excess of \$10,000.00, plus interest thereon;
8 3. For declaratory relief setting forth the particular rights and obligations of each
9 party with regard to Purchase Contract.
10 4. For statutory treble damages;
11 5. For attorney fees and costs incurred herein as damages pursuant NRS
12 598.0999(3);
13 6. For attorney fees and costs incurred herein as damages pursuant Purchase
14 Contract;
15 7. For punitive damages; and
16 8. For such other and further relief as the Court deems just and proper in its
17 premises.

18 Dated this 23rd day of October, 2007.

19 MARQUIS & AURBACH

20
21
22 By: 

23 Terry A. Coffing, Esq.
24 Nevada Bar No. 4949
25 Brian R. Hardy, Esq.
26 Nevada Bar No. 10068
27 10001 Park Run Drive
28 Las Vegas, Nevada 89145
Attorneys for Plaintiffs

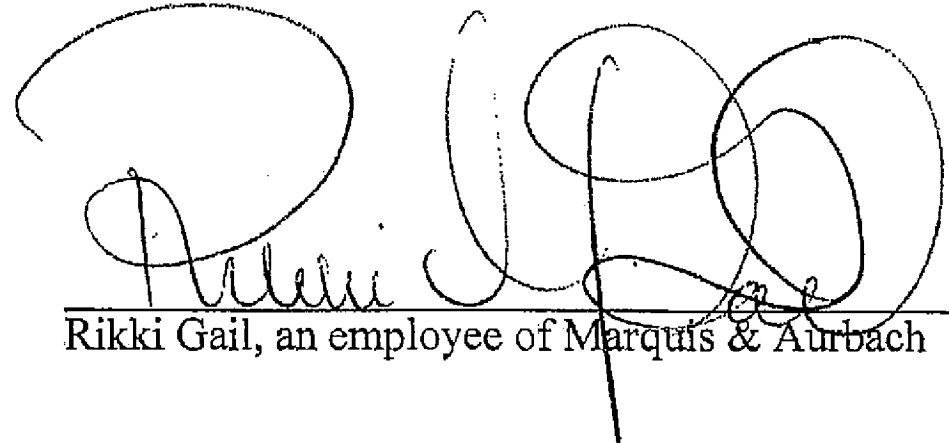
CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of October, 2007, I served a copy of the foregoing **FIRST AMENDED COMPLAINT** upon each of the parties by depositing a copy of the same in a sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, and addressed to:

William H. Heaton, Esq.
NITZ, WALTON & HEATON, LTD.
601 S. 10th Street, #201
Las Vegas, Nevada 89101
Attorneys for Defendants
Tower Homes, LLC &
Rodney Yanke

Michael E. Stoberski, Esq.
OLSON, CANNON, GORMLEY &
DESRUISSEAU
9950 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Americana, LLC dba
Americana Group, Jeannine Cutter,
Mark L. Stark & David Berg,

and that there is a regular communication by mail between the place of mailing and the places so addressed.



Rikki Gail, an employee of Marquis & Aurbach

EXHIBIT “D”

EXHIBIT “D”


CLERK OF THE COURT

1 ACOM
2 Marquis & Aurbach
3 TERRY A. COFFING, ESQ.
Nevada Bar No. 4949
4 BRIAN R. HARDY, ESQ.
Nevada Bar No. 10068
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bhardy@marquisaurbach.com
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

9 ALLISON GAYNOR, an individual; BARBARA
10 CHANDLER, individually and as TRUSTEE OF
THE SARALEE M. BOWERS TRUST;
11 MELVA NEVADA BROWN, an individual;
12 RICHARD GOODALL, an individual;
HAROLD & CAROL HERZLICH, individuals;
13 ROBERT EMBLETON, an individual; DAHN
MIDORA, an individual; ARTHUR
14 WILLIAMS, an individual; LARRY & JUDY
SHIFFMAN, individuals; EDWIN & GAIL
15 EDEJER, individuals; JUDGE ANGEL
COOLEY, an individual; DEBRA JONES, an
16 individual; ABE SIEMENS, an individual;
JOHN & JENNIFER KILPATRICK, individuals;
17 CLIFFORD & CARMEN CHITA TEJADA,
individuals; LISA WESTFIELD, an individual;
18 ANN & ROBERT MUELLER, individuals; and
PHILLIP & KATHERINE STROMER,
individuals,

Case No: A541668
Dept. No.: XI

SECOND AMENDED COMPLAINT

Plaintiffs,

vs.

20 TOWER HOMES, LLC., a Nevada limited
21 liability company; RODNEY C. YANKE, an
individual; AMERICANA LLC dba
22 AMERICANA GROUP; Nevada limited liability
company; MARK L. STARK, an individual in
23 his capacity as a broker; JEANNINE CUTTER,
an individual in her capacity as an agent; DAVID
24 BERG, an individual in his capacity as an agent;
EQUITY TITLE OF NEVADA, LLC, a Nevada
25 limited liability company; DOE REAL ESTATE
AGENTS I through X, individually, DOE REAL
26 ESTATE BROKERS I through X, individually,
ROE REAL ESTATE CORPORATIONS I
27 through X, inclusive,

Defendants.

SECOND AMENDED COMPLAINT

Plaintiffs Allison Gaynor, Barbara Chandler, individually and on behalf of the Saralee M. Bowers Trust, Melva Nevada Brown, Richard Goodall, Harold and Carol Herzlich, Robert Embleton, Dahn Midora, Arthur Williams, Larry and Judy Shiffman, Edwin & Gail Edejer, Judge Angel Cooley, Debra Jones, Abe Siemens, John and Jennifer Kilpatrick, Clifford and Carmenchita Tejada, Lisa Westfield, Ann and Robert Mueller, and Phillip and Katherine Stromer (hereinafter collectively the "Plaintiffs"), by and through their attorney of record, the law firm of Marquis & Aurbach, hereby complain and allege as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction in this suit because Plaintiffs seek damages in excess of the minimum jurisdictional requirements of this Court.

2. This Court has personal jurisdiction over the Defendants for the following reasons:

a. Upon information and belief, the Defendants conduct business in Nevada, were fiduciaries or recipients of funds held in Nevada, participated and/or engaged in transactions which injured Nevadans, engaged in tortious behavior in Nevada, caused injuries and damages to Nevadans, and/or they are citizens or domiciliaries of this state. In addition, the claim stated in this Complaint arises under Defendants' contacts with this state.

b. The Defendants have had such minimum contacts with the State of Nevada that a Nevada court's exercise of personal jurisdiction over the, would not offend traditional notions of fair play and substantial justice, and the claims stated in this Complaint arise under those minimum contacts.

3. Venue is proper in Clark County, Nevada for the following reasons:

a. Upon information and belief, Defendants are residents of Clark County, Nevada, they transact business in Clark County, Nevada.

...

- 1 b. The issues and claims alleged in this Complaint revolve around property
2 located in Nevada.
- 3 c. Clark County, Nevada, is the county where all or substantially all of the
4 events giving rise to the Plaintiffs' claims occurred.

5 II. PARTIES

6 4. Allison Gaynor is, and was at all times relevant hereto, a party to an agreement to
7 purchase real property located in Clark County, State of Nevada.

8 5. Barbara Chandler is, and was at all times relevant hereto, a party to an agreement
9 to purchase real property located in Clark County, State of Nevada.

10 6. Saralee M. Bowers Trust is, and was at all times relevant hereto, a party to an
11 agreement to purchase real property located in Clark County, State of Nevada.

12 7. Melva Nevada Brown is, and was at all times relevant hereto, a party to an
13 agreement to purchase real property located in Clark County, State of Nevada.

14 8. Richard Goodall is, and was at all times relevant hereto, a party to an agreement
15 to purchase real property located in Clark County, State of Nevada.

16 9. Harold and Carol Herzlich are, and were at all times relevant hereto, party to an
17 agreement to purchase real property located in Clark County, State of Nevada.

18 10. Robert Embleton is, and was at all times relevant hereto, a party to an agreement
19 to purchase real property located in Clark County, State of Nevada.

20 11. Dahn Midora is, and was at all times relevant hereto, a party to an agreement to
21 purchase real property located in Clark County, State of Nevada.

22 12. Arthur Williams is, and was at all times relevant hereto, a party to an agreement
23 to purchase real property located in Clark County, State of Nevada.

24 13. Larry and Judy Shiffman are, and were at all times relevant hereto, party to an
25 agreement to purchase real property located in Clark County, State of Nevada.

26 14. Edwin and Gail Edejer are, and were at all times relevant hereto, party to an
27 agreement to purchase real property located in Clark County, State of Nevada.

28 ...

15. Judge Angel Cooley is, and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

16. Debra Jones is, and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

17. Abe Siemens is, and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

18. John and Jennifer Kilpatrick are, and were at all times relevant hereto, party to an agreement to purchase real property located in Clark County, State of Nevada.

19. Clifford and Carmenchita Tejada are, and were at all times relevant hereto, party to an agreement to purchase real property located in Clark County, State of Nevada.

20. Lisa Westfield is, and was at all times relevant hereto, a party to an agreement to purchase real property located in Clark County, State of Nevada.

21. Ann and Robert Mueller are, and were at all times relevant hereto, party to an agreement to purchase real property located in Clark County, State of Nevada.

22. Phillip and Katherine Stromer are, and were at all times relevant hereto, party to an agreement to purchase real property located in Clark County, State of Nevada.

23. Plaintiffs are purchasers, consumers, individuals or otherwise, who entered into written Purchase Contracts with Defendant Tower Homes, LLC ("Tower") and/or its agents, partners, successors or assigns, to purchase a common interest ownership unit in the Spanish View Tower Homes Project ("Spanish View Project") to be constructed by Defendants Tower and Rodney C. Yanke ("Yanke") (collectively hereinafter the "Tower Defendants") on Assessors Parcel No. 176-04-601-019 in the County of Clark, State of Nevada.

24. Tower is, and was at all times relevant hereto, a Nevada limited liability company, doing business in Clark County, State of Nevada.

25. Yanke is, and was at all times relevant hereto, a resident of Clark County, State of Nevada.

...

...

1 26. AMERICANA LLC dba AMERICANA GROUP ("Americana") is, and was at all
2 times relevant hereto, a Nevada limited liability company, doing business in Clark County, State
3 of Nevada.

4 27. Equity Title of Nevada, LLC ("Equity Title") is, and was at all times relevant
5 hereto, a Nevada limited liability company, doing business in Clark County, State of Nevada.

6 28. Mark L. Stark ("Stark") is, and was at all times relevant hereto, a resident of and
7 real estate broker in Clark County, State of Nevada.

8 29. Jeannine Cutter ("Cutter") is, and was at all times relevant hereto, a resident of
9 and real estate agent in Clark County, State of Nevada.

10 30. David Berg ("Berg") is, and was at all times relevant hereto, a resident of and real
11 estate agent in Clark County, State of Nevada.

12 31. Americana, Stark, Cutter and Berg are hereinafter collectively referred to as the
13 Agent Defendants.

14 32. That the true names or capacities, whether individual, corporate, associate or
15 otherwise of the Defendants named herein as DOES 1 through X, inclusive, and ROE
16 CORPORATIONS I through X, inclusive, are unknown to Plaintiffs who, therefore, sue said
17 Defendants by such fictitious names. Plaintiffs allege that each Defendant designated herein as a
18 DOE or ROE CORPORATION is negligently, willfully, contractually, intentionally or otherwise
19 legally responsible for the events and happenings herein referred to and proximately caused
20 injury and damage thereby to the Plaintiffs as herein alleged. Plaintiffs shall ask leave of this
21 Court to amend the Complaint to insert the true names and capacities of each Defendant named
22 as DOES and/or ROE CORPORATIONS, when the same have been ascertained, and will further
23 seek leave to join said Defendants in these proceedings.

24 **III. GENERAL FACTUAL ALLEGATIONS**

25 **SPANISH VIEW PROJECT**

26 33. Tower is a company set up by Yanke for the sole purpose of building the Spanish
27 View Project.

28 ...

1 34. The Spanish View Project is proposed to have three 18-story condominium
2 towers, combining for 405 units, located at the southwest corner of Interstate-215 and S. Buffalo
3 Road in Las Vegas, Nevada.

4 35. The Plaintiffs entered into written Purchase Contracts with the Tower Defendants
5 which provided that their units would be completed within two (2) years.

6 36. Moreover, according to oral promises made by the Tower Defendants and the
7 Agent Defendants the first tower in the Spanish View Project was to be complete in June or July
8 2006.

9 37. To date, the first tower has not been completed nor is it near substantial
10 completion. In fact, to date, Tower A does not even contain a ground level floor. Accordingly,
11 it is impossible for the Tower Defendants to have a completed tower within a reasonable time
12 period.

13 38. Upon information and belief, construction on the Spanish View Project has ceased
14 and there is presently no financing available for its completion.

15 39. Upon information and belief, there are approximately nine (9) lawsuits pending
16 against the Tower Defendants and the Spanish View Project which effectively cloud title to the
17 property.

18 40. Upon information and belief, there are over twenty-five million dollars in
19 mechanics liens which have been filed for work on the Spanish View project.

20 INDUCEMENT INTO UNCONSCIONABLE AGREEMENT

21 41. Plaintiffs met with one or more of the Agent Defendants regarding the Spanish
22 View project. At the meeting with one or more of the Agent Defendants, it was represented to
23 the Plaintiffs that the first tower would be completed in or around July 2006.

24 42. Based upon the assurances of the Agent Defendants, the Plaintiffs provided the
25 Tower Defendants with deposit monies in excess of \$10,000 to reserve a unit in the Spanish
26 View Project.

27 43. The Plaintiffs' deposit monies were placed into an escrow account with Equity
28 Title.

1 44. At the time of escrow, Americana owned 100% of A-Title, which owned 37% of
2 Equity Title.

3 45. The Defendants failed to disclose this relationship to the Plaintiffs.

4 46. Based upon the assurances of the Agent Defendants, the Plaintiffs entered into a
5 Purchase Contract with the Tower Defendants to purchase a unit in the Spanish View Project.

6 47. The Purchase Contract provided a time is of the essence clause.

7 48. The Tower Defendants failed to meet their completion dates and will be unable to
8 meet any future contract dates.

9 49. Upon information and belief, the Spanish View Project presently has neither
10 financing available nor the resources necessary for its completion. Moreover, the first tower has
11 not been completed nor is it near substantial completion.

12 **FIRST CAUSE OF ACTION**
13 **(Breach of Contract – the Tower Defendants)**

14 50. The Plaintiffs repeat, re-allege and incorporate by reference each and every
15 allegation contained above, inclusive, as if fully set forth herein.

16 51. The Plaintiffs, each of them, entered into a into written Purchase Contracts with
17 the Tower Defendants and/or their agents, partners, successors or assigns, to purchase a common
18 interest ownership unit in the Spanish View Project.

19 52. The Purchase Contract provided a time is of the essence clause.

20 53. The first tower in Spanish View was to be complete in June or July 2006.

21 54. To date, the first tower has not been completed nor is it near substantial
22 completion.

23 55. Moreover, Pursuant to Section 2(e) of the Purchase Contract the Tower
24 Defendants were obligated to place all Plaintiffs deposit monies into an interest bearing trust
25 account designated solely for the purpose of holding the purchasers deposit monies.

26 56. Pursuant to Section 2(e) the Purchase Contract the Plaintiffs' deposit monies were
27 not to be released from the interest bearing trust account until: 1) closing; 2) Purchaser's default;
28 or 3) Sellers default.

THIRD CAUSE OF ACTION
(Declaratory Relief – the Tower Defendants)

68. The Plaintiffs repeat, re-allege and incorporate by reference each and every allegation contained above, inclusive, as if fully set forth herein.

69. A justiciable controversy exists between the Plaintiffs and the Defendants relative to their legal rights and duties under the above-mentioned Purchase Contract.

70. The controversy between the Plaintiffs and Defendants is adverse.

71. Plaintiffs seek a declaration from this Court setting forth the particular rights and obligations of each party with regard to Purchase Contract.

72. A judicial determination of the Plaintiffs rights under the above referenced Purchase Contract is necessary and appropriate at this time in order to avoid additional and unnecessary litigation.

73. As a direct and proximate result of the aforementioned acts, it has become necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to recover fees and costs incurred herein pursuant to the terms Purchase Contract.

FOURTH CAUSE OF ACTION
(Unjust Enrichment – all Defendants)

74. The Plaintiffs repeat, re-allege and incorporate by reference each and every allegation contained above, inclusive, as if fully set forth herein.

75. The Plaintiffs conferred upon Defendants, each of them, certain monetary benefits.

76. Defendants, each of them, appreciated the benefits conferred upon them by the Plaintiffs.

77. Defendants, each of them, accepted and retained the benefits under circumstances where it would be unjust and inequitable for them to retain the benefits.

78. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have been damaged in excess of \$10,000.00, plus interest thereon.

...

1 79. As a direct and proximate result of the aforementioned acts, it has become
2 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
3 recover fees and costs incurred herein pursuant to the terms of the Purchase Contract.

4 **FIFTH CAUSE OF ACTION**
5 **(Deceptive and Unfair Trade Practices in Violation of NRS 598 Et. Seq. and 599A Et. Seq.)**
6 **(Agent Defendants)**

7 80. The Plaintiffs repeat, re-allege and incorporate by reference each and every
8 allegation contained above, inclusive, as if fully set forth herein.

9 81. Upon information and belief, in or around 2005, Cutter was intimately involved
10 and living with Yanke, the owner of Tower and developer of the Spanish View Project.

11 82. Upon information and belief, in or around 2005, the Agent Defendants had direct
12 financial interests in the Spanish View Project.

13 83. Upon information and belief, Cutter and Berg were receiving monthly salaries
14 from Tower.

15 84. Cutter and Berg, as the onsite agents at the Spanish View Project, had contact
16 with each and every one of the Plaintiffs.

17 85. NRS 598.0923 provides that a person engages in a deceptive trade practice when
18 in the course of their business or occupation they knowingly fail to disclose a material fact in
19 connection with the sale or lease of goods or services.

20 86. NRS 599A.060 provides that it is an unfair practices for any person to
21 misrepresent or conceal any material fact or to make any false or deceptive statements while
22 offering to sell an option, interest, or reservation in land.

23 87. Cutter and Berg, while providing services as real estate agents, failed to disclose
24 to the Plaintiffs, each of them, material facts in connection with their solicitation to purchase an
25 interest in land in the state of Nevada in violation of NRS 598.0903 et. seq. and NRS 599A.010
26 et. seq.

27 ...

28 ...

...

1 88. Cutter and Berg, while providing services as real estate agents, made
2 misrepresentations of material fact to the Plaintiffs, each of them, in connection with their
3 solicitation to purchase an interest in land in the state of Nevada in violation of NRS 598.0903 et.
4 seq. and NRS 599A.010 et. seq.

5 89. Cutter and Berg's actions and conduct constitute a deceptive and unfair trade
6 practice in violation of NRS 598.0903 et. seq. and NRS 599A.010 et. seq.

7 90. Cutter and Berg work as agents for sales in the Spanish View Project and do so as
8 agents of Stark who is the authorized broker for all sales in the Spanish View Project.

9 91. Upon information and belief, Cutter and Stark are agents of Americana.

10 92. Consequently, Americana through its agents failed to disclose material facts and
11 made material misrepresentations in connection with a solicitation to purchase an interest in land
12 in the state of Nevada in violation of NRS 598.0903 et. seq. and NRS 599A.010 et. seq.

13 93. NRS 598.0999(3) provides that a "person, firm, or any officer or managing agent
14 of any corporation or association who knowingly and willfully engages in a deceptive trade
15 practice" may be required to "pay to the aggrieved party damages on all profits derived from the
16 knowing and willful engagement in a deceptive trade practice and treble damages on all damages
17 suffered by reason of the deceptive trade practice."

18 94. Plaintiffs are entitled to treble damages against the Agent Defendants.

19 95. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have
20 been damaged in excess of \$10,000.00, plus interest thereon.

21 96. As a direct and proximate result of the aforementioned acts, it has become
22 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
23 recover fees and costs incurred herein as well as treble damages pursuant to NRS 598.0999(3).

24 **SIXTH CAUSE OF ACTION**
25 **(Violation of NRS 645)**
(Agent Defendants)

26 97. The Plaintiffs repeat, re-allege and incorporate by reference each and every
27 allegation contained above, inclusive, as if fully set forth herein.

28 ...

1 98. Pursuant to NRS 645.990(4) any officer or agent of a corporation, or member or
2 agent of a limited-liability company, partnership or association, who personally participates in or
3 is an accessory to any violation of NRS chapter 645 is subject to the penalties prescribed therein.

4 99. Pursuant to NRS 645.260, where any person, limited liability company,
5 partnership, association or corporation, in consideration for (or expectation of) a commission,
6 directly or indirectly engages in any single act defined under NRS 645.030, such as negotiating a
7 sale or soliciting prospective buyers, that person or entity is acting within the capacity of a real
8 estate broker or real estate salesman.

9 100. Pursuant to NRS 645.252(1), the Agent Defendants were required to disclose to
10 the Plaintiffs: 1) any material and relevant facts, data or information which they knew, or should
11 have known, relating to the property, 2) each source from which they would receive
12 compensation as a result of the transaction, and 3) that they had an interest in a principal to the
13 transaction.

14 101. Pursuant to NRS 645.320, a licensee is prohibited from dealing with any party to
15 a real estate transaction in a manner which is deceitful, fraudulent, or dishonest.

16 102. Upon information and belief, in or around 2005, Cutter was intimately involved
17 and living with Yanke, the owner of Tower and developer of the Spanish View Project.

18 103. Upon information and belief, Cutter and Berg were receiving monthly salaries
19 from Tower.

20 104. Upon information and belief, in or around 2005, the Agent Defendants had a
21 direct financial interest in the Spanish View Project.

22 105. The Agent Defendants failed to disclose material facts in connection with their
23 solicitation to purchase an interest in land in the state of Nevada in violation of NRS 645 et. seq.

24 106. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have
25 been damaged in excess of \$10,000.00, plus interest thereon.

26 107. As a direct and proximate result of the aforementioned acts, it has become
27 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
28 recover all fees and costs incurred herein.

SEVENTH CAUSE OF ACTION
(Violation of NRS 116 and Associated Punitive Damages-- all Defendants)

108. The Plaintiffs repeat, re-allege and incorporate by reference each and every allegation contained above, inclusive, as if fully set forth herein.

109. NRS 116.411(1) provides that a deposit made in connection with the purchase or reservation of a condominium unit must be placed in an escrow account designated solely for that purpose until said monies are: (a) delivered to the seller at closing; (b) delivered to the seller because of the purchaser's default under a contract to purchase the unit; (c) released to the seller for an additional item, improvement, optional item or alteration; or (d) refunded to the purchaser.

110. NRS 116.411(3) provides that in lieu of placing a deposit in escrow a seller may furnish a bond in a principal sum equal to the amount of the deposit as surety.

111. The Plaintiffs, each of them, entered into a into written Purchase Contracts with the Tower Defendants and/or their agents, partners, successors or assigns, to purchase a common interest ownership unit in the Spanish View Project.

112. Plaintiff, each of them provided deposit monies in connection with their purchase.

113. Upon information and belief, Tower never posted a bond for said deposits pursuant to NRS 116.411(3).

114. Upon information and belief, Tower never placed the Plaintiffs deposits in an escrow account designated solely for that purpose until said monies were to be: (a) delivered to the seller at closing; (b) delivered to the seller because of the purchaser's default under a contract to purchase the unit; (c) released to the seller for an additional item, improvement, optional item or alteration; or (d) refunded to the purchaser.

115. Upon information and belief, Yanke, without the authorization of the Plaintiffs, transferred substantially all of Plaintiffs deposit monies into accounts which were used to pay, among other things, the personal expenses of the Yanke, Berg, and Cutter.

116. Despite repeated requests, the Defendants have failed and/or refused to return Plaintiffs deposit monies.

...

117. NRS 116.4117(3) provides that punitive damages may be awarded for a willful and material failure to comply with NRS 116.

118. The Defendants have failed willfully and materially failed to comply with NRS 116.

119. As a direct and proximate result of the Defendants activities, the Plaintiffs have been damaged in excess of \$10,000.

120. The Plaintiffs are entitled to punitive damages.

121. The Plaintiffs have been forced to retain the services of an attorney to prosecute this matter and are entitled recover reasonable costs and attorney fees incurred herein as special damages.

EIGHTH CAUSE OF ACTION
(Civil RICO - Yanke)

122. The Plaintiffs repeat, re-allege and incorporate by reference each and every allegation contained above, inclusive, as if fully set forth herein.

123. Yanke engaged in racketeering activity as defined in NRS 207.390.

124. Upon information and belief, Yanke committed a predicate act when was involved in a scheme in which he took buyers and lenders monies for completed houses without the intent or ability to complete said houses in violation of NRS 207.360.

125. Upon information and belief, Yanke was sued as a result of his activities in Case No.: 86-A-245508-C and Case No. 06-A-528584-C in the Eighth Judicial District Court in Clark County, Nevada.

126. Upon information and belief, the aforementioned cases were initiated after July 1, 1983 and Yanke has continued engaging in related acts of racketeering which have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics.

127. Yanke's racketeering actions are not isolated incidents.

...

...

128. Yanke has utilized a Purchase Contract in relation to the Spanish View Project which provides that potential purchasers must place their purchase monies into escrow account which, after five (5) days, pursuant to Yanke's instructions is deposited into Yanke's company bank account.

129. Upon information and belief, Yanke is not utilizing said money to complete the Spanish View Project.

130. Upon information and belief, Yanke committed a subsequent predicate act when prior to Yanke accepting the Plaintiffs purchase monies he accepted purchase monies from other purchasers under false pretenses.

131. The Plaintiffs entered into a Purchase Contract and provided Yanke with deposit monies in excess of \$10,000.

132. The Plaintiffs deposit monies have been removed from the escrow account and deposited in Yanke business account.

133. Upon information and belief, Yanke is continuing to take purchase monies from other potential purchasers, knowing that the Spanish View Project cannot be completed or receive financing.

134. As a direct and proximate result of Defendants' racketeering activities, the Plaintiffs have been damaged in excess of \$10,000.

135. The Plaintiffs are entitled to treble damages.

136. The Plaintiffs have been forced to retain the services of an attorney to prosecute this matter and are entitled recover reasonable costs and attorney fees incurred herein as special damages.

NINTH CAUSE OF ACTION
(Conversion – the Tower Defendants)

137. The Plaintiffs repeat, re-allege and incorporate by reference each and every allegation contained above, inclusive, as if fully set forth herein.

...

...

1 138. The Tower Defendants have misappropriated, unlawfully exercised domain over,
2 and converted for their use and benefit the Plaintiffs purchase money to the detriment of the
3 Plaintiffs.

4 139. By keeping the above-referenced funds, the Tower Defendants' possession and
5 use of the funds demonstrates a claim of ownership which is inconsistent with the proper and
6 rightful ownership thereof.

7 140. The Plaintiffs have been forced to retain the services of an attorney to prosecute
8 this matter and are entitled to recover reasonable costs and attorneys fees incurred herein as
9 special damages

10
11 **TENTH CAUSE OF ACTION**
(Conspiracy--Agent Defendants and Equity Title)

12 141. The Plaintiffs repeat, re-allege and incorporate by reference each and every
13 allegation contained above, inclusive, as if fully set forth herein.

14 142. Agent Defendants and Equity, amongst themselves, entered into an agreement
15 whereby they misrepresented material facts regarding the Spanish View Project.

16 143. The objective of the Defendants misrepresentations, among other things, was to
17 elicit deposit monies from the Plaintiffs.

18 144. Plaintiffs were harmed by Defendants conduct in excess of \$10,000.00.

19 145. The Plaintiffs have been forced to retain the services of an attorney to prosecute
20 this matter and are entitled to recover reasonable attorneys fees incurred herein as special
21 damages.

22
23 **ELEVENTH CAUSE OF ACTION**
(Breach of the Duty to Disclose--Agent Defendants and Equity Title)

24 146. The Plaintiffs repeat, re-allege and incorporate by reference each and every
25 allegation contained above, inclusive, as if fully set forth herein.

26 147. Americana solicited the Plaintiffs to purchase units at the Spanish View project.

27 148. As a result of the solicitation, the Plaintiffs entered into Purchase Contracts with
28 the Tower Defendants to purchase a unit in the Spanish View Project.

1 149. The Agent Defendants acted as the escrow agent for the sale of the units.

2 150. The Agent Defendants and Equity Title had a duty to disclose their relationship.

3 151. Equity Title, as an escrow agent, also had a duty to disclose the Agent
4 Defendants' misrepresentations to the Plaintiffs.

5 152. Equity Title and the Agent Defendants breached their duties of disclosure.

6 153. As a direct and proximate result of Defendants' breach of their duty of disclosure,
7 the Plaintiffs have been damaged in excess of \$10,000.

8 154. The Plaintiffs have been forced to retain the services of an attorney to prosecute
9 this matter and are entitled to recover reasonable costs and attorneys fees incurred herein as
10 special damages.

11 WHEREFORE, Plaintiffs pray for a judgment against the Defendants as follows:

12 1. For Breach of Contract damages in excess of \$10,000, plus interest thereon;

13 2. For general damages in excess of \$10,000.00, plus interest thereon;

14 3. For declaratory relief setting forth the particular rights and obligations of each
15 party with regard to Purchase Contract.

16 4. For statutory treble damages;

17 5. For attorney fees and costs incurred herein as damages pursuant NRS
18 598.0999(3);

19 6. For attorney fees and costs incurred herein as damages pursuant Purchase
20 Contract;

21 7. For punitive damages; and

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 8. For such other and further relief as the Court deems just and proper in its
2 premises.

3 Dated this ^{24th} day of March, 2009.

4 MARQUIS & AURBACH

5
6
7 By: 

Terry A. Coffing, Esq.
Nevada Bar No. 4949
Brian R. Hardy, Esq.
Nevada Bar No. 10068
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Plaintiffs

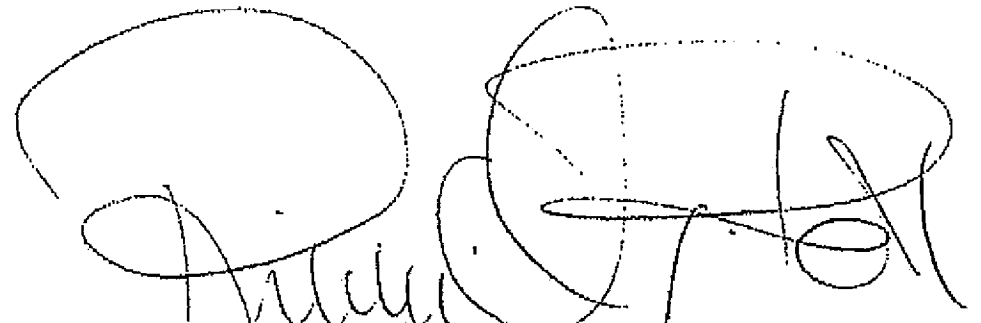
CERTIFICATE OF MAILING

I hereby certify that on the 31st day of March, 2009, I served a copy of the foregoing
SECOND AMENDED COMPLAINT upon each of the parties by depositing a copy of the
same in a sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage
fully prepaid, and addressed to:

William H. Heaton, Esq.
NITZ, WALTON & HEATON, LTD.
601 S. 10th Street, #201
Las Vegas, Nevada 89101
Attorneys for Defendants
Tower Homes, LLC &
Rodney Yanke

Michael E. Stoberski, Esq.
OLSON, CANNON, GORMLEY &
DESRUISSEAU
9950 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Americana, LLC dba
Americana Group, Jeannine Cutter,
Mark L. Stark & David Berg,

and that there is a regular communication by mail between the place of mailing and the places so
addressed.



Rikki M. Poll, an employee of Marquis & Aurbach

EXHIBIT “E”

EXHIBIT “E”



Entered on Docket
December 08, 2008

Bruce A. Markell

Hon. Bruce A. Markell
United States Bankruptcy Judge

SULLIVAN, HILL, LEWIN, REZ & ENGEL
A Professional Law Corporation
James P. Hill, CA SBN 90478
Christine A. Roberts, NV SBN 6472
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Attorneys for William A. Leonard, Jr.,
Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

TOWER HOMES, LLC, a Nevada limited
liability company, dba Spanish View Tower
Homes,

Debtor.

CASE NO. BK-S-07-13208-BAM
Chapter 11 (Involuntary)

Date: November 17, 2008
Time: 9:30 a.m.

Ctrm.: BAM - Courtroom 3
Foley Federal Building
300 Las Vegas Blvd. South
Las Vegas, NV 89101
Judge: Hon. Bruce A. Markell

ORDER APPROVING DISCLOSURE STATEMENT AND CONFIRMING PLAN OF
REORGANIZATION

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1 The Motion to Confirm Plan of Reorganization ("Motion") filed by William A. Leonard, Jr.
2 ("Trustee"), the Chapter 11 trustee of the bankruptcy estate of Tower Homes, LLC ("Debtor"), came
3 on regularly for hearing on November 17, 2008, at 9:30 a.m. in Courtroom 3 of the above-entitled
4 Court, United States Bankruptcy Judge Bruce A. Markell presiding. The Trustee appeared in person
5 and by his counsel, James P. Hill of Sullivan, Hill, Lewin, Rez & Engel. All other appearances are
6 noted in the Court's record of the hearing.

7 The Court having considered the Motion, its supporting papers, the combined Disclosure
8 Statement and Plan of Reorganization, the opposition filed thereto, and the stipulation resolving the
9 opposition; the Court having previously entered an order conditionally approving the Trustee's
10 disclosure statement; the Court having entered findings of fact and conclusions of law concurrently
11 herewith; notice of the Motion appearing sufficient and proper; and good cause appearing therefor,

12 IT IS HEREBY ORDERED that:

13 1. The disclosure statement aspect of the plan is granted final approval as containing
14 "adequate information" within the meaning of section 1125 of the Bankruptcy Code (11 U.S.C. §§
15 101, et seq.).

16 2. The Plan, subject to the modifications announced in open court ("Plan"), is confirmed
17 and approved in its entirety. A copy of the Plan as amended is attached as Exhibit "A" hereto. To
18 the extent of any conflict between the Plan and this order ("Confirmation Order"), this Confirmation
19 Order shall control. The Trustee is authorized to take all steps and do all things necessary to
20 implement the Plan. All terms not defined herein shall have the meaning given them in the Plan, or
21 if not defined in the Plan, then in the Motion.

22 3. The failure to reference or discuss any particular provision of the Plan in this
23 Confirmation Order shall have no effect on the Court's approval and authorization of, or the validity,
24 binding effect, and enforceability of, such provision. Each provision of the Plan is authorized and
25 approved and shall have the same validity, binding effect, and enforceability as every other provision
26 of the Plan, whether or not mentioned in this Confirmation Order.

27 4. Pursuant to section 1141 of the Bankruptcy Code (11 U.S.C. § 101, et seq.), and
28 except as expressly provided in the Plan, related settlement agreements referred to in the Plan, or this

1 Confirmation Order, the provisions of the Plan (including the exhibits thereto, and all documents and
2 agreements executed pursuant to the Plan) and this Confirmation Order shall be binding on (i) the
3 Debtor, (ii) the Trustee, (iii) any person acquiring property under the Plan, and (iv) all holders of
4 Claims against and Interests in the Debtor or its bankruptcy estate, whether or not impaired under the
5 Plan and whether or not, if impaired, any such holder accepted the Plan.

6 5. On the Effective Date, except as provided in the Plan or related settlement agreements
7 referred to in the Plan; (A) Creditors of the Debtor whose Claims are dealt with by the Plan and this
8 Confirmation Order are restrained and enjoined from the commencement, taking, or continuance of
9 any action, or the employment of any process: (i) to collect such Claims or debts from the Trustee,
10 the Debtor or its bankruptcy estate, or from property of the Debtor or its bankruptcy estate; (ii)
11 which may directly or indirectly interfere with or impair the Trustee's administration of property of
12 the Debtor's bankruptcy estate; or (iii) to collect on a claim or alleged claim that is satisfied or
13 treated under the Plan; (B) this injunction shall be binding on all Creditors, parties in interest, and
14 other Persons, and their respective officers, agents, members, employees, successors, and assigns;
15 and (C) the assets and property of the Debtor and its bankruptcy estate shall be held by the Trustee to
16 be administered free and clear of each and every claim, lien, encumbrance, action, successor liability
17 proceeding, setoff, counterclaim, or claims for equitable relief of any type or nature, except as
18 expressly provided for by the Plan.

19 6. In the event that a Timely Refinancing is achieved in accordance with the terms of the
20 Plan, then (a) all executory Purchase Contracts shall be assumed pursuant to the provisions of
21 sections 365 and 1123 of the Bankruptcy Code, other than any executory Purchase Contract that is
22 the subject of a motion to reject filed prior to and pending on the Confirmation Date, which shall be
23 rejected according to the terms of such motion; and (b) all other executory contracts to which the
24 Debtor may be a party shall be rejected, other than any executory contract or unexpired lease that is
25 the subject of a motion to assume filed prior to and pending on the Confirmation Date, which shall
26 be assumed according to the terms of such motion. In the event that a Timely Refinancing is not
27 achieved, then (i) all executory contracts and unexpired leases to which the Debtor may be a party
28 shall be rejected, other than any executory contract or unexpired lease that is the subject of a motion

1 to assume filed prior to and pending on the Confirmation Date, which shall be assumed according to
2 the terms of such motion. Any assumption or rejection effected under this paragraph and not the
3 subject of a specific assumption or rejection order shall be deemed to have occurred on the date that
4 the Trustee files the notice described in Section V(B)(3)(i) of the Plan; provided, however, that in the
5 event of a dispute over whether a Timely Refinancing has been achieved, any assumption or
6 rejection effected under this paragraph shall be deemed to have occurred on the date that any Court
7 order resolving the dispute becomes final.

8 7. Pursuant to section 1142(b) of the Bankruptcy Code, the Trustee is authorized and
9 empowered to (a) execute and deliver any instrument, agreement or document required to effect a
10 transfer of property dealt with by the Plan; and (b) to perform any other act that is necessary,
11 desirable or required to consummate the Plan.

12 8. Pursuant to section 105 of the Bankruptcy Code, the Trustee is authorized and
13 empowered to take any and all actions reasonably necessary to implement the transactions
14 contemplated by the Plan and this Confirmation Order, all without further corporate action or action
15 of the managers or members of the Debtor, including, without limitation, matters under the Plan
16 involving the organizational structure of the Debtor or corporate action by the Debtor.

17 9. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or
18 exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or
19 other security interest, the making or assignment of any lease or sublease, or the making or delivery
20 of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan,
21 including, without limitation, any agreements of consolidation, deeds, bills of sale or assignments
22 executed in connection with any of the transactions contemplated under the Plan, shall not be subject
23 to any stamp tax, transfer tax, mortgage recording fee, or other similar tax.

24 10. All Professional Persons, or other Persons requesting compensation or reimbursement
25 of expenses pursuant to any of sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code
26 for services rendered on or before the Confirmation Date (including, inter alia, any compensation
27 requested by any Professional Person or any other Person for making a substantial contribution in
28 the Bankruptcy Cases) shall file with the Court and properly serve an application for final allowance

1 of compensation and reimbursement of expenses no later than (i) sixty (60) days after the
2 Confirmation Date, or (ii) such later date as this Court shall order upon application made prior to the
3 end of such 60-day period. The Trustee shall be paid in accordance with the terms of Section VIII(J)
4 of the Plan.

5 11. Compensation for services rendered and for reimbursement of expenses by the
6 Trustee or a Professional Person after the Confirmation Date need not be approved by the Court.
7 The Trustee or Professional Persons may invoice the estate directly, and shall provide a copy of such
8 invoice to the Office of the United States Trustee and any other party specifically requesting in
9 writing to the Trustee a copy of such post-confirmation invoices (not merely having requested notice
10 generally in the bankruptcy case). In the event that no objection is served on the Trustee and the
11 party requesting payment within 10 days of service of a given invoice, the Trustee may pay such
12 invoice without further order of the Court. In the event that an objection to a given invoice is served
13 on the Trustee and the party requesting payment within 10 days of service of a given invoice, the
14 party requesting payment may submit an application to the Court for review of the request for
15 compensation and reimbursement, and the Court retains jurisdiction to hear and approve such
16 application and compel payment thereon. Such post-Confirmation Date compensation for services
17 rendered and reimbursement of expenses shall be considered an ordinary expense of the Debtor's
18 bankruptcy estate.

19 12. All fees payable by the Trustee on behalf of the Debtor on or before the Effective
20 Date pursuant to section 1930 of Title 28 of the United States Code shall be paid by the Trustee on or
21 before the Effective Date.

22 13. Except as otherwise provided in the Plan and this Confirmation Order, notice of all
23 subsequent pleadings in these Chapter 11 cases shall be limited to counsel for the Debtor; the
24 Trustee; the United States Trustee; Yanke; Bank of George; OneCap; the Petitioning Creditors; the
25 Joining Creditors; as well as Donna Osborn, Esq.; any party directly affected by the relief requested
26 in a pleading; and any other party requesting such notice by a writing delivered to the undersigned
27 counsel after the Effective Date, unless otherwise specified in an order by this Court. The Trustee
28 ///

1 shall provide notice to all creditors and parties in interest of (i) such future limitation of notice, and
2 (ii) the opportunity to request in writing continued notice.

3 14. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of
4 this Confirmation Order, the Plan, or any amendments or modifications thereto shall apply and be
5 enforceable notwithstanding any otherwise applicable non-bankruptcy law.

6 15. The Trustee and the Debtor's bankruptcy estate shall retain all Claims or Causes of
7 Action that they have or hold against any party, including against "insiders" of the Debtor (as that
8 term is defined in Bankruptcy Code section 101(31)), whether arising pre- or post-petition, subject to
9 applicable state law statutes of limitation and related decisional law, whether sounding in tort,
10 contract or other theory or doctrine of law or equity. Confirmation of the Plan effects no settlement,
11 compromise, waiver or release of any Claim or Cause of Action unless the Plan, related settlement
12 agreements referred to in the Plan, or this Confirmation Order specifically and unambiguously so
13 provide. Upon the Effective Date, the Trustee will be designated as representative of the Estate
14 under section 1123(b)(3) of the Bankruptcy Code and shall, except as otherwise provided herein,
15 have the right to assert any or all of the above Causes of Action post-confirmation in accordance
16 with applicable law. Notwithstanding the foregoing, neither the Trustee, the Debtor, nor the Estate
17 have, or shall assert, any claims or Causes of Action against Bank of George, or with respect to the
18 SPF Financing.

19 16. When the Trustee has determined in his reasonable business judgment that the Plan
20 has been substantially consummated, he shall file an application for a final decree as required by
21 Federal Rule of Bankruptcy Procedure 3022. This application may be granted prior to full
22 consummation of the Plan. Notwithstanding the entry of such final decree and the closing of the
23 Chapter 11 case, the Court shall hear controversies arising thereafter that are within the scope of the
24 provisions of the Plan, of this Confirmation Order, or of other order of this Court regarding retained
25 jurisdiction over the case and the parties in interest thereto. In addition, any party in interest may
26 move to reopen the Chapter 11 case if necessary to obtain relief that otherwise could not be obtained
27 absent reopening of the case. Any request for such relief may be heard concurrently with a motion

28 ///

1 to reopen the case, and the same may be heard on an emergency basis if expedited relief is necessary
2 under the circumstances.

3 17. The Court reserves jurisdiction to the extent set forth in Section X(I) of the Plan and
4 as provided by law.

5 IT IS SO ORDERED.

6
7 Submitted by:

8 SULLIVAN, HILL, LEWIN, REZ & ENGEL
9 A Professional Law Corporation

10 By: /s/ James P. Hill
11 JAMES P. HILL
12 ATTORNEYS FOR WILLIAM A.
13 LEONARD, JR.,
14 CHAPTER 11 TRUSTEE

15 APPROVED/DISAPPROVED:

16 SHEA & CARLYON, LTD.

17
18 By: failed to respond
19 SHLOMO S. SHERMAN, ESQ.
20 COUNSEL FOR BANK OF GEORGE

21 APPROVED/DISAPPROVED:

22 SYLVESTER & POLEDNAK, LTD.

23 By: failed to respond
24 JAMES MACROBBIE, ESQ.
25 COUNSEL FOR ONECAP
26 MORTGAGE CO.
27
28

1 APPROVED/DISAPPROVED:

2 | GORDON & SILVER

3

By: failed to respond
4 WILLIAM M. NOALL, ESQ.
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5 CONSTRUCTION, INC., REGIONAL
STEEL CORPORATION, and NEVADA
6 READY MIX CORPORATION

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8 APPROVED/DISAPPROVED:

9 FENNEMORE CRAIG, P.C.

10

By: failed to respond
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MECHANICAL, INC; BUILDING
CONSENSUS, INC.;
HARRY ELLIS DEVEREAUX;
HELIX ELECTRIC OF NEVADA;
LEDCOR CONSTRUCTION, INC.; and
WPH ARCHITECTURE, INC.

15

16 APPROVED/DISAPPROVED:

17 MARQUIS & AURBACH

18

By: DONNA M. OSBORN, ESQ.
COUNSEL FOR FERGUSON
ENTERPRISES and HUGHES WATER
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22 APPROVED/DISAPPROVED:

23 | MARQUIS & AURBACH

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25 By: DONNA M. OSBORN, ESQ.
Counsel for Numerous Pre-Purchasers

26

27

28

1 APPROVED/DISAPPROVED:

2 NITZ, WALTON & HEATON, LTD.

3

4 By: *failed to respond*
5 WILLIAM H. HEATON, ESQ.
6 COUNSEL FOR RODNEY YANKE
7
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1 APPROVED/DISAPPROVED

2 FENNEMORE CRAIG, P.C.

3

By:

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JON T. PEARSON, ESQ.
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HARRY ELLIS DEVEREAUX;
HELIUM ELECTRIC OF NEVADA;
LEDCOR CONSTRUCTION, INC.; and
WPH ARCHITECTURE, INC.

8

9 APPROVED/DISAPPROVED

10 MARQUIS & AURBACH

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By:

12

DONNA M. OSBORN, ESQ.
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16 MARQUIS & AURBACH

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By:

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DONNA M. OSBORN, ESQ.
Counsel for Numerous Pre-Purchasers

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20 APPROVED/DISAPPROVED

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NITZ, WALTON & HEATON, LTD.

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By:

24

WILLIAM H. HEATON, ESQ.
COUNSEL FOR RODNEY YANKE

25

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CERTIFICATION - LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document(s) certifies as follows (check one):

☐ The Court waived the requirements of L.R. 9021.

☐ No parties appeared or filed written objections; and there is no Trustee appointed in the case.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any Trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below (list each party and whether the party has approved, disapproved, or failed to respond to the document):

- William A. Leonard, Jr., is the appointed Trustee and the client of undersigned counsel.
- Donna Osborn, counsel for Ferguson Enterprises, Hughes Water & Sewer, Ltd., and numerous pre-purchasers, approved the order.
- Shlomo Sherman, counsel for Bank of George, failed to respond.
- James MacRobbie, counsel for OneCap Mortgage Co., failed to respond.
- William M. Noall, counsel for HB Parkco Construction, Inc.; Regional Steel Corporation; and Nevada Ready Mix Corporation, failed to respond.
- Jon T. Pearson, counsel for Atlas Mechanical, Inc.; Building Consensus, Inc.; Harry Ellis Devereaux; Helix Electric of Nevada; Ledcor Construction, Inc.; and WPH Architecture, Inc., failed to respond.
- William H. Heaton, counsel for Rodney Yanke, failed to respond.

By: /s/ Christine A. Roberts
Christine A. Roberts
228 South Fourth Street, First Floor
Las Vegas, NV 89101
Attorneys for William A. Leonard, Jr.

###

EXHIBIT "A"

1 SULLIVAN, HILL, LEWIN, REZ & ENGEL
A Professional Law Corporation
2 James P. Hill, CA SBN 90478
Christine A. Roberts, NV SBN 6472
3 Elizabeth E. Stephens, NV SBN 5788
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4 Las Vegas, NV 89101
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5 Fax Number: (702) 384-9102
Email: hill@shlaw.com

6 Attorneys for William A. Leonard, Jr.,
7 Chapter 11 Trustee

8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF NEVADA

10
11 In re) CASE NO. BK-S-07-13208-BAM
Chapter 11 (Involuntary)
12 TOWER HOMES, LLC, a Nevada limited
liability company, dba Spanish View Tower
13 Homes,) Date: November 17, 2008
Time: 9:30 a.m.
14 Debtor.)
Ctm.: BAM - Courtroom 3
15 Foley Federal Building
300 Las Vegas Blvd. South
16 Las Vegas, NV 89101
Judge: Hon. Bruce A. Markell

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18
19 TRUSTEE'S DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION
(amended as approved at confirmation hearing)
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TABLE OF CONTENTS

1		
2		
3	I.	EXECUTIVE SUMMARY 1
4	A.	Overview 1
5	B.	The Plan Will Allow for Greater Recoveries by Creditors 1
6	C.	The Trustee Recommends that You Vote to Accept the Plan..... 2
7	II.	INTRODUCTION..... 3
8	III.	VOTING INSTRUCTION AND THE PLAN CONFIRMATION PROCESS 6
9	A.	Approval of the Disclosure Statement..... 6
10	B.	Holders of Claims Eligible to Vote For or Against the Plan..... 6
11	C.	Voting Instructions..... 7
12	D.	Acceptance of the Plan..... 7
13	1.	Acceptance By a Class of Claims 7
14	2.	Deemed Acceptance/Rejection 7
15	3.	Comparison to Chapter 7 8
16	4.	Confirmation Without Acceptance ("Cramdown") 8
17	5.	Confirmation Hearing 9
18	6.	Identity of Person to Contact For More Information Regarding the Plan 9
19	E.	The Trustee Recommends That You Vote to Accept the Plan..... 9
20	IV.	FACTUAL BACKGROUND 10
21	A.	The Debtor's Background and Pre-Bankruptcy Operating History 10
22	B.	Events Leading to the Debtor's Bankruptcy 11
23	C.	The Chapter 11 Case 11
24	V.	CRITICAL PLAN PROVISIONS..... 12
25	A.	Overview 12
26	B.	First Alternative - Refinancing..... 12
27	1.	Generally..... 12
28	2.	Determination of Amount Needed to Satisfy All Claims 13
	3.	Effect of Timely Refinancing 14
	4.	Control of Estate Funds/Satisfaction of Claims..... 14
	C.	Second Alternative - Liquidation 15
	1.	Generally..... 15
	2.	Sale Procedure 15
	3.	Sale Free and Clear/Credit Bids..... 17
	4.	Operation of Bankruptcy Code Section 506(a)..... 17
	D.	Allowance and Satisfaction of Claims 17
	E.	Timing of Distributions 18
	VI.	DESIGNATION AND TREATMENT OF UNCLASSIFIED CLAIMS 18
	A.	Administrative Expense Claims 18
	B.	Priority Tax Claims 19

1	VII.	DESIGNATION, CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS	19
2			
3	A.	Class 1	20
4	B.	Class 2	21
5	C.	Class 3	21
6	D.	Class 4	22
7	E.	Class 5	23
8	F.	Class 6	27
9	G.	Class 7	28
10	H.	Class 8	29
11	I.	Class 9	29
12	J.	Class 10	30
13	K.	Class 11	30
14	L.	Class 12	31
15	M.	Class 13	31
16	N.	Class 14	34
17	O.	Class 15	34
18	P.	Class 16	34
19	VIII.	MEANS OF IMPLEMENTATION OF THE PLAN	35
20	A.	Assets and Liabilities of the Estate	35
21	B.	Source of Funds to Pay Claims	35
22	C.	Continued Management of the Debtor	36
23	D.	Further Development of Property/Additional Debt	36
24	E.	Objections to Claims	37
25	1.	Generally	37
26	2.	Resolution of Disputes	37
27	3.	Settlement	37
28	4.	Allowed Amount	37
29	F.	Assumption or Rejection of Unexpired Leases and Executory Contracts	38
30	1.	Assumption or Rejection	38
31	2.	Reservation of Rights	38
32	3.	Proof of Claim for Rejection Damages	39
33	G.	Retention of Liens	39
34	H.	Deadline For Administrative Expense Claims	39
35	I.	Post-Confirmation Compensation of Professional Persons	40
36	J.	Compensation of the Trustee	40
37	K.	Net Operating Reserve	41
38	L.	Re-vesting of Assets in the Debtor	41
39	M.	Cancellation of the Debtor's Stock	41
40	IX.	LIQUIDATION ANALYSIS	42
41			
42	A.	In General	42
43	B.	The Plan Priorities Follow the Chapter 7 Priorities	42
44	C.	Timing of Distributions	42
45	D.	Amount of Distributions	43
46	E.	The Trustee's Financial Projections	44
47	1.	Overview	44
48	2.	The Different Possible Outcomes	45
49	3.	The Models Are Liquidation Analyses	45
50	4.	Disclaimer	46

1	X.	MISCELLANEOUS PROVISIONS OF THE PLAN	46
2	A.	All section 1129(a)(4) Payments Subject to Bankruptcy Court Review	46
	B.	Default	46
3	1.	Events of Default	46
	2.	Consequences of Default	47
4	C.	Litigation	47
	D.	Modification/Amendment of Plan	48
5	1.	Amendments Prior to Confirmation	48
	2.	Amendments After Confirmation	48
6	3.	Effect on Claims	48
	E.	Reservation of Section 1129(b) Rights (Cramdown)	48
7	F.	Exemption from Transfer Taxes	49
	G.	Post-Confirmation Status Reports and Final Decree	49
8	H.	Post-Confirmation United States Trustee Fees	50
	I.	Post-Confirmation Jurisdiction	50
9	1.	Purposes	50
	2.	Abstention	52
10	J.	General Provisions	53
	1.	Unclaimed Funds	53
11	2.	Notice	53
	3.	Headings	54
12	4.	Severability	54
	5.	Governing Law	54
13	6.	Successors and Assigns	55
	7.	Plan Is Self Executing	55
14	XI.	EFFECT OF CONFIRMATION	55
15	A.	Binding Effect	55
16	B.	Possible Discharge of the Debtor	55
	C.	Post-Confirmation Conversion or Dismissal	56
17	D.	Tax Consequences	56
	E.	Exculpation	57
18	F.	Injunction/Further Actions	58
19	XII.	CONCLUSION AND RECOMMENDATION	59
20	XIII.	GLOSSARY OF DEFINED TERMS	59
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

Statutes

Bankruptcy Code § 1129(a).....	6, 9, 49
Bankruptcy Code § 1129(a)(4)	46
Bankruptcy Code § 1129(a)(7)(A).....	8
Bankruptcy Code § 1129(a)(8)	9, 49
Bankruptcy Code § 1129(a)(9)	32
Bankruptcy Code § 1129(b).....	6, 8, 9, 48
Bankruptcy Code § 1129(b)(2)(A).....	13, 17, 35, 36, 64

1 William A. Leonard, Jr. (the "Trustee"), the Chapter 11 trustee of the bankruptcy estate
 2 of Tower Homes, LLC (the "Debtor"), hereby files his Disclosure Statement and Plan of
 3 Reorganization (the "Disclosure Statement," or the "Plan").¹

4 I.

5 **EXECUTIVE SUMMARY**

6 A. **Overview**

7 The Trustee's Plan is described in detail below. In summary, it offers two alternative
 8 solutions for satisfaction of Creditors' Claims. One alternative provides the Debtor and its
 9 principal, Rodney Yanke, a short period of time (in addition to that already enjoyed) to complete
 10 a refinancing of the Debtor's Spanish View Towers real estate project. The second alternative
 11 provides sale procedures for the certain sale of the Property within a definite time period should
 12 the Debtor and Yanke fail to consummate and close a refinancing of the Property in the time
 13 afforded them to do so. Payments on account of Creditors' Claims depend on which alternative
 14 is implemented. If the Debtor and Yanke achieve a refinancing, all Allowed Claims will be paid
 15 in full. If the Debtor and Yanke fail to achieve a timely refinancing, Creditors' Claims will be
 16 paid, if at all, depending on the ultimate sale price achieved for the Property, and upon each
 17 Creditor's relative priority in terms of allowed, perfected liens against the Property and in terms
 18 of the priority their Claims hold as established by this Plan and the Bankruptcy Code. The
 19 treatment set forth herein represents the results of arms length settlement negotiations between
 20 and among the Trustee, Yanke, OneCap (as holder of multiple classes and priorities of Claims),
 21 the Mechanics' Lien Claimants, and the Pre-Purchaser Claimants. Creditors and other parties in
 22 interest are urged to read this Plan carefully to more fully understand the treatment of Creditors'
 23 Claims, Equity Interests and the Debtor's assets.

24 B. **The Plan Will Allow for Greater Recoveries by Creditors**

25 The Trustee believes that the treatment of Creditors under this Plan will result in a greater
 26 recovery for Creditors than that which is likely to be achieved under liquidation in a case under
 27

28 ¹ A glossary of defined terms is provided at the end of this document, beginning at page 59 below.

1 Chapter 7 of the Bankruptcy Code. Absent confirmation of the Plan, the Trustee believes that
2 senior Secured Creditors would likely foreclose on the Property, and that a foreclosure sale
3 would not realize maximum value for the Property. The Plan avoids a hurried "fire sale" of the
4 Property, and instead provides for a fully-advertised sale of the Property over a reasonable time
5 period with the help of seasoned professionals -- all of which should help realize maximum value
6 for the Property. The Plan also provides for the possibility -- albeit remote -- of a Timely
7 Refinancing, under which all Allowed Claims will be satisfied in full -- a result not probable in a
8 liquidation under either Chapter 7 or the Plan. The Plan will also allow distributions to Creditors
9 to be made sooner than would be possible under Chapter 7. Earlier payment will likely mean
10 higher payment, because the more time passes, the more interest accrues on the senior Secured
11 Claims.

12 Attached as Exhibit "1" hereto are the Trustee's Financial Projections which show
13 various possible outcomes for Creditors in the Bankruptcy Case. The models make clear that in
14 order for Class 14 Unsecured Claims to receive any distribution, (i) Yanke must achieve a
15 Timely Refinancing (including the required negotiation of discounted Claim amounts), or (ii) the
16 Property must sell for \$90 million or more, and the Trustee must achieve success with Claim
17 objections.

18 The Trustee believes that the alternative to the Plan is liquidation through foreclosure by
19 the senior priority Secured Creditors and likely litigation among Classes of Secured Creditors
20 spanning many years and involving many tens of thousands of dollars of litigation expenses, and
21 offering no guaranteed returns.

22 **C. The Trustee Recommends that You Vote to Accept the Plan**

23 Based on the factors described above, the Trustee believes that confirmation of the Plan
24 is in the best interest of Creditors. The Trustee, in consultation with senior priority Creditors and
25 the Debtor, recommends that Creditors vote to accept the Plan.

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II.

INTRODUCTION

Chapter 11 of the Bankruptcy Code allows a debtor, a court-appointed trustee, creditors and other parties in interest to propose a plan of reorganization. A plan of reorganization provides the means for a debtor to reorganize its financial affairs and continue to operate, or to liquidate, or a combination of both. A disclosure statement describes the assumptions that underlie the Plan, how the Plan will be executed, and the treatment of creditors' and other parties' claims and interests. A disclosure statement must contain information of a kind and in sufficient detail to enable creditors and other parties who are affected by the Plan to vote intelligently for or against the Plan or to object to the Plan.

THE DOCUMENT YOU ARE READING IS A COMBINED DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION, AS THOSE TERMS ARE USED IN THE BANKRUPTCY CODE. The Trustee is the party proposing the Plan and sending you this combined Disclosure Statement and Plan of Reorganization. The Trustee, in consultation with the Debtor and the secured creditors holding the largest claims in this case, has proposed the Plan to provide the treatment for all claims against and equity interests in the Debtor. The Plan provides that the Debtor be afforded a brief opportunity (60 or 90 days) to attempt to refinance its real property. If the Debtor timely achieves such a refinancing, all allowed claims of creditors will be paid in full. If the Debtor does not timely achieve such a refinancing, then the Trustee will liquidate the Debtor's assets and use the liquidation proceeds to pay allowed claims of creditors in the priority set forth below, to the extent that such proceeds allow. The procedures for refinancing and sale are discussed in detail below.

The Bankruptcy Court has preliminarily approved the document you are reading as a Disclosure Statement containing adequate information in sufficient detail to enable parties affected by the Plan to make informed judgments about the Plan. The Bankruptcy Court will make a final determination respecting the adequacy of this Disclosure Statement at the Confirmation Hearing (defined below). The Bankruptcy Court has not yet confirmed the Plan, and therefore the Plan is not yet binding.

1 READ THIS DISCLOSURE STATEMENT CAREFULLY TO FIND OUT THE
2 FOLLOWING IMPORTANT INFORMATION:

- 3 1. HOW THE PLAN WILL AFFECT YOUR CLAIM;
4 2. WHAT RIGHTS YOU HAVE WITH RESPECT TO VOTING FOR OR
5 AGAINST THE PLAN;
6 3. WHAT RIGHTS YOU HAVE WITH RESPECT TO OBJECTING TO THE
7 PLAN; AND
8 4. HOW AND WHEN TO VOTE FOR OR AGAINST THE PLAN.

9 This Disclosure Statement cannot tell you everything about your rights. You should
10 consider consulting your own lawyer to obtain more specific advice on how the Plan will affect
11 you and what is the best course of action for you.

12 The information contained in this Disclosure Statement has been submitted by the
13 Trustee, unless expressly attributed to other sources. The Trustee has authorized no
14 representations concerning the Debtor or its financial affairs other than those representations set
15 forth in this Disclosure Statement.

16 Except as may be set forth in this Disclosure Statement, the Bankruptcy Court has not
17 approved any representations concerning the Debtor or the value of its assets. The Trustee has
18 not authorized any representations or inducement to secure acceptance or rejection of the Plan
19 other than as contained herein and approved by the Bankruptcy Court.

20 The statements contained in this Disclosure Statement are based upon information
21 obtained by the Trustee from the Debtor's books and records, as well as through formal and
22 informal discovery conducted by the Trustee with the Debtor's former officers, directors,
23 employees, attorneys and accountants, and with other parties in interest. Such statements are
24 made as of the date of this document, unless another date is specified. Neither delivery of this
25 Disclosure Statement nor any exchange of rights made in connection with this Disclosure
26 Statement or the Plan shall under any circumstances create an implication that there has been no
27 change in the facts set forth in the Disclosure Statement since the date the Disclosure Statement
28 was prepared. Although the Trustee believes that the contents of the Disclosure Statement are

1 complete and accurate to the best of his knowledge, information and belief, the Trustee is unable
2 to warrant or represent that the information contained herein is without any inaccuracy.

3 The financial data and other facts relied upon in formulating the Plan are based upon the
4 Debtor's books and records. The Trustee, as the Plan proponent, represents that everything
5 stated in the Disclosure Statement is true to his best knowledge and belief. The Trustee has
6 included in this Disclosure Statement as Exhibit "1" certain Financial Projections reflecting how
7 claims will be paid either through sale or refinancing of the Debtor's assets. Those projections
8 represent the Trustee's predictions of future events based upon various assumptions. Those
9 anticipated or expected future events may or may not occur, and the projections may not be
10 relied upon as either a guarantee or as other assurance that the projected results will actually
11 occur. Thus, while the Trustee believes that such projections are reasonable, there is no
12 assurance that they will prove to be accurate. Because of all the uncertainties inherent in any
13 predictions of future events, all Creditors and other interested parties should be aware of the risk
14 associated with these projections and the possibility that the actual experience in the future may
15 differ in material or adverse ways.

16 The Bankruptcy Court has not yet confirmed the Plan described in this Disclosure
17 Statement. In other words, the terms of the Plan are not yet binding on anyone. If, however, the
18 Bankruptcy Court later confirms the plan, then the Plan will be binding on all Creditors in this
19 case, and will provide the means for treatment of all Creditors' and other parties' Claims and
20 interests.

21 The Plan is intended to resolve, compromise and settle all Claims, disputes, and Causes
22 of Action between and among all participants and as to all matters relating to these proceedings,
23 except as expressly provided otherwise in the Plan. If the Bankruptcy Court confirms the Plan,
24 Creditors' Claims, if and to the extent allowed, will receive the treatment provided by the terms
25 of the Plan.

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28 ///

III.

VOTING INSTRUCTION AND THE PLAN CONFIRMATION PROCESS

All Creditors are asked to vote to accept or reject the Plan. All voting will be by ballots in a form approved by the Bankruptcy Court. Based on the results of voting, the Bankruptcy Court will examine whether each Creditor Class has accepted the Plan by the requisite majority. If all Classes vote to accept the Plan, the Plan will be confirmed if the Bankruptcy Court determines that the Plan meets certain legal requirements. See generally, Bankruptcy Code section 1129(a). If at least one Class of Creditors, but fewer than all Classes, has voted to accept the Plan (without considering the vote of insiders), the Trustee will seek confirmation of the Plan pursuant to the "cramdown" provisions of Bankruptcy Code section 1129(b). Cramdown is discussed in greater detail in section III(D)(4) below.

A. Approval of the Disclosure Statement

The Bankruptcy Code requires that a disclosure statement contain "adequate information" sufficient to allow a reasonable hypothetical investor to make an informed decision regarding a plan of reorganization. The document you are reading is a combined disclosure statement and plan of reorganization. The disclosure statement aspect of this document has been conditionally approved by the Bankruptcy Court's order entered August 21, 2008. It has not yet received final approval by the Bankruptcy Court. The Bankruptcy Court will address the issue of final approval of the disclosure statement aspect of this document at a hearing on November 17, 2008. If you wish to object to the adequacy of this Disclosure Statement, you must file an objection with the Bankruptcy Court and serve it on the undersigned counsel and other parties requesting special notice in this case no later than October 21, 2008.

B. Holders of Claims Eligible to Vote For or Against the Plan

Under the Bankruptcy Code, only the members of those Classes whose Claims are impaired under the Plan are entitled to vote for acceptance or rejection of the Plan. "Impaired" generally means "changing or altering the legal or equitable rights of such Creditor." In this case, Classes 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 and 16 are impaired under the Plan.

1 Accordingly, the holders of all Claims in those Classes are entitled to vote to accept or to reject
2 the Plan.

3 **C. Voting Instructions**

4 A ballot accompanies this document for Creditors to use in voting on the Plan. To vote
5 on the Plan, indicate the amount of your Claim, and whether you accept or reject the Plan on the
6 ballot. If you have a Claim in more than one Class, you should submit a ballot for each Claim
7 falling within each Class. Creditors entitled to vote to accept or reject the Plan may vote by
8 completing, dating, signing and returning the accompanying ballot via regular United States
9 Postal Service mail or by personal hand delivery to the Trustee's counsel, Sullivan, Hill, Lewin,
10 Rez & Engel, Attn: James P. Hill Esq., 228 South Fourth Street, First Floor, Las Vegas, Nevada,
11 89101, or via facsimile actually received at (702) 384-9102.

12 IN ORDER TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED NOT LATER
13 THAN 5:00 P.M. (PACIFIC) ON NOVEMBER 3, 2008. The risk of non-receipt or late receipt
14 of ballots, whether due to United States Postal Service error or any other reason, is entirely on
15 the voting Creditor.

16 **D. Acceptance of the Plan**

17 For the Plan to be accepted and thereafter confirmed without resort to "cramdown," it
18 must be accepted by each impaired Class.

19 **1. Acceptance by a Class of Claims**

20 In accordance with Bankruptcy Code section 1126, a particular Class of Claims will be
21 deemed to have accepted the Plan only if holders representing at least two-thirds (2/3) in amount
22 and more than one-half (1/2) in number of Claims against the Debtor that have voted in that
23 Class have accepted the Plan.

24 **2. Deemed Acceptance/Rejection**

25 Pursuant to Bankruptcy Code section 1126(f), an unimpaired Class and each holder of a
26 Claim in that Class are deemed to have accepted the Plan, and those Creditors do not vote on the
27 Plan. Under the Plan, Classes 1 and 11 are unimpaired, and, accordingly, such Classes are
28 deemed to have accepted the Plan under this provision.

1 3. Comparison to Chapter 7

2 In order to confirm the Plan, the Bankruptcy Court must determine that the Plan provides
3 to each Creditor (in an impaired class) who does not accept the Plan property of a value, as of the
4 Effective Date, not less than the Distribution that such Creditor would receive or retain if the
5 Debtor were liquidated in a case under Chapter 7 of the Bankruptcy Code. This requirement, set
6 forth in Bankruptcy Code section 1129(a)(7)(A), is commonly referred to as the "best interests of
7 creditors" test. The Trustee believes that the Plan meets this requirement and that, if necessary,
8 the Bankruptcy Court will make such a determination. A hypothetical Chapter 7 liquidation
9 analysis is set forth in detail at section IX below.

10 4. Confirmation Without Acceptance ("Cramdown")

11 Bankruptcy Code section 1129(b) provides that the Plan may be confirmed by the
12 Bankruptcy Court, even if not accepted by every impaired Class, if (i) at least one impaired Class
13 has accepted the Plan (determined without including any acceptance of the Plan by any insider),
14 and (ii) the Bankruptcy Court finds that the Plan does not discriminate unfairly against, and is
15 fair and equitable with respect to, the rejecting Class(es).

16 With respect to each Class of Secured Claims, the requirement that the Plan be fair and
17 equitable to an impaired rejecting Class means that a Plan must provide:

18 (a) that each holder of a Claim in such Class will (i) retain the liens securing such
19 Claim, and (ii) receive deferred cash payments totaling at least the value of the security interest
20 (as of the effective date of the plan);

21 (b) for the sale of property subject to the liens securing such Claim, free and clear of
22 such liens, with the liens to attach to the proceeds of such sale, and to be treated as described in
23 section (a) above or (c) below; or

24 (c) for the realization by each holder of a Claim in such Class of the indubitable
25 equivalent of such Claim.

26 With respect to each Class of Unsecured Claims, the requirement that the Plan be fair and
27 equitable to an impaired rejecting Class means that (i) each holder of a Claim in such Class will
28 receive property of a value equal to the allowed amount of such Claim, plus interest, or (ii) no

holder of a Claim or Equity Interest that is junior to such Class will receive any property under the Plan on account of such junior Claim or Equity Interest.

If any impaired Class does not accept the Plan, the Trustee will seek confirmation by the "cramdown" provisions of section 1129(b), provided that all of the applicable requirements of section 1129(a), other than section 1129(a)(8), have been met.

5. Confirmation Hearing

The Bankruptcy Court will hold a hearing with respect to confirmation of the Plan to determine whether the Plan has been accepted by the requisite number of Creditors and whether the other requirements for confirmation of the Plan have been satisfied. The issues to be determined through the confirmation hearing include (without limitation) issues relating to notice, value of property, and feasibility of the Plan. In the event of a cramdown, the Trustee must also prove, among other things, that the Plan does not discriminate unfairly against, and is fair and equitable to, any non-accepting Class(es). THE TIME, PLACE AND DATE OF THE HEARING ON CONFIRMATION, AND THE DATE BY WHICH OBJECTIONS TO CONFIRMATION MUST BE FILED AND SERVED, ARE SPECIFIED IN THE BANKRUPTCY COURT ORDER APPROVING THIS DISCLOSURE STATEMENT AND THE NOTICE OF HEARING THAT ACCOMPANIES THIS DISCLOSURE STATEMENT.

6. Identity of Person to Contact For More Information Regarding the Plan

Any interested party desiring further information about the Plan should contact the Trustee's general bankruptcy counsel, James P. Hill, Esq., of Sullivan, Hill, Lewin, Rez & Engel, whose contact information is set forth above on the cover sheet to this combined Plan and Disclosure Statement.

E. The Trustee Recommends That You Vote to Accept the Plan

Based on the factors described in this document, the Trustee believes that his Plan will allow for the greatest possible Distributions to Creditors. Accordingly, the Trustee strongly urges all Creditors to vote to accept the Plan in accordance with the procedures described herein.

IV.

FACTUAL BACKGROUNDA. The Debtor's Background and Pre-Bankruptcy Operating History

The Debtor is a limited liability company formed under the laws of the State of Nevada. Rodney C. Yanke is the sole member and manager of the Debtor, holding 100 percent of its Equity Interests. The Debtor's most significant asset consists of a real estate development project comprising approximately 15 acres of partially developed real property located in the Southwest Las Vegas Valley along the I-215 Beltway at Buffalo, commonly referred to as the Spanish View Tower Homes. The real property was initially purchased by the Debtor in July of 2004 through an acquisition and development loan from OneCap. The project as presently configured contemplates three 21-floor condominium towers, each with 144 luxury residential units with projected sales prices in the \$800,000 to \$8,000,000 range. The Debtor asserts that an approved tract map has been filed; all necessary government permits, exemptions, entitlements and approvals have been obtained; and substantially all excavation work has been completed. Foundations are in place for Towers "A" and "B." The parking deck platform has been completed for Tower "A." Due to the Debtor's inability to secure sufficient financing to continue construction, minimal work has been performed on the project since the spring of 2006. The real property and its improvements may be described herein as the "Property."

The project was originally envisioned to cost over \$600,000,000. The Debtor alleges that approximately \$90,000,000 has been invested in the project to date, including \$28,000,000 from Yanke and his affiliates. OneCap asserts that it is the loan servicer for and services three separate fractionalized promissory notes secured by fully perfected deeds of trust against the Property upon which the Debtor owes OneCap's noteholders approximately \$36,000,000 secured against the Property. In addition, various mechanics' lien claimants assert that they are owed in excess of \$30,000,000, secured by valid and perfected mechanics' liens on the Property. Benchmark Enterprises, LLC asserts that it is owed approximately \$15,000,000 secured by a junior deed of trust on the Property. Sizable additional Claims are also asserted by parties who claim to have made down payments or pre-payments toward the purchase of individual

1 condominium units. Other Creditors have asserted Unsecured Claims entitled to neither priority
2 or secured status. The Debtor's bankruptcy schedules list over \$100,000,000 in debt of all
3 Classes (i.e., secured and unsecured). Over the last two years, the Debtor has attempted to obtain
4 additional financing for the project, but has been unable to do so.

5 **B. Events Leading to the Debtor's Bankruptcy**

6 In 2006, with the project far from complete, the Debtor began to experience financial
7 difficulties. The Debtor attempted to obtain additional financing to continue developing the
8 Property, but was unable to do so due to the deteriorating real estate and credit markets. The
9 Debtor defaulted on various obligations owed to OneCap, and in response, OneCap threatened to
10 foreclose on the Property. On May 31, 2007, three mechanics' lienholders, HBParkco
11 Construction, Inc., Regional Steel Corporation, and Nevada Ready Mix Corporation, filed an
12 involuntary bankruptcy petition against the Debtor under section 303 of the Bankruptcy Code in
13 order to stay foreclosure of the Property.

14 **C. The Chapter 11 Case**

15 On August 21, 2007, with the consent of the Debtor, the Bankruptcy Court entered an
16 order for relief in the Bankruptcy Case. Almost immediately thereafter, various Creditors and
17 parties in interest began to seek the appointment of a trustee in the Bankruptcy Case. On January
18 18, 2008, the Bankruptcy Court entered its order approving the United States Trustee's
19 appointment of the Trustee as the Chapter 11 trustee in the Bankruptcy Case.

20 Upon his appointment, the Trustee began investigating the Debtor's assets, liabilities and
21 prospects for reorganization. He quickly determined that whatever course the case was to take,
22 immediate funding was required in order to preserve the value of the Property. Absent such
23 funding, the Property might suffer significant devaluation in the form of damaged property;
24 stolen property; degraded property; loss of permits; loss of entitlements; increased fees; and
25 penalties. Accordingly, the Trustee filed motions seeking Bankruptcy Court approval of interim
26 super-priority financing for the Estate to provide essential funding through Plan confirmation and
27 beyond. On May 7, 2008, the Bankruptcy Court approved the Trustee's motion to borrow
28 \$550,000 from Bank of George on a super-priority, priming lien basis. The proceeds of this SPF

1 Financing are to be used specifically to pay certain critical expenses, which must be satisfied in
2 order to avoid potential significant loss of value of the Property. Bank of George is secured by a
3 senior priority lien against the Property and must be repaid from the first dollars recovered by the
4 Estate from any source, including but not limited to any sale or refinancing of the Property.

5 Based on his investigation of the Debtor's assets, liabilities and prospects for
6 reorganization, the Trustee has proposed the Plan on the terms set forth below.

7 V.

8 **CRITICAL PLAN PROVISIONS**

9 A. **Overview**

10 The Trustee's Plan provides for two possible solutions (alternatives) for payment of
11 Creditors' Claims. If the Plan is confirmed, the Debtor will be afforded a very short window of
12 time to attempt to reorganize by refinancing the Property in a fashion which brings into the
13 Estate sufficient funds to allow the Trustee to satisfy all Allowed Claims against the Estate. If
14 the Debtor fails to achieve a Timely Refinancing (as defined below), then the Trustee will
15 instead liquidate the Debtor's assets, including by an orderly sale of the Property, and will
16 distribute the proceeds to Creditors in accordance with the terms of this Plan. The Plan
17 embodies the results of extensive arms length negotiations between the Trustee, Yanke, OneCap
18 and the Mechanics' Lien Claimants, and the votes of these creditors and parties in interest on the
19 Plan represent their respective consents and agreements to the treatment afforded each of them
20 and one another under the Plan.

21 B. **First Alternative - Refinancing**

22 1. **Generally**

23 Under the first Plan alternative, the Debtor will be allowed a "Refinance Period" during
24 which it may attempt to refinance the project. Under this alternative, the Debtor will have 60
25 days from the Confirmation Date to deliver to the Trustee a binding commitment from a credible
26 lender to provide financing, which commitment shall be:

27 (i.) in form and content satisfactory to the Trustee in the Trustee's reasonable
28 discretion;

- 1 (ii.) is subject only to reasonable conditions which are capable of being satisfied
2 within the period provided;
- 3 (iii.) for an amount under which the Estate would receive funds sufficient to satisfy in
4 full all Allowed Claims against the Estate (considering reduced amounts
5 negotiated between Creditors and the Debtor and/or Yanke); and
- 6 (iv.) is accompanied by sufficient evidence in Trustee's reasonable discretion of
7 lender's ability to close the transaction timely upon satisfaction of all applicable
8 conditions.

9 The financing commitment may provide for the lender to obtain a senior priority deed of trust
10 against the Property free and clear of all liens, claims and interests (other than the Bank of
11 George Claim, which shall be satisfied from refinancing proceeds directly from the close of
12 escrow), with all such other existing liens, claims and interests to attach to the proceeds of the
13 refinancing, pursuant to Bankruptcy Code section 1129(b)(2)(A), and to be deemed
14 unenforceable and no longer valid against the Property, pursuant to Bankruptcy Code sections
15 1123(b)(1) and (5).

16 If the Debtor timely delivers a binding financing commitment satisfactory to the Trustee,
17 then the Trustee will file a notice with the Bankruptcy Court that Debtor will have an additional
18 30 days to close such financing (with the Bank of George Claim to be paid in full directly from
19 the proceeds of closing) and to cause the balance of the refinancing proceeds to be deposited
20 with the Trustee for satisfaction of Creditors' Claims as provided for below.

21 2. Determination of Amount Needed to Satisfy All Claims

22 For purposes of determining whether the refinancing proceeds are sufficient to satisfy all
23 Allowed Claims against the Estate, each Claim will be tallied at the amount shown on its
24 respective proof of claim, or, if no proof of claim was filed, at the amount shown in the Debtor's
25 bankruptcy schedules. As part of the foregoing process, the Debtor or Yanke may deliver to the
26 Trustee during the Refinance Period consents by Creditors of any Class to have their Claims
27 allowed at amounts less than either scheduled or filed.

28 3. Effect of Timely Refinancing

1 In the event that the Debtor accomplishes all of the foregoing within the Refinancing
2 Period, the Debtor will have achieved a "Timely Refinancing." In the event that the Debtor
3 achieves a Timely Refinancing:

4 (i.) the Trustee will file with the Bankruptcy Court and serve on all Creditors and
5 parties in interest notice of such Timely Refinancing;

6 (ii.) upon closing of the Timely Refinancing, and payment of the proceeds thereof to
7 Bank of George and the Trustee, as provided above, the Debtor will immediately
8 be granted control over the Property, including the right to continue developing it,
9 to encumber it, or to transfer it; and

10 (iii.) Yanke will retain his Equity Interest in the Debtor.

11 In the event of a dispute over whether or not the Debtor has either provided the Trustee
12 with a sufficient binding financing commitment or has otherwise achieved a Timely Refinancing,
13 the Bankruptcy Court shall determine the issue upon noticed motion. The Debtor and/or Yanke
14 shall have 120 days from the Confirmation Date to file and serve such a motion. Absent (y) a
15 timely filing of such motion or (z) the Trustee's filing of the notice described in subparagraph (i)
16 above, no Timely Refinancing will have taken place, and the time to achieve a Timely
17 Refinancing will have expired.

18 4. Control of Estate Funds/Satisfaction of Claims

19 Confirmation of the Plan will not terminate the Estate nor re-vest Estate assets in the
20 Debtor. The Trustee shall direct and control all Distributions made to Creditors on account of
21 Allowed Claims. Until such time as all Allowed Claims against the Estate are satisfied, all
22 proceeds of any refinancing shall remain under the control of the Trustee. Any funds remaining
23 in the Estate after full satisfaction of all Allowed Claims against the Estate shall remain property
24 of the Estate, and shall re-vest in the Debtor upon entry of a final decree.

25 The Trustee questions whether the Debtor can achieve a Timely Refinancing, particularly
26 given the time the Debtor has had to date to secure refinancing. The Trustee believes, however,
27 that the Debtor should be given the opportunity to attempt to do so for a variety of reasons,
28 including because a Timely Refinancing would allow for the full satisfaction of all Allowed

1 Claims against the Estate -- a result that may not be achieved under the second Plan alternative
2 discussed immediately below. During the Refinance Period afforded to the Debtor, the Trustee
3 will not file a motion seeking Bankruptcy Court approval of a sale of the Property; provided,
4 however, that during such Refinance Period, the Trustee will begin the process of marketing and
5 selling the Property, including, but not limited to, seeking Bankruptcy Court approval of the
6 retention of real estate professionals, preparing due diligence materials, exposing the Property to
7 prospective buyers, and other similar steps.

8 C. Second Alternative - Liquidation

9 1. Generally

10 The second Plan alternative will control in the event the Debtor does not achieve a
11 Timely Refinancing. Under the second Plan alternative, if the Debtor does not achieve a Timely
12 Refinancing, the Trustee will liquidate all of the Debtor's assets, pursuant to Bankruptcy Code
13 section 1123(b)(4), and distribute the net proceeds to pay Creditors' Allowed Claims in
14 accordance with the priorities set forth in this Plan, which priorities track those established under
15 Chapter 7 of the Bankruptcy Code. Any remaining net proceeds from the liquidation of the
16 Debtor's assets after payment of Creditors' Allowed Claims as treated under this alternative will
17 be paid to holders of Equity Interests in the Debtor. As described above, the Trustee does not
18 believe that the liquidation of the Debtor's assets will result in full satisfaction of all Allowed
19 Claims against the Estate. As also described above, confirmation of the Plan will not terminate
20 the Estate nor re-vest Estate assets in the Debtor.

21 2. Sale Procedure

22 The following "Sale Procedure" will govern the sale of the Property, pursuant to
23 Bankruptcy Code section 1123(b)(4): Upon the Effective Date, the Trustee will begin marketing
24 the Property for sale, although, as described above, during the Debtor's Refinance Period, the
25 Trustee will not file a Sale Motion seeking Bankruptcy Court approval of a sale of the Property;
26 provided, however, that during the Refinance Period, the Trustee will begin the process of
27 marketing and selling the Property.

28 The Trustee will market the Property for a minimum of 60 days following the Effective

1 Date prior to filing a motion to sell the Property, or for a minimum of 90 days in the event that
2 the Debtor timely delivers a binding financing commitment satisfactory to the Trustee. The
3 marketing will include publication of the opportunity in national and regional publications. Any
4 asset purchase agreement entered into by the Trustee must contain the following terms:

- 5 (a) The initial bidder must provide the Trustee with a deposit in the amount of
6 \$1,000,000, which deposit is non-refundable unless (i) the initial bidder is not
7 approved by the Bankruptcy Court as the purchaser, or (ii) the sale does not close
8 despite the initial bidder's timely performance of all its obligations.
- 9 (b) The sale shall be subject to overbid, with an initial overbid increment of three
10 percent (3%) of the purchase price, and subsequent overbid increments of one
11 percent (1%) of the purchase price.
- 12 (c) In the event that (i) the initial bidder is not approved by the Bankruptcy Court as
13 the purchaser, or (ii) the sale does not close despite the initial bidder's timely
14 performance of all its obligations, the initial bidder shall be entitled to a "break
15 up fee" of the lesser of (i) reasonable and actual out-of-pocket due diligence costs
16 as determined by the Bankruptcy Court (including fees and costs of attorneys,
17 accountants, bankers, and other professionals customarily used in transactions of
18 a similar nature), or (ii) one percent (1%) of the purchase price.
- 19 (d) The party approved as the purchaser at the sale hearing shall have 10 days from
20 entry of a Bankruptcy Court order approving the sale to close the transaction.
- 21 (e) The Trustee shall be authorized to accept one or more back-up bids.

22 Parties wishing to overbid must "qualify" no later than 5 days prior to the hearing on the
23 Trustee's sale by:

- 24 (i) entering into an asset purchase agreement with the Trustee in form substantially
25 identical to that entered into by the initial bidder,
- 26 (ii) depositing with the Trustee a deposit in the amount of \$1,000,000, which deposit
27 is non-refundable unless (i) the overbidder is not approved by the Bankruptcy
28 Court as the purchaser, or (ii) the sale does not close despite the overbidder's

1 timely performance of all its obligations; and

2 (iii) providing evidence of financial ability to close, satisfactory to the Trustee.

3 In the event that the Trustee has not received a satisfactory offer within 180 days
4 following the Effective Date, he will file and serve on all creditors and parties in interest a notice
5 of a sale hearing at which the Bankruptcy Court will conduct a "no-minimum" auction of the
6 Property.

7 3. Sale Free and Clear/Credit Bids

8 The Property will transfer to the successful purchaser free and clear of all liens, claims
9 and interests, allowing the purchaser to obtain fully insurable "clear" title, pursuant to
10 Bankruptcy Code sections 1123(b)(1) and (5). All such liens, claims and interests shall attach to
11 the proceeds of the sale, pursuant to Bankruptcy Code section 1129(b)(2)(A). Amounts
12 outstanding to Bank of George will be paid directly from sale proceeds at closing.

13 Rights of Secured Creditors to "credit bid" at any sale of the Property are fully preserved,
14 whether such rights arise under Bankruptcy Code section 363(k) or otherwise.

15 Any other terms of the sale may be addressed in the Trustee's Sale Motion.

16 4. Operation of Bankruptcy Code Section 506(a)

17 In the event that the Property is sold in accordance with the Sale Procedures, the sale will
18 be deemed to have fairly and conclusively determined the fair market value of the Property, and
19 accordingly, the values of the various Secured Claims against the Property, for purposes of
20 determining the extent to which such Claims are Secured Claims under Bankruptcy Code section
21 506(a). The holder of any Secured Claim not satisfied in full from the proceeds of a sale shall
22 receive an Unsecured Claim to the extent of any such deficiency, to be treated in Class 14.

23 D. Allowance and Satisfaction of Claims

24 Regardless of whether the Debtor achieves a Timely Refinance or the Trustee sells the
25 Property, the Trustee shall direct the process of satisfying Claims, including holding and
26 accounting for all funds of the Estate, and making Distributions to Creditors on account of
27 Allowed Claims in accordance with the terms of this Plan. Pursuant to Bankruptcy Code section
28 502, any party in interest may file an objection to a Claim.

E. Timing of Distributions

Upon a Timely Refinancing or sale of the Property, the Trustee, as soon as practicable, shall distribute the proceeds thereof in accordance with the terms of this Plan. The Trustee shall not distribute the proceeds of the liquidation of any other assets of the Estate to Creditors (other than Bank of George, pursuant to the SPF Financing) until such time as the Plan is substantially consummated, and the Trustee is prepared to move the Bankruptcy Court for a final decree.

VI.

DESIGNATION AND TREATMENT OF UNCLASSIFIED CLAIMS

Bankruptcy Code section 1123(a)(1) provides that a plan should classify all Claims other than Claims of the kinds specified in sections 507(a)(2), 507(a)(3), and 507(a)(8). As such, the Trustee has not placed the following Claims in separate Classes:

A. Administrative Expense Claims

Administrative Expense Claims consist of Claims entitled to priority under Bankruptcy Code section 507(a)(2). They include professional fees and expenses incurred in connection with administering the Bankruptcy Case. Administrative Expense Claims also include obligations incurred by the Debtor or the Trustee after the Petition Date. The Bankruptcy Code generally requires that all Administrative Expense Claims be paid in full in Cash on the Effective Date (or on such later date as the Administrative Expenses Claims are approved by a Final Order of the Bankruptcy Court), unless a particular Administrative Claimant agrees to a different treatment.

The Plan provides that, upon (i) the closing of a sale or a refinancing of the Property, and (ii) the full satisfaction of the Bank of George Claim, all Allowed Post-Trustee Administrative Expense Claims will be paid in full in Cash directly from the proceeds of such sale or refinancing, with each Class of Secured Claims to bear its Ratable Share of Administrative Expenses.

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All Allowed Pre-Trustee Administrative Expense Claims will be paid at such time as the Estate has sufficient available Cash to do so, in the Trustee's reasonable discretion, whether from

1 the proceeds of a sale or refinancing (after payment of Allowed Secured Claims), or from
2 recoveries from other sources. The Trustee is informed and believes that all Persons holding
3 Pre-Trustee Administrative Expense Claims consent to such treatment.

4 **B. Section 506(c) Stipulation**

5 Pursuant to the Stipulation Re Plan Treatment of Petition Creditors' and Joining
6 Creditors' Administrative Expense Claims entered into among the Trustee, OneCap and more
7 than a majority in number and more than two-thirds in amount of the Class 5 claimants:

8 1. All allowed Post-Trustee Administrative Expense Claims (inclusive of the fees
9 and costs of the Trustee and his professionals from and after the Confirmation Date) constitute
10 reasonable and necessary costs and expenses of preserving or disposing of the Property, and as
11 such are entitled to be paid as a "surcharge" or assessment against the Property, pursuant to
12 Bankruptcy Code section 506(c) and the Plan, to be satisfied in accordance with Section VI(A)
13 of the Plan.

14 2. All allowed Petitioning Creditors' Administrative Expense Claims (as defined in
15 the Stipulation) constitute reasonable and necessary costs and expenses of preserving or
16 disposing of the Property, and as such are entitled to be paid as a "surcharge" or assessment
17 against the Property, pursuant to Bankruptcy Code section 506(c) and the Plan, to be satisfied in
18 accordance with Section VI(A) of the Plan.

19 3. All allowed administrative expense claims of the Joining Creditors ("Joining
20 Creditors' Administrative Expense Claims") constitute reasonable and necessary costs and
21 expenses of preserving or disposing of the Property, and as such are entitled to be paid as a
22 "surcharge" or assessment against the Property, pursuant to Bankruptcy Code section 506(c) and
23 the Plan, to be satisfied in accordance with Section VI(A) of the Plan.

24 4. Post-Trustee Administrative Expense Claims, Petitioning Creditors'
25 Administrative Expense Claims and Joining Creditors' Administrative Expense Claims are
26 subject to Court review, approval and allowance.

27 **C. Priority Tax Claims**

28 Priority Tax Claims consist of the Claims of governmental units that are entitled to

1 priority under Bankruptcy Code section 507(a)(8). The Bankruptcy Code requires that each
 2 holder of an Allowed Priority Tax Claim receive the present value of such Claim in deferred
 3 Cash payments, over a period not exceeding six years from the date of the assessment of such
 4 tax, unless the holder of a Priority Tax Claim agrees to a different treatment. The Plan provides
 5 that all Allowed Priority Tax Claims will be paid in full in Cash from the proceeds of the SPF
 6 Financing, or if such proceeds are insufficient, then directly from the proceeds of the sale or
 7 refinancing of the Property, as applicable. The SPF Loan Documents require the Trustee to pay
 8 all real property tax claims on a timely basis, and the Trustee has done so.

9 VII.

10 DESIGNATION, CLASSIFICATION AND TREATMENT 11 OF CLAIMS AND INTERESTS

12 All other Claims or Equity Interests are classified and treated in 16 different Classes
 13 under the Plan. Unless provided otherwise below, after satisfaction of all Allowed Unclassified
 14 Claims, then Allowed Classified Claims shall be paid in the priority set forth below from the net
 15 proceeds of a Timely Refinancing if one is achieved, or from the net proceeds of the sale of the
 16 sale of the Property, and in any event from the net proceeds of any additional Estate assets from
 17 which value can be realized. In the event that insufficient funds are available to pay a Class in
 18 full, then the claimants within such Class shall share all remaining available funds on a Pro Rata
 19 basis based upon their respective Allowed Claim amounts. The treatment set forth herein
 20 represents the results of arms length settlement negotiations between and among the Trustee,
 21 Yanke, OneCap (as holder of multiple classes and priorities of Claims), the Mechanics' Lien
 22 Claimants, and the Pre-Purchaser Claimants. Under the Plan, Classes 1 and 11 are unimpaired.
 23 Classes 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 and 16 are impaired.

24 A. Class 1

- 25 1. Classification: Class 1 consists of the super-priority Secured Claim of
 26 Bank of George for funds advanced under the Super-Priority Financing
 27 Facility approved by the Bankruptcy Court's order entered May 7, 2008,
 28 which claim is secured by a first priority, fully perfected "priming lien"

upon all of the Debtor's assets.

2. Treatment: The Class 1 Claim shall be paid in full in accordance with the SPF Loan Documents. The Plan shall not alter the rights of Bank of George under the SPF Loan Documents, nor extend or modify any obligation of the borrower under the SPF Loan Document, the provisions of which shall survive confirmation of the Plan.

Pursuant to the Bankruptcy Court's May 7, 2008 order, the terms of the SPF Financing cannot be altered through this Plan or any other, and the terms of the May 7, 2008 order are incorporated herein. The automatic stay set forth in Bankruptcy Code section 362 shall not apply to Bank of George, including to Bank of George's rights to take any other action or to exercise any other right or remedy as permitted to Bank of George under the SPF Financing loan documents. No entity shall be entitled to any relief which may operate to delay or interfere with Bank of George's rights (including, without limitation, any injunction or stay), whether or not any changed circumstance or cause is demonstrated. The foregoing provisions mean that, should the Estate default on its obligations to Bank of George, the bank (owed approximately \$270,000 as of the filing of this pleading) could foreclose on the Property (worth tens of millions of dollars). Such a foreclosure, which is not subject to stay or injunction by the Bankruptcy Court or any other court, is likely to yield far less proceeds to pay Creditors than would a sale through this Plan.

As provided by the SPF Loan Documents, the Bank of George Claim must be repaid via cashier's check, wire transfer, or other cash equivalent, on the earliest of the following:

- (a) June 7, 2009;
- (b) The sale of substantially all of the Debtor's assets;
- (c) The funding of additional financing secured by a lien or liens on

the Property.

(d) Such date as the Trustee may determine in his discretion is in the best interests of the Estate; or

(e) Upon Default under the SPF Financing loan documents.

Class 1 is unimpaired.

B. Class 2

1. Classification: Class 2 consists of the Secured Claim of the Clark County, Nevada Treasurer's Office for real property taxes. As of the filing of this Plan, all such taxes had been paid in full; nonetheless, such taxes will continue to accrue going forward.

2. Treatment: Any amounts then outstanding on the Class 2 Claim shall be paid in full in Cash from the proceeds of the SPF Financing, or if such proceeds are insufficient, directly from the proceeds of the sale or refinancing of the Property, as applicable. In the event that the foregoing proceeds are insufficient to pay the Class 2 Claim in full, the Class 2 claimant shall be Allowed a "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 2 is impaired.

C. Class 3

1. Classification: Class 3 consists of the Secured Claim of OneCap arising out of a promissory note in the original principal amount of \$9,500,000, which is secured by a deed of trust against the Property recorded December 22, 2004 held by various entities by and through their collateral agent and loan servicer, OneCap.

2. Treatment: To the extent Allowed and secured by a lien against the Property after satisfaction of all senior Claims (including the Class 3 Ratable Share of Administrative Expenses), the Class 3 Claim shall be paid in Cash from the net proceeds of the sale or refinancing of the Property an amount equal to the then outstanding principal balance of that

note together with interest at the non-default rate plus \$2,000,000.² The Trustee shall make the Distribution on account of the Class 3 Claim no later than 30 days from the later of (i) closing of the sale or refinancing of the Property, or (ii) entry of a Final Order fixing and allowing such Secured Claim pursuant to Bankruptcy Code sections 502 and 506. In the event that the proceeds of a sale or refinancing of the Property are insufficient to pay in full the Claim allowed herein, then the holder of the Class 3 Claim shall be Allowed a "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 3 is impaired.

D. Class 4

1. Classification: Class 4 consists of the Secured Claim of OneCap arising out of a promissory note in the original principal amount of \$13,000,000 secured by a deed of trust recorded December 22, 2004 held by various entities by and through their collateral agent and loan servicer, OneCap.
2. Treatment: To the extent Allowed and secured by a lien against the Property after satisfaction of all senior Claims (including the Class 4 Ratable Share of Administrative Expenses), the Class 4 Claim shall be paid in Cash from the net proceeds of the sale or refinancing of the Property an amount equal to the then outstanding principal balance of that note together with interest at the non-default rate. The Trustee shall make the Distribution on account of the Class 4 Claim no later than 30 days from the later of (i) closing of the sale or refinancing of the Property, or (ii) entry of a Final Order allowing such Secured Claim pursuant to Bankruptcy Code sections 502 and 506. In the event that the proceeds of a

² The treatment afforded to OneCap herein was negotiated by the Debtor prior to the Trustee's appointment. The Trustee believes that such treatment is in the best interest of the Debtor's Creditors and the Estate. Because the Estate will likely lack Cash on the Effective Date sufficient to cure the default in the OneCap Claims, the Plan cannot utilize section 1124(2) of the Bankruptcy Code which allows a debtor to "de-accelerate" a debt that was accelerated pre-petition. Accordingly, in order to confirm the Plan, OneCap's consent to the Plan is required.

sale or refinancing of the Property are insufficient to pay in full the Claim allowed herein, then the holder of the Class 4 Claim shall be Allowed a "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 4 is impaired.

E. Class 5

1. Classification: Class 5 consists of all Claims of all Mechanics' Lien Creditors asserting mechanics' lien claims under applicable state law. In general, mechanics' lien claims are subject to adjustment due to accrued interest and attorneys' fees and costs under Nevada law and the Bankruptcy Code. Importantly, under applicable state law, including Nevada Revised Statute 108.236(1), certain types of mechanics' lien claims are subordinate to other types of mechanics' lien claims. This legal framework could possibly result in "sub-priorities" within Class 5.

2. Treatment:

(a) Allowance of Secured Claims: Each Mechanics' Lien Creditor listed below shall be deemed to hold an allowed secured Class 5 Claim in the respective amounts listed below, secured as a mechanics' lien Claim against the Property recognized under Nevada state law, specifically under Nevada Revised Statute 108.236(1). The Allowed Class 5 Claims will be paid in whole or in part after satisfaction of all senior priority secured Claims (including the Class 5 Ratable Share of Administrative Expenses). The Allowed Claim amounts listed below for each of the Class 5 Creditors represents the results of arms length settlement negotiations between and among the Trustee, Yanke, OneCap (as holder of multiple classes and priorities of Claims) and the Mechanics' Lien Claimants:

1	AHERN RENTAL	\$17,008.60
2	ALLIED TRENCH SHORING SERVICE	\$22,407.00
3	ATLAS MECHANICAL, INC.	\$185,000.00
4	BUILDING CONSENSUS, INC.	\$1,500,000.00 ³
5	CASHMAN EQUIPMENT	\$62,000.00
6	DESERT FIRE PROTECTION	\$151,000.00
7	FERGUSON ENTERPRISES	\$2,963.13
8	GEOTEK, INC.	\$151,599.52
9	GRG, INC.	\$50,874.57
10	HBPARKCO CONSTRUCTION	\$15,734,066.49 ⁴
11	HELIUM ELECTRIC	\$470,500.00
12	HUGHES WATER & SEWER, LTD.	\$105,815.91
13	JADE SUMMIT, LLC	\$181,138.76 ⁵
14	LAS VEGAS BUILDING DEVELOPMENT	\$1,826,406.64
15	LAS VEGAS PAVING	\$12,600.00
16	LEDCOR CONSTRUCTION, INC.	\$2,003,432.64
17	NEVADA READY MIX, CORP.	\$1,507,647.86
18	OLSEN PRECAST	\$8,000.00
19	REGIONAL STEEL CORP.	\$2,925,381.23
20	SOUTHERN NEVADA STORM DRAIN	\$17,900.00
21	STANTEC CONSULTING, INC.	\$86,486.88
22	THE PLUMBER, INC.	\$81,588.00
23	WATER MOVERS	\$31,574.55
24	WPH ARCHITECTURE	\$997,755.22

(b) Issues of Priority Reserved: All issues of relative priority of liens against the Property between and among the individual Class 5 claimants, including which individual Claims within Class 5 may be senior to and which may be subordinate to one another within this Class under applicable state law, including Nevada Revised Statute 108.236(1), are fully reserved, to be determined, if and to

³ This claim includes the claims of Harley Ellis Devereaux, formerly known as Fields Devereaux Architects and Engineers, and Fields Devereaux Miyamoto International, which have a total principal amount of \$3,153,613.88. Additionally, the Debtor asserts an affirmative claim against Building Consensus in the amount of \$5.2 million. The Debtor had previously proposed a compromise and settlement of these potentially offsetting claims in the form of a payment to Building Consensus in the amount of \$400,000, and those settlement negotiations are ongoing. The Debtor and Building Consensus have agreed to continue their discussions in good faith in an effort to determine the dollar amount of the Building Consensus Allowed Claim.

⁴ This amount does not include the claims of Nevada Ready Mix and Regional Steel.

⁵ This amount does not include the claims of Ahern Rental, Allied Trench, Ferguson Enterprises, Hughes Water, Southern Nevada Storm Drain and Stantec.

1 the extent required, by subsequent proceedings in the Bankruptcy
 2 Court as more fully discussed below. The settlements embodied
 3 within this Plan, however, fully resolve all disputes as to the
 4 relative priority of the liens against the Property held by all Class 5
 5 claimants, considered in the aggregate, on the one hand, as
 6 measured against, on the other hand, the respective liens against
 7 the Property of other secured creditors provided under this Plan
 8 (meaning Classes 1, 2, 3, 4, 6, 7 and 8).

9 (c) Possible Mootness of Priority: In the event that the net proceeds of
 10 the sale or refinancing of the Property after payment of all senior
 11 priority Secured Claims and assessments either (i) are not
 12 sufficient to pay any amount on account of any portion of an
 13 Allowed Class 5 Claim, or (ii) are sufficient to pay all Class 5
 14 Claims in full in the Allowed amounts set forth above in the
 15 aggregate, then all issues of sub-priority between and among the
 16 various holders of Class 5 Claims under applicable state law,
 17 including Nevada Revised Statute 108.236(1), will be moot and
 18 will not require further Bankruptcy Court determination.

19 (d) Future Determination of Priority (If Needed): If, however, the net
 20 proceeds of sale or refinancing of the Property after payment of all
 21 senior priority Secured Claims and assessments as provided above
 22 are sufficient to pay only part of but not all of the Allowed Class 5
 23 Claims in the aggregate, then the Bankruptcy Court will proceed to
 24 determine and fix (in the adversary proceeding described below)
 25 the relative priority between and among each of the individual
 26 holders of Class 5 Claims under applicable state law, including
 27 Nevada Revised Status 108.236(1), for purposes of determining
 28 which claimant or claimants within Class 5 are entitled to be paid

1 first, second, third, and so on within Class 5 until all available net
2 proceeds of sale are exhausted.

3 (e) Stay of Adversary Proceeding: The Bankruptcy Court will make
4 all determinations of relative priorities between and among Claims
5 within Class 5 as part of the currently-pending Adversary No. 07-
6 1150 (Building Consensus, Inc. v. Tower Homes, LLC, et al.).
7 Upon confirmation of the Plan, all proceedings within Adversary
8 No. 07-1150 shall be stayed until such time as (i) net proceeds of
9 sale or refinancing are available for distribution among members
10 of Class 5, and the Trustee or any other party in interest notices
11 and schedules a status conference in Adversary No. 07-1150 (and
12 serves notice of same on all holders of Class 5 Claims and any
13 other affected parties), or (ii) the Bankruptcy Court enters a final
14 decree closing the Bankruptcy Case, at which time Adversary No.
15 07-1150 may be dismissed.

16 (f) Distributions: If particular Claims within Class 5 fall within the
17 same sub-priority under applicable Nevada state law, then such
18 similarly ranked sub-priority Claims will be paid on a Pro Rata
19 basis within such sub-priority until the net proceeds of sale or
20 refinancing are exhausted within that sub-priority. If and to the
21 extent all or a portion of any Claim within Class 5 is not paid in
22 full, then the unsatisfied deficiency portion of such Claim shall be
23 allowed and treated as a general unsecured Claim within Class 14.
24 Distributions on account of Class 5 Claims will be made as soon as
25 practicable in the Trustee's reasonable discretion once (i) net
26 proceeds of sale or refinancing become available for distribution to
27 holders of Class 5 Claims after satisfaction of all senior priority
28 secured Claims(including the Class 5 Ratable Share of

Administrative Expenses), and (ii) all issues with respect to relative priority between and among holders of Class 5 Claims have been resolved by Final Order of the Bankruptcy Court within Adversary No. 07-1150. Prior to distributing any funds on account of a Class 5 Claim, the Trustee will file with the Bankruptcy Court and serve upon all holders of Class 5 Claims a notice of his intended distributions, providing that interested parties shall have 30 calendar days from date of service of such notice to request and schedule a status conference in Adversary No. 07-1150 and to ask the Bankruptcy Court to hear and determine any dispute as to relative priority of Claims within Class 5, as described above.

(g) Compromise of Claims: The treatment set forth above for Class 5 Claims is intended to be a compromise and settlement of the Claims asserted in Adversary No. 07-1150. Class 5 is impaired.

F. Class 6

1. Classification: Class 6 consists of the Secured Claim of OneCap arising out of a promissory note in the original principal amount of \$5,200,000 secured by a deed of trust recorded March 16, 2006 held by various entities by and through their collateral agent and loan servicer, OneCap, and encumbering the Property in a position junior to the Class 5 Creditors.
2. Treatment: To the extent Allowed and secured by a lien against the Property after satisfaction of all senior Claims (including the Class 6 Ratable Share of Administrative Expenses), the Class 6 Claim shall be paid in Cash from the net proceeds of the sale or refinancing of the Property an amount equal to the then outstanding principal balance of that note together with interest at the non-default rate. The Trustee shall make the Distribution on account of the Class 6 Claim no later than 30 days from the later of (i) closing of the sale or refinancing of the Property, or

(ii) entry of a Final Order allowing such Secured Claim pursuant to Bankruptcy Code sections 502 and 506. In the event that the proceeds of a sale or refinancing of the Property are insufficient to pay in full the Claim allowed herein, then the holder of the Class 6 Claim shall be Allowed a "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 6 is impaired.

G. Class 7

1. Classification: Class 7 consists of the Claim of Benchmark arising out of a promissory note dated in the original principal amount of \$15,000,000 purportedly secured by the deed of trust recorded May 2, 2006 held by Benchmark encumbering the Property in a position junior to the Class 6 Creditors.
2. Treatment: To the extent Allowed and secured by a lien against the Property after satisfaction of all senior Claims (including the Class 7 Ratable Share of Administrative Expenses), the Class 7 Claim shall be paid in Cash from the net proceeds of the sale or refinancing of the Property an amount equal to the Allowed Amount of the Claim (believed to be \$4,300,000 in principal) together with interest at the non-default rate. The Trustee shall make the Distribution on account of the Class 7 Claim no later than 30 days from the later of (i) closing of the sale or refinancing of the Property, or (ii) entry of a Final Order allowing such Secured Claim pursuant to Bankruptcy Code sections 502 and 506. In the event that the proceeds of a sale or refinancing of the Property are insufficient to pay in full the Claim allowed herein, then the holder of the Class 7 Claim shall be Allowed a "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 7 is impaired.

H. Class 8

1. Classification. Class 8 consists of the Claim of OneCap arising from a

1 "Memorandum of Revenue Participation" recorded August 14, 2006.

- 2 2. Treatment. To the extent Allowed and secured by a lien against the
3 Property after satisfaction of all senior Claims (including the Class 8
4 Ratable Share of Administrative Expenses), the Class 8 Claim shall be
5 paid in Cash from the net proceeds of the sale or refinancing of the
6 Property an amount equal to the then outstanding principal balance of that
7 note together with interest at the non-default rate. The Trustee shall make
8 the Distribution on account of the Class 8 Claim no later than 30 days
9 from the later of (i) closing of the sale or refinancing of the Property, or
10 (ii) entry of a Final Order allowing such Secured Claim pursuant to
11 Bankruptcy Code sections 502 and 506. In the event that the proceeds of a
12 sale or refinancing of the Property are insufficient to pay in full the Claim
13 allowed herein, then the holder of the Class 8 Claim shall be Allowed a
14 "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 8
15 is impaired.

16 I. Class 9

- 17 1. Classification: Class 9 consists of any other Allowed Claims secured by
18 the Property in a position junior to the Class 8 Creditors.
19 2. Treatment: To the extent Allowed and secured by a lien against the
20 Property after satisfaction of all senior Claims (including the Class 9
21 Ratable Share of Administrative Expenses), each Class 9 Claim shall be
22 paid in Cash from the net proceeds of the sale or refinancing of the
23 Property an amount equal to the Allowed Amount of such Claim. The
24 Trustee shall make the Distribution on account of the Class 9 Claim no
25 later than 30 days from the later of (i) closing of the sale or refinancing of
26 the Property, or (ii) entry of a Final Order allowing such Secured Claim
27 pursuant to Bankruptcy Code sections 502 and 506. In the event that the
28 proceeds of a sale or refinancing of the Property are insufficient to pay in

1 full the Claim allowed herein, then the holder of the Class 9 Claim shall be
2 Allowed a "deficiency" Claim in Class 14 for any remaining unpaid
3 balance. Class 9 is impaired.

4 **J. Class 10**

- 5 1. Classification: Class 10 consists of the Secured Claim of Lexus Financial
6 Services secured by a 2007 Lexus 460, on which both the Debtor and
7 Yanke are obligated.
- 8 2. Treatment: Lexus shall retain its lien in the vehicle. Yanke will retain the
9 vehicle and will continue making the required monthly payments on the
10 debt. In the event that he defaults on such payments (or other
11 obligations), Lexus will have the right to foreclose upon its lien against the
12 vehicle. In the event that the proceeds of a foreclosure are insufficient to
13 satisfy Lexus' Claim, Lexus will be entitled to a general unsecured Class
14 14 Claim for any deficiency remaining. The Estate waives any further
15 rights in the vehicle. Class 10 is impaired.

16 **K. Class 11**

- 17 1. Classification. Class 11 consists of the Secured Claim of GMAC secured
18 by a 2005 Cadillac Escalade, on which both the Debtor and Yanke are
19 obligated.
- 20 2. Treatment. The Claim of GMAC has been paid in full by Yanke, and
21 GMAC has released its lien against the automobile. GMAC shall be
22 Allowed no claim against the Estate, and shall receive no distribution from
23 the Estate. The Estate shall retain the vehicle and any rights to dispose of
24 it, provided, however, that Yanke shall be entitled to credit for amounts he
25 actually paid towards the vehicle. Class 11 is unimpaired.

26 ///

27 **L. Class 12**

- 28 1. Classification: Class 12 consists of all Priority Non-Tax Claims, other

1 than unclassified Claims and Claims held by the Pre-Purchaser Claimants.

- 2 2. Treatment: Allowed Class 12 Claims shall be paid from the proceeds of a
3 Timely Refinancing if one is achieved, or from the proceeds of the sale of
4 the sale of the Property, and of any additional assets of the Debtor from
5 which value can be realized. The Trustee believes that there are no
6 priority Unsecured Claims. Class 12 is impaired.

7 M. Class 13

- 8 1. Classification: Class 13 consists of all Claims of Pre-Purchaser
9 Claimants. Attached as Exhibit "2" hereto is a list of all Pre-Purchaser
10 Claimants presently known to the Trustee.

11 2. Treatment:

- 12 (a) Allowance. Each Class 13 Claim shall be allowed in an amount
13 equal to (i) the actual dollars paid by such creditor as a deposit
14 toward a condominium unit in the Property, plus simple interest of
15 4 percent per annum, less (ii) any recoveries achieved to date or
16 which may hereafter be achieved from any third party source,
17 including but not limited to Yanke; Prudential Real Estate
18 Affiliates, Inc.; Americana LLC; Americana Group; Mark L.
19 Stark; Jeannine Cutter; David Berg; Equity Title of Nevada, LLC;
20 any surety or insurance company; or any affiliate of any of the
21 foregoing, with any such reduction applied first to the Priority
22 Non-Tax Claim (described below), and then to the general
23 unsecured portion of the Class 14 claim (described below).

- 24 (b) Relief from Stay. Pursuant to agreement between the Class 13
25 creditors and the Trustee on behalf of the Estate, each member of
26 Class 13 shall, upon the Effective Date, be granted relief from the
27 automatic stay provided in Bankruptcy Code section 362 in order
28 to prosecute claims against any third parties relating to their

1 contracts of purchase and their payments toward the purchase of
2 condominium units in the Property, whether asserted in Case No.
3 A541668 currently pending in the Eighth Judicial District, Nevada
4 or otherwise; furthermore, each member of Class 13 shall be
5 granted relief from the automatic stay to collect against insurance
6 policies, if any, insuring the Debtor for acts relating to claims of
7 Pre-Purchaser Claimants, but not against any other assets of the
8 Debtor or the Estate. Payment of Class 13 Claims from property
9 of the Debtor or the Estate shall only be in accordance with the
10 terms of this Plan.

11 (c) Priority Non-Tax Claim Treatment. To the extent the holder of an
12 allowed Class 13 Claim is an individual who deposited funds
13 before the commencement of this Case for the purchase of one or
14 more condominium units for their own personal, family, or
15 household use, the first \$2,425 of such allowed Class 13 Claim
16 shall receive treatment under this plan as a Priority Non-Tax Claim
17 pursuant to Bankruptcy Code section 507(a)(7). Each member of
18 Class 13 shall be deemed to have consented to this treatment of the
19 priority portion of their Allowed Class 13 Claim, and to have
20 waived any right to payment in full on plan confirmation, if any
21 such right exists, under Bankruptcy Code section 1129(a)(9).

22 (d) General Unsecured Claim Treatment. Each holder of an Allowed
23 Class 13 Claim shall receive the same treatment afforded under
24 this Plan to Allowed Class 14 Claims (General Unsecured Claims,
25 as described below), to be paid out at the same time and at the
26 same rate on a pari passu basis as such Allowed Class 14 Claims,
27 in an amount equal to the amount allowed under subparagraph
28 2(a) above, less any distributions received under subparagraph 2(c)

1 in this section above.

2 (e) Distributions. Payment on account of the Claims Allowed herein
3 shall be made on the later of (i) the Effective Date, or (ii), such
4 date as the Trustee determines that the Estate has sufficient
5 unrestricted funds to make such distributions, after payment of all
6 allowed Secured Claims and all allowed senior priority Claims.
7 Prior to making such distributions, the Trustee will file with the
8 Court and serve on all holders of Class 13 Claims a notice of his
9 intent to distribute, which will attach a form declaration to be filled
10 out and executed by the Class 13 Claim creditor regarding (1) the
11 amount and nature of the pre-purchase deposit made for personal,
12 family or household use, and (2) the amount of recoveries from
13 third parties, as described in section 2(b) above, which declaration
14 shall be completed and executed by each claimant and returned to
15 the Trustee no later than 30 days following service of the notice of
16 intent. In the event of a dispute over the nature of a deposit or the
17 amount due on account of a Class 13 Claim, either the Pre-
18 Purchaser Claimant or the Trustee may move the Bankruptcy
19 Court for a resolution of the dispute through the claim objection
20 process.

21 (f) Compromise of Claims. The treatment set forth above for Class 13
22 Claims is intended to be a compromise and settlement of the
23 Claims asserted in Case No. A541668 and elsewhere, and
24 represents the results of arms length negotiations between the
25 Trustee and the Pre-Purchaser Claimants. Class 13 is impaired.

26 N. Class 14

27 1. Classification: Class 14 consists of all general, non-priority Unsecured
28 Claims.

2. Treatment: All Allowed Unsecured Claims shall be paid if and only if all Allowed unclassified Claims, Secured Claims and Priority Non-Tax Claims have been fully satisfied. The total amount of Allowed Class 14 Claims may increase over time by virtue of (i) rejection damage Claims arising from the Debtor's rejection of executory contracts and leases, and (ii) deficiency Claims arising as a result of one or more Secured Creditors' Secured Claims not being fully satisfied by a sale of the Property. In the event that the estate has sufficient funds to pay Claims in this Class after satisfaction of all senior Claims, the Trustee will consider conducting a comprehensive round of Claim objections. The Trustee believes that the Claim objection process would dramatically reduce the Allowed amount of Class 14 Claims. Class 14 is impaired.

O. Class 15

1. Classification: Class 15 consists of all Claims subordinated pursuant to section 510 of the Bankruptcy Code. As of the filing of this Plan, no Claims exists in this Class. The Class is reserved for Claims which may be subordinated pursuant to (i) agreements with Creditors negotiated by Yanke; (ii) litigation prosecuted by the Trustee; or (iii) other means.
2. Treatment: All Allowed subordinated Claims shall be paid after all Allowed unclassified Claims, Secured Claims and Priority Non-Tax Claims, and Unsecured Claims have been paid in full. Class 15 is impaired.

P. Class 16

1. Classification: Class 16 is comprised of all Equity Interests.
2. Treatment: In the event of a Timely Refinancing, the holders of Equity Interests in the Debtor shall retain such interests. In the event that no Timely Refinancing is achieved, the holder(s) of the Debtor's Equity Interests shall receive the remainder of the net proceeds of the Trustee's

liquidation of all Estate assets, if any, only if all senior Claims are paid in full, and all Equity Interests will be cancelled. Class 16 is impaired.

VIII.

MEANS OF IMPLEMENTATION OF THE PLAN

A. Assets and Liabilities of the Estate

In August of 2007, the firm of Integra Realty Resources-Nevada issued an appraisal of the Property. That report indicated an "as is" value (without any improvements) of \$42,400,000, and a value of \$89,700,000 if the costs of improvement as reported by the Debtor are added to this amount. The value of the Debtor's other assets (such as recoveries by the Trustee from transfers avoidable as fraudulent or preferential) is uncertain, and the Trustee is not likely to be able to place a value on such other assets until after Plan confirmation. Pursuant to Bankruptcy Code section 546, the Trustee must file avoidance actions under Chapter 5 of the Bankruptcy Code no later than August 21, 2009 (although Chapter 5 claims may be asserted by the Trustee against parties asserting claims against the Estate at any time).

According to Debtor's schedules on file with the Bankruptcy Court, the Debtor's liabilities are \$106,900,000 or more.

B. Source of Funds to Pay Claims

As described in section V(B)(1) above, the Debtor will be afforded a brief Refinancing Period during which it may attempt to refinance the Property, including by granting a lender a first priority deed of trust against the Property (junior only to Bank of George). In the event of a Timely Refinancing, all liens against the Property will attach to the proceeds of the refinancing, pursuant to Bankruptcy Code section 1129(b)(2)(A), and will be deemed unenforceable and no longer valid against the Property, pursuant to Bankruptcy Code sections 1123(b)(1) and (5). The Trustee will use the proceeds of the refinancing to satisfy in full all Allowed Claims.

Absent a Timely Refinancing, the Trustee will liquidate the Debtor's assets, including the Property, in accordance with Bankruptcy Code section 1123(b)(4) and the Sale Procedures described in section V(C)(2) above. All liens against the Property will attach to the proceeds of the sale, pursuant to Bankruptcy Code section 1129(b)(2)(A), and will be deemed unenforceable

1 and no longer valid against the Property, pursuant to Bankruptcy Code sections 1123(b)(1) and
2 (5). The Trustee will distribute the proceeds in accordance with the payment scheme set forth
3 herein (which tracks that established by the Bankruptcy Code). The Trustee believes that the
4 proceeds of a Timely Refinancing would allow for significantly greater Distributions to Creditors
5 as a whole than would be possible if the Trustee liquidates the Debtor's assets.

6 The Trustee may but shall not be required to set off or recoup against any Claim or the
7 payments to be made pursuant to this Plan in respect of such Claim (before any Payment is made
8 on account of such Claim), claims of any nature whatsoever that the Trustee, the Debtor or the
9 Reorganized Debtor may have against the holder of such Claims to the extent such Claims may
10 be set off or recouped under applicable law, but neither the failure to do so nor the allowance of
11 any Claim hereunder shall constitute a waiver or release by the Trustee or the Debtor of any such
12 Claim that either of them may have against such holder.

13 **C. Continued Management of the Debtor**

14 From and after the Effective Date, the Trustee shall continue to manage the affairs of the
15 Debtor's Estate, until such time as the Bankruptcy Court enters a final decree closing the
16 Bankruptcy Case, or enters an order otherwise. The Trustee will be responsible for the collection
17 and disbursement of all funds under the Plan. In the event of a Timely Refinancing, the Debtor
18 will obtain control of the Property as described in section V(B)(3) above. From and after the
19 Effective Date, the Trustee shall not be required to maintain a bond.

20 **D. Further Development of Property/Additional Debt**

21 From and after the Effective Date, the Trustee shall be authorized, without further order
22 of the Bankruptcy Court:

- 23 (1) to further develop the Property from its current state, and
24 (2) to obtain credit or incur debt (including debt secured by an interest in the
25 Property)

26 as the Trustee in his reasonable discretion determines likely to maximize the value ultimately
27 realized from the Property or other assets of the Estate. Prior to exercising any powers under this
28 section, the Trustee shall consult on the subject with the Debtor, OneCap, and William Noall,

1 Esq. and Laurel Davis, Esq., counsel for the two largest groups of Mechanics' Lien Creditors.
2 No transfer of any interest in the Property or lien thereon will be permitted absent prior payment
3 in full of the Bank of George Claim, and absent the consent of Bank of George, any such transfer
4 shall trigger an obligation on the Estate's part to repay in full amounts outstanding under the SPF
5 Financing.

6 **E. Objections to Claims**

7 1. Generally

8 The deadline for any party in interest to file objections to Claims within a given Class
9 shall be the Claims Objection Date, unless the Bankruptcy Court, upon request, extends such
10 period. Such extension may be granted without notice to the affected Creditor. Objections may
11 include a request for subordination pursuant to Bankruptcy Code section 510. Filing, service and
12 prosecution of such objections shall be subject to and in accordance with the Bankruptcy Rules
13 and local rules and procedures.

14 2. Resolution of Disputes

15 Disputes regarding the validity or amount of Claims shall be resolved pursuant to the
16 procedures established by the Bankruptcy Court, the Plan, the Bankruptcy Code, the Bankruptcy
17 Rules, and other applicable law, and such resolution shall not be a condition precedent to
18 confirmation or consummation of the Plan.

19 3. Settlement

20 From and after the Effective Date, the Trustee may compromise, liquidate or otherwise
21 settle any undetermined or objected to Claim or Cause of Action without notice and a hearing
22 and without approval of the Bankruptcy Court.

23 ///

24 4. Allowed Amount

25 No holder of a Claim shall receive a Distribution in excess of the amount allowed, either
26 by the Bankruptcy Court or as provided herein, with respect to such Allowed Claim.

27 **F. Assumption or Rejection of Unexpired Leases and Executory Contracts**

28 1. Assumption or Rejection

1 Pursuant to sections 365 and 1123 of the Bankruptcy Code, the Confirmation Order will
 2 constitute Bankruptcy Court approval of both: (1) the rejection of all executory contracts and
 3 unexpired leases to which the Debtor may be a party, other than any executory contract or
 4 unexpired lease that is the subject of a motion to assume filed prior to the Confirmation Date;
 5 and (2) the assumption of all executory contracts and unexpired leases that are the subject of one
 6 or more motions to assume filed prior to the Confirmation Date; provided, however, that in the
 7 event that a Timely Refinancing is achieved, then, with respect to all executory Purchase
 8 Contracts, the Confirmation Order will constitute Bankruptcy Court approval of both: (1) the
 9 assumption of all executory Purchase Contracts to which the Debtor may be a party, other than
 10 any executory contract or unexpired lease that is the subject of a motion to reject filed prior to
 11 the Confirmation Date; and (2) the rejection of all executory Purchase Contracts and unexpired
 12 leases that are the subject of one or more motions to reject filed prior to the Confirmation Date.

13 2. Reservation of Rights

14 The Trustee reserves the right to file applications or motions for the assumption or
 15 rejection of any executory contract or unexpired lease at any time prior to the Confirmation Date,
 16 and to prosecute any such application to entry of a Final Order any time thereafter. The SPF
 17 Loan Documents shall not be subject to rejection, and shall not be modified by the Plan (or
 18 otherwise, except as specifically permitted in the SPF Loan Documents, with the written consent
 19 of the Bank of George). Notwithstanding the rejection of any executory contract or unexpired
 20 lease, the Trustee reserves any and all rights or defenses he, the Debtor or the Estate may hold or
 21 may have held against the other parties to such contract or lease. In the event that the
 22 Bankruptcy Court enters a Final Order denying assumption of a particular executory contract or
 23 unexpired lease, such Final Order shall be deemed to be a rejection by the Trustee of such
 24 executory contract or unexpired lease. In the event that the Bankruptcy Court enters a Final
 25 Order denying rejection of a particular executory contract or unexpired lease, such Final Order
 26 shall be deemed to be an assumption by the Trustee of such executory contract or unexpired
 27 lease.

28 3. Proof of Claim for Rejection Damages

1 Each Person that is a party to an executory contract or unexpired lease rejected pursuant
 2 to the Plan, and only such Person, shall be entitled to file, not later than thirty (30) days after the
 3 Confirmation Date, a proof of claim for damages alleged to arise from the rejection or
 4 termination of the contract or lease to which such entity is a party. Any such timely-filed Claim
 5 will be determined by the Bankruptcy Court pursuant to Bankruptcy Code section 502(g), and to
 6 the extent allowed, will be classified in the appropriate Class. Any Claim for rejection damages
 7 not timely filed in accordance with this paragraph will be deemed disallowed.

8 **G. Retention of Liens**

9 In the event of a Timely Refinancing, all valid, duly-perfected and enforceable liens
 10 against the Property (other than that held by Bank of George) shall attach to the proceeds of the
 11 refinancing, and shall no longer be valid and enforceable against the Property itself. In the event
 12 of a sale of the Property under the Plan, such sale shall be made free and clear of all liens, claims
 13 and interests (other than that held by Bank of George), and such liens, claims and interests shall
 14 attach to the proceeds of the refinancing, and shall no longer be valid and enforceable against the
 15 Property itself. Holders of Secured Claims shall retain any valid, perfected liens against Estate
 16 assets other than the Property.

17 Each of the foregoing provisions in the paragraph above is expressly subject to the
 18 provisions of this Plan, and to any avoidance actions or Claim objections that the Trustee may
 19 bring.

20 **H. Deadline For Administrative Expense Claims/Other Claims Related to**
 21 **Bankruptcy Case**

22 All Administrative Claimants shall file motions for allowance of Administrative Expense
 23 Claims incurred from and after the Petition Date through and including the Confirmation Date
 24 not later than sixty (60) days after the Effective Date of the Plan or such Administrative Expense
 25 Claims shall be disallowed and forever barred. Any Creditor or party in interest having any
 26 Claim or cause of action against the Debtor, the Trustee or against any of the Debtor's or the
 27 Trustee's professionals relating to any actions or inactions in regard to the Bankruptcy Case must
 28 pursue such Claim or cause of action by the commencement of an adversary proceeding in the

1 Bankruptcy Case within sixty (60) days after the Effective Date of the Plan, or such Claim or
2 cause of action shall be forever barred and released. Nothing in this section shall be construed to
3 modify, extend or otherwise affect the Bar Date for filing pre-petition Claims against the Debtor,
4 which Bar Date was January 1, 2008. This section shall not apply to the Bank of George Claim,
5 which shall be an Allowed Claim without further proceeding or order.

6 **I. Post-Confirmation Compensation of Professional Persons**

7 Compensation for services rendered and for reimbursement of expenses incurred by the
8 Trustee or a Professional Person after the Confirmation Date need not be approved by the
9 Bankruptcy Court. Professional Persons may invoice the Trustee directly, providing a copy of
10 the invoice to the United States Trustee and any other person requesting such a copy in writing
11 after the Confirmation Date. The Trustee shall follow the same procedure with respect to his
12 own fees. If ten days pass without objection, all objections are deemed waived, and the Trustee
13 may pay such invoices without further Order of the Bankruptcy Court; provided, however, that in
14 the event of a dispute regarding such compensation or reimbursement, the Trustee or
15 Professional Person may submit an application to the Bankruptcy Court for review of the request
16 for compensation and reimbursement, and the Bankruptcy Court retains jurisdiction to hear and
17 approve such application and compel payment thereon. Such post-Confirmation Date
18 compensation for services rendered and reimbursement of expenses shall be considered an
19 ordinary expense of the Estate.

20 **J. Compensation of the Trustee**

21 The Trustee's Fee for all services rendered in the Bankruptcy Case, both pre- and post-
22 confirmation, shall be calculated as follows:

23 ///

24 1. In the event the Property is sold for a gross purchase price of \$45,000,000
25 or less, or is refinanced in a fashion which yields the Estate gross proceeds of \$45,000,000 or
26 less, then the Trustee shall be allowed a Trustee's Fee of \$250,000 plus his actual hourly rate,
27 capped at 1 percent of the gross sales price or gross refinancing amount.

28 2. In the event the Property is sold for a gross purchase price of between

1 \$45,000,000.01 and \$55,000,000, or is refinanced in a fashion which yields the Estate gross
2 proceeds of between \$45,000,000.01 and \$55,000,000, then the Trustee shall be allowed a
3 Trustee's Fee (a) as described in paragraph 1 above, plus (b) an additional amount equal to 2
4 percent of the difference between (i) the gross sale price or gross refinance amount, as
5 applicable, and (ii) \$45,000,000.

6 3. In the event the Property is sold for a gross purchase price of greater than
7 \$55,000,000, or is refinanced in a fashion which yields the Estate gross proceeds of greater than
8 \$55,000,000, then the Trustee shall be allowed a Trustee's Fee (a) as described in paragraph 2
9 above, plus (b) an additional amount equal to 3 percent of the difference between (i) the sale
10 price or refinance amount, as applicable, and (ii) \$55,000,000.

11 The Trustee's Fee was negotiated with certain key Creditors, and is expected to result in a
12 fee ultimately paid to the Trustee in an amount less than the fee provided under Bankruptcy Code
13 section 326.

14 **K. Net Operating Reserve**

15 Notwithstanding any other provision herein, until final Distributions are made to
16 Creditors in accordance with this Plan, the Trustee shall maintain at all times a net operating
17 reserve in the Estate in an amount of his discretion, but in no event less than \$100,000.

18 **L. Re-vesting of Assets in the Debtor**

19 In the event that both (i) the Debtor achieves a Timely Refinancing, and (ii) all Claims
20 against the Estate are fully satisfied, then the Trustee will seek a final decree from the
21 Bankruptcy Court providing for, among other things, the re-vesting of all Estate assets in the
22 Debtor.

23 ///

24 **M. Cancellation of the Debtor's Stock**

25 In the event that the assets of the Estate are exhausted before all Allowed Claims against
26 the Estate are fully satisfied, the Trustee will seek a final decree from the Bankruptcy Court
27 providing for, among other things, the cancellation of all Equity Interests in the Debtor.

28 **IX.**

LIQUIDATION ANALYSIS

A. In General

For Creditors to make an informed decision about whether to accept or reject the Plan, the Trustee provides the following liquidation analysis. The data contained in the Financial Projections accompanying this document are estimates only, based upon the best information currently available. The Trustee reserves the right to revise the data as more accurate information becomes available.

If any Creditor votes to reject the Plan, the Bankruptcy Court must determine that each such Creditor will receive or retain under the Plan property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Creditor would receive or retain if the Debtor were liquidated in a case under Chapter 7 of the Bankruptcy Code. This is commonly referred to as the "best interest of Creditors test." The Trustee believes that the Plan complies with the test.

B. The Plan Priorities Follow the Chapter 7 Priorities

The Trustee believes that the "best interest of creditors" test is satisfied by the Plan for a variety of reasons, the most important of which may be this: The priorities set forth in the Plan precisely follow those set forth in Chapter 7 of the Bankruptcy Code. Thus, essentially by definition, under the Plan, Creditors will receive no less than they would under a Chapter 7 liquidation. For the reasons discussed below, the Trustee believes that Creditors will ultimately receive more under the Plan than they would under a Chapter 7 liquidation.

C. Timing of Distributions

Under a Chapter 7 liquidation of the Debtor's non-exempt assets, most Classes of Creditors would probably be forced to wait longer for payment on account of Claims than they would under the Trustee's proposed Plan. Absent approval of the Plan, significant litigation would likely ensue, including litigation with Yanke, OneCap, the Mechanics' Lien Creditor, the Pre-Purchaser Claimants, and others. Such litigation could easily last a year or two, possibly longer, considering appeals. Under the Plan, this litigation is avoided, and Distributions to Creditors can begin as soon as Claims in a given Class are fixed and sufficient assets exist to pay them.

1 **D. Amount of Distributions**

2 The timing of the Distributions will affect the amounts ultimately paid to Creditors here.
3 The longer Creditors wait for the liquidation of the Property, the more interest continues to
4 accrue on senior Secured Claims, thus eroding the ultimate Distributions to junior Creditors.
5 Because the Plan avoids the litigation described above, it avoids the delay inherent therein, thus
6 preserving more value for Creditors. The Plan also avoids the significant expense that would be
7 involved with such litigation, again preserving more value for Creditors.

8 In the event of a Timely Refinancing under the Plan, all Allowed Claims will be satisfied
9 in full -- a result not probable in a liquidation under either Chapter 7 or the Plan.

10 The Trustee believes that one key to a successful outcome in this Bankruptcy Case lies in
11 realizing maximum value for the Property. Absent confirmation of the Plan, the Trustee believes
12 that senior Secured Creditors would likely foreclose on the Property, and that a foreclosure sale
13 would not realize maximum value for the Property. The Plan embodies the results of extensive
14 arms length negotiations between the Trustee, Yanke, OneCap and the Mechanics' Lien
15 Claimants, and the votes of these creditors and parties in interest on the Plan represent their
16 respective consents and agreements to the treatment afforded each of them and one another under
17 the Plan. As such, the Plan avoids a hurried "fire sale" of the Property, and instead provides for
18 a fully-advertised sale of the Property over a reasonable time period with the help of seasoned
19 professionals -- all of which should help realize maximum value for the Property. The Trustee
20 believes that the Sale Procedure established in the Plan will accomplish this goal.

21 The Trustee believes that a second key to a successful outcome in this Bankruptcy Case
22 lies in the following: Were this case administered under Chapter 7, the Trustee could do nothing
23 other than liquidate the Debtor's assets, object to and fix Claims, and distribute the proceeds of
24 the non-exempt assets in strict conformity with the priorities established by the Bankruptcy
25 Code. Under Chapter 7, the Trustee believes that relief from the automatic stay would likely be
26 granted to all senior priority creditors (e.g., OneCap, the Mechanics' Lien Creditors, etc.), and
27 that those Creditors would likely foreclose on their secured interests in the Property outside of
28 the jurisdiction of the Bankruptcy Court, with no opportunity for orderly marketing and

1 overbidding in accordance with the Sales Procedures provided under this Plan. Section 1123(b)
 2 of the Bankruptcy Code, by contrast, allows the Trustee (through the Plan) much greater
 3 flexibility, including the ability to impair certain Classes of Claims; to assume certain contracts;
 4 to provide for the settlement of certain Claims; to permit the retention by various parties of their
 5 interests in assets of the Debtor; and to modify the rights of holders of Secured Claims. The
 6 Trustee's Plan does all of these things. In utilizing the greater flexibility provided under Chapter
 7 11, the Plan achieves a more favorable resolution of key Claims than would be possible under
 8 Chapter 7, thus reducing the amount of Claims that will ultimately have to be paid. This
 9 resolution is achieved through a more efficient procedure than would be possible in a Chapter 7
 10 liquidation -- meaning administrative expenses are likely to be less. These factors allow
 11 Creditors a greater chance at a better recovery than could be achieved in a Chapter 7 liquidation,
 12 if at all.

13 Additionally, the Plan allows the Estate to take advantage of provisions of the
 14 Bankruptcy Code which may avoid millions of dollars in default interest, late charges, and
 15 accelerated debt owed to OneCap, and instead "cure" that debt at a much lower amount than
 16 would be possible outside Chapter 11. And the Plan allows for a reasonable amount of time to
 17 adequately market the Property, thus avoiding the risk of a forced sale which is likely to yield a
 18 lower price.

19 Based on all of the foregoing factors, the Trustee believes that the Plan will realize a
 20 higher net return for Creditors than would a Chapter 7 liquidation, and thus satisfies the best
 21 interest test.

22 ///

23 E. The Trustee's Financial Projections

24 1. Overview

25 The Trustee's Financial Projections are attached as Exhibit "1" hereto. The Financial
 26 Projections show various possible outcomes for Creditors in the Bankruptcy Case. Each model
 27 provides the following information:

28 (1) The amount for which the Property is sold or refinanced under a given scenario.

1 This figure is at the top of each model.

2 (2) The aggregate dollar amount of Claims that the Trustee estimates may be Allowed
3 in each Class under a given scenario. These figures are found in the column titled "Amount
4 Tentatively Allowed."

5 (3) The aggregate dollar amount that the Trustee estimates the estate may be able to
6 pay each Class under a given scenario. These figures are found in the column titled "Proposed
7 Payment." This column also illustrates at what priority level Estate assets would be fully
8 depleted under a given scenario.

9 (4) The percentage distributions that the Trustee estimates will be paid on account of
10 Allowed Claims in each Class. These figures are found in the "Distribution %" column.

11 2. The Different Possible Outcomes

12 Model "A" illustrates a worst-case scenario, with the Property selling for \$30 million.
13 Model "F" illustrates the opposite end of the spectrum -- a best-case scenario, with the Property
14 selling for \$90 million, and the Trustee conducting a comprehensive round of claim objections,
15 thereby reducing the total Allowed Amount of Class 14 Claims which share in the sale proceeds.
16 The models in between "A" and "F" illustrate various middle grounds. Model "G" illustrates
17 Yanke or the Debtor achieving a Timely Refinancing, with net refinancing proceeds of \$80
18 million, and Yanke or the Debtor having negotiated substantial reductions to Class 14 Claims.

19 The models make clear that in order for Class 14 Unsecured Claims to receive any
20 distribution, (i) Yanke must achieve a Timely Refinancing (including the required negotiation of
21 discounted Claim amounts), or (ii) the Property must sell for \$90 million or more, and the
22 Trustee must achieve success with Claim objections.

23 3. The Models Are Liquidation Analyses

24 Other than Model "G," each model provides a liquidation analysis at various sale prices,
25 because, as described above, the priorities set forth in the Plan precisely follow those set forth in
26 Chapter 7 of the Bankruptcy Code. Thus, essentially by definition, under the Plan, Creditors will
27 receive no less than they would under a Chapter 7 liquidation.

28 4. Disclaimer

The projections contained in the models represent the Trustee's predictions of future events based upon various assumptions. Those anticipated or expected future events may or may not occur, and the projections may not be relied upon as either a guarantee or as other assurance that the projected results will actually occur. Thus, while the Trustee believes that such projections are reasonable, there is no assurance that they will prove to be accurate. Because of all the uncertainties inherent in any predictions of future events, all Creditors and other interested parties should be aware of the risk associated with these projections and the possibility that the actual experience in the future may differ in material or adverse ways.

X.

MISCELLANEOUS PROVISIONS OF THE PLAN

A. All section 1129(a)(4) Payments Subject to Bankruptcy Court Review

As required by Bankruptcy Code section 1129(a)(4), all payments made or to be made by the Trustee for services or for costs and expenses in or in connection with the Bankruptcy Case, or in connection with the Plan and incident to the Bankruptcy Case, are subject to approval of the Bankruptcy Court as reasonable. To the extent that any such payment is not subject to the procedures and provisions of Bankruptcy Code sections 326 through 330, then such Bankruptcy Court approval shall be deemed to have been given through entry of the Confirmation Order unless, within ninety (90) days of such payment or request for such payment, the Bankruptcy Court, the United States Trustee, the party making the payment, or the party receiving the payment challenges or seeks approval of the reasonableness of such payment. No other parties or entities shall have standing to make such a challenge or application for approval. Nothing in this provision shall affect the duties, obligations and responsibilities of any entity under Bankruptcy Code Sections 326 through 330.

B. Default

1. Events of Default

The following shall be events of default under the Plan:

- (a) The failure of the Trustee to make any payment required under the Plan when

1 due; provided, however, that, except as otherwise provided in this Plan or the SPF Loan
2 Documents, no default shall be deemed to have occurred if such missed payment is made within
3 thirty (30) days of its due date.

4 (b) Failure to comply with any provision of this Plan.

5 2. Consequences of Default

6 Except as otherwise provided in this Plan, an order of the Bankruptcy Court issued upon
7 application by a party in interest, or the SPF Loan Documents, if an event of default under this
8 Plan occurs and is not cured within thirty (30) days after service of written notice of default on
9 the Trustee, any holder of an Allowed Claim may seek relief from the Bankruptcy Court,
10 including but not limited to filing motions to enforce the Plan, to revoke the Confirmation Order,
11 to convert the Bankruptcy Case to one under Chapter 7, or to dismiss the Bankruptcy Case. Any
12 party requesting such relief shall bear the burden of proof with respect thereto. Such notice or
13 relief is not required to be sought by Bank of George prior to enforcing its rights under the SPF
14 Loan Documents.

15 C. Litigation

16 The Trustee has lacked funds or other resources in the Estate to finance an investigation
17 as to claims or Causes of Action that he, the Estate or the Debtor may hold. Accordingly, from
18 and after the Confirmation Date, the Trustee and the Estate shall retain all claims or Causes of
19 Action that they have or hold against any party, including against "insiders" of the Debtor (as
20 that term is defined in section 101(31) of the Bankruptcy Code), whether arising pre- or post-
21 petition, subject to applicable state law statutes of limitation and related decisional law, whether
22 sounding in tort, contract or other theory or doctrine of law or equity. Confirmation of the Plan
23 effects no settlement, compromise, waiver or release of any Cause of Action unless the Plan or
24 Confirmation Order specifically and unambiguously so provide. The nondisclosure or
25 nondiscussion of any particular Cause of Action is not and shall not be construed as a settlement,
26 compromise, waiver or release of such Cause of Action. Upon the Effective Date, the Trustee
27 will be designated as representative of the Estate under section 1123(b)(3) of the Bankruptcy
28 Code and shall, except as otherwise provided herein, have the right to assert any or all of the

1 above Causes of Action post-confirmation in accordance with applicable law. Notwithstanding
2 the foregoing, neither the Trustee, the Debtor, nor the Estate have, or shall assert, any claims or
3 Causes of Action against Bank of George, or with respect to the SPF Financing.

4 **D. Modification/Amendment of Plan**

5 1. Amendments Prior to Confirmation

6 The Trustee may propose any number of amendments to or modifications of the Plan, or
7 may rescind and withdraw the Plan in its entirety (with or without substitution of a replacement
8 plan), at any time prior to confirmation. If the Trustee revokes or withdraws the Plan, or if either
9 confirmation or the Effective Date does not occur, then the Plan shall be deemed null and void,
10 and in any such event, nothing contained herein shall be deemed to constitute an omission or a
11 waiver or release of any Claims or interests by or against the Trustee, the Debtor or any other
12 Person, or to prejudice in any manner the rights of the Trustee, the Debtor or any other Person in
13 any further proceedings involving the Debtor.

14 2. Amendments After Confirmation

15 The Plan may be modified by the Trustee at any time after the Confirmation Date,
16 provided that such modification meets the requirements of the Bankruptcy Code. The Trustee
17 may, with the approval of the Bankruptcy Court, and so long as it does not materially or
18 adversely affect the interests of Creditors, remedy any defect or omission, or reconcile any
19 inconsistencies in the Plan or in the Confirmation Order, in such manner as may be necessary to
20 carry out the purposes and intent of the Plan.

21 ///

22 ///

23 3. Effect on Claims

24 A Creditor that has previously accepted or rejected this Plan shall be deemed to have
25 accepted or rejected, as the case may be, this Plan, as modified, unless, within the time fixed by
26 the Bankruptcy Court, such Creditor elects in writing to change its previous acceptance or
27 rejection.

1 **E. Reservation of Section 1129(b) Rights (Cramdown)**

2 If any Class of Creditors holding Claims against the Debtor rejects the Plan, the Trustee,
3 pursuant to Bankruptcy Code section 1129(b), will seek confirmation of the Plan if all of the
4 applicable requirements of Bankruptcy Code section 1129(a), other than those of section
5 1129(a)(8), have been met.

6 **F. Exemption from Transfer Taxes**

7 Pursuant to section 1146(a) of the Bankruptcy Code, (a) the transfer of the Property or
8 any other property under this Plan; (b) the creation, modification, consolidation or recording of
9 any deed of trust or other security interest under this Plan, and the securing of additional
10 indebtedness by such means or by other means under this Plan; (c) the making, delivery or
11 recording of a deed or other instrument of transfer under this Plan; and (d) any transaction
12 contemplated above, or any transactions arising out of, contemplated by or in any way related to
13 the foregoing (including any Trustee's Deed upon sale in connection with the SPF Loan
14 Documents), shall not be subject to any document recording tax, stamp tax, conveyance fee,
15 intangible or similar tax, mortgage tax, stamp act or real estate transfer tax, mortgage recording
16 tax or other similar tax or governmental assessment. All applicable state and local governments
17 and their officials and agents shall be directed to forego the collection of any such tax or
18 assessment, and to accept for filing or recordation any of the foregoing instruments or other
19 documents without the payment of any such tax or assessment.

20 **G. Post-Confirmation Status Reports and Final Decree**

21 The Trustee shall file status reports with the Bankruptcy Court on a quarterly basis after
22 entry of the Confirmation Order, describing the progress toward consummation of the Plan. The
23 status reports shall be served on the United States Trustee and any other party in interest which
24 has requested in writing after the Confirmation Date that the Trustee provide it with a copy of
25 any such status reports. The status reports shall include a disclosure of the Debtor's Cash
26 position and the extent of any prepayments of the Debtor's obligations during the reported
27 quarter.

28 When the Plan is fully administered in all material respects, the Trustee shall file an

1 application for a final decree. The effect of a final decree entered by the Bankruptcy Court will
2 be to close the Bankruptcy Case, and to re-vest all remaining Estate assets, if any, in the Debtor.
3 After such closure, a party seeking any type of relief relating to a Plan provision can seek such
4 relief in a state court of general jurisdiction or can petition the Bankruptcy Court to re-open the
5 Bankruptcy Case.

6 **H. Post-Confirmation United States Trustee Fees**

7 The Trustee shall pay post-confirmation fees pursuant to section 1930 of Title 28 of the
8 United States Code to the extent required by law. The amount of fees due shall be calculated and
9 paid based on disbursements made pursuant to this Plan. Non-plan disbursements shall not be
10 counted for purposes of the calculation.

11 **I. Post-Confirmation Jurisdiction**

12 **1. Purposes**

13 Except as otherwise provided in this Plan, the Bankruptcy Court shall retain jurisdiction
14 over the Bankruptcy Case subsequent to the Confirmation Date to the fullest extent permitted
15 under section 1334 of Title 28 of the United States Code, including, without limitation, for the
16 following purposes:

- 17 (a) To allow, disallow, determine, liquidate, classify, estimate,
18 subordinate or establish the priority or secured or unsecured status
19 of any Claim, including the resolution of any request for payment
20 of any Administrative Expense Claim and the resolution of any and
21 all objections to the allowance or priority of Claims;
- 22 (b) To determine any and all fee applications of the Trustee or
23 Professional Persons and any other fees and expenses authorized to
24 be paid or reimbursed in accordance with the Bankruptcy Code or
25 the Plan;
- 26 (c) To resolve any matters related to the assumption, assignment or
27 rejection of any executory contract or unexpired lease, and to hear,
28 to determine and, if necessary, to liquidate, any Claims arising

- 1 therefrom or cure amounts related thereto;
- 2 (d) To ensure that payments to holders of Allowed Claims and
- 3 Distributions to Equity Interest holders are accomplished pursuant
- 4 to the provisions of this Plan;
- 5 (e) To decide or resolve any motions, adversary proceedings,
- 6 contested or litigated matters and any other matters that may be
- 7 pending on the Effective Date;
- 8 (f) To hear and determine any and all actions initiated by the Trustee
- 9 to collect, realize upon, reduce to judgment or otherwise liquidate
- 10 any Causes of Action;
- 11 (g) To enter such orders as may be necessary or appropriate to
- 12 implement or consummate the provisions of this Plan and all
- 13 contracts, instruments, releases and other agreements or documents
- 14 created in connection with this Plan and/or confirmation, including
- 15 actions to enjoin enforcement of Claims inconsistent with the
- 16 terms of the Plan, except as otherwise provided herein;
- 17 (h) To decide or resolve any cases, controversies, suits or disputes that
- 18 may arise in connection with the consummation, interpretation or
- 19 enforcement of any Final Order entered in this Case, this Plan,
- 20 confirmation or any party's obligations incurred in connection with
- 21 this Case;
- 22 ///
- 23 ///
- 24 (i) To hear and determine any dispute or Claim involving or against
- 25 the Trustee, or involving or against any Professional Person
- 26 employed by the Trustee;
- 27 (j) To modify this Plan pursuant to section 1127 of the Bankruptcy
- 28 Code, or to modify any contract, instrument, release or other

1 agreement or document created in connection with this Plan; or to
2 remedy any defect or omission or reconcile any inconsistency in
3 any Bankruptcy Court order or any contract, instrument, release or
4 other agreement or document created in connection with this Plan
5 in such manner as may be necessary or appropriate to consummate
6 this Plan, to the extent authorized by the Bankruptcy Code;

7 (k) To issue injunctions, enter and implement other orders or to take
8 such other actions as may be necessary or appropriate to carry out
9 the intent of this Plan or to restrain interference by any party with
10 consummation, implementation or enforcement of any order or this
11 Plan, except as otherwise provided herein;

12 (l) To determine disputes regarding title of the property claimed to be
13 property of the Debtor or its Estate;

14 (m) To decide or resolve any matter over which the Bankruptcy Court
15 has jurisdiction pursuant to section 505 of the Bankruptcy Code;

16 (n) To hear and determine disputes concerning any event of default or
17 alleged event of default under this Plan, as well as disputes
18 concerning remedies upon any event of default;

19 (o) To determine any other matters that may arise in connection with
20 or relate to this Plan, any order entered in this Bankruptcy Case, or
21 any contract, instrument, release or other agreement or document
22 created in connection with this Plan, except as otherwise provided
23 herein;

24 (p) To hear any other matters not inconsistent with the Bankruptcy
25 Code; and

26 (q) To enter a final decree closing the Case.

27 2. Abstention

28 If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is

1 otherwise without jurisdiction, over any matter arising out of the Bankruptcy Case, this post-
2 confirmation jurisdiction section shall have no effect upon and shall not control, prohibit, or limit
3 the exercise of jurisdiction by any other court having competent jurisdiction with respect to such
4 matter.

5 **J. General Provisions**

6 **1. Unclaimed Funds**

7 Any Distribution by check to any holder of an Allowed Claim, if unclaimed or uncashed
8 by the payee thereof within 120 days after issuance and delivery by regular United States Postal
9 Service mail shall become property of the Estate, and all liabilities and obligations of the Trustee
10 to such payee and any holder of such check shall thereupon cease. Any check distributed to a
11 holder of an Allowed Claim shall bear a legend that the check shall be void if not cashed or
12 presented for payment within 120 days of the date of issuance.

13 **2. Notice**

14 Notices provided pursuant to the Plan shall be served as follows:

15 *If to the Debtor:*

16 Tower Homes, LLC
17 Attn: Rodney Yanke
8337 West Sunset Road, #300
18 Las Vegas, NV 89113-2201

If to the Trustee:

William A. Leonard, Jr.
5030 Paradise Road
Suite B-216
Las Vegas, NV 89119

19 *With a copy to:*

20 Tower Homes, LLC
21 c/o William L. McGimsey, Esq.
516 S. Sixth Street, Suite 300
22 Las Vegas, NV 89101

With a copy to:

Sullivan, Hill, Lewin, Rez & Engel
Attn: James P. Hill, Esq.
228 South Fourth Street, First Floor
Las Vegas, NV 89101

Additional copies to:

OneCap Mortgage Corporation: c/o James MacRobbie, Esq. Jeffrey R. Sylvester, Esq. Sylvester & Polednak, Ltd. 7371 Prairie Falcon, Suite 120 Las Vegas, NV 89128	William Noall, Esq. c/o Gordon & Silver 3960 Howard Hughes Pkwy., 9th Floor Las Vegas, NV 89109
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Laurel E. Davis, Esq. Fennemore Craig, P.C. 300 S. Fourth Street, Suite 1400 Las Vegas, NV 89101	Donna M. Osborn, Esq. Terry A. Coffing, Esq. Marquis & Aurbach 10001 Park Run Drive Las Vegas, NV 89145
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Bank of George
c/o Candace C. Carlyon, Esq.
Shea & Carlyon, Ltd.
701 Bridger Avenue, Suite 850
Las Vegas, NV 89101

3. Headings

The article and section headings used herein are for convenience and reference only, and do not constitute a part of the Plan or in any manner affect the terms, provisions, or interpretations of the Plan.

4. Severability

If any provision of this Plan is determined by the Bankruptcy Court to be invalid, illegal or unenforceable or this Plan is determined to be not confirmable pursuant to section 1129 of the Bankruptcy Code, the Bankruptcy Court shall have the power to alter and interpret the Plan or any provision thereof to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this

1 Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and
2 enforceable pursuant to its terms.

3 5. Governing Law

4 Except to the extent that the Bankruptcy Code or other federal law is applicable or as
5 provided in any contract, instrument, release or other agreement entered into in connection with
6 this Plan or in any document which remains unaltered by this Plan, the rights, duties and
7 obligations of the Debtor and any other Person arising under this Plan shall be governed by, and
8 construed and enforced in accordance with, the internal laws of the State of Nevada without
9 giving effect to Nevada's choice of law provisions.

10 6. Successors and Assigns

11 The rights and obligations of any entity named or referred to in the Plan shall be binding
12 upon, and shall inure to the benefit of, the successors and assigns of such entity.

13 7. Plan Is Self Executing

14 The terms and provisions of this Plan are self-executing on the Effective Date.

15 XI.

16 EFFECT OF CONFIRMATION

17 A. Binding Effect

18 Confirmation of the Plan will not terminate the Estate nor re-vest Estate assets in the
19 Debtor. To the contrary, from and after the Effective Date, the provisions of the Plan, the
20 Confirmation Order, and any associated findings of fact or conclusions of law shall bind the
21 Trustee, the Estate, the Reorganized Debtor, any entity acquiring property under the Plan, and
22 any Creditor of the Debtor, whether or not the Claim of such Creditor is impaired under the Plan
23 and whether or not such Creditor has accepted the Plan.

24 B. Possible Discharge of the Debtor

25 In the event of a Timely Refinancing, the Reorganized Debtor may apply to the
26 Bankruptcy Court for a discharge.⁶ Any discharge will have no effect on the Bank of George

27
28 ⁶ A discharge may have little to no actual effect, because in the event of a Timely Refinancing, all claims will be paid in full, thus leaving no claims to discharge. The Trustee has included this provision, however, at the request of

1 Claim. Otherwise, the Reorganized Debtor is not entitled to receive a discharge, pursuant to
2 section 1141(d)(3)(A) or (B) of the Bankruptcy Code.

3 **C. Post-Confirmation Conversion or Dismissal**

4 A Creditor or party in interest may bring a motion to convert or dismiss the Bankruptcy
5 Case under Bankruptcy Code section 1112(b)(7) after the Plan is confirmed if there is a default
6 in performing the Plan. If the Bankruptcy Court orders the case converted after the Plan is
7 confirmed, property of the Estate that has not been disbursed pursuant to the Plan will revert in
8 the Chapter 7 estate and the automatic stay will be reimposed upon the revested property to the
9 extent that relief from the automatic stay was not previously authorized by the Bankruptcy Court
10 during the case.

11 The order confirming the Plan may also be revoked under very limited circumstances.
12 The Bankruptcy Court may revoke the order if and only if the order of confirmation was
13 procured by fraud and if a party in interest brings a motion to revoke confirmation within 180
14 days after entry of the order of confirmation.

15 **D. Tax Consequences**

16 ANY PERSON CONCERNED WITH THE TAX CONSEQUENCES OF THE PLAN
17 SHOULD CONSULT WITH HIS/HER/ITS OWN ACCOUNTANTS, ATTORNEYS, AND/OR
18 ADVISORS TO DETERMINE HOW THE PLAN MAY AFFECT HIS/HER/ITS TAX
19 LIABILITY. The following disclosure of possible tax consequences is intended solely for the
20 purpose of alerting readers about possible tax issues the Plan may present to THE DEBTOR'S
21 ESTATE. The Trustee CANNOT and DOES NOT represent that the tax consequences
22 contained below are the only tax consequences of the Plan, because the Internal Revenue Code
23 embodies many complicated rules which make it difficult to completely and accurately state all
24 of the tax implications of any action or transaction.

25 The Trustee is unaware of any adverse tax consequences of the Plan as to the Estate. The
26 Trustee expects to minimize the tax liability upon the Estate and, to the extent permitted by the
27 _____ (continued)
28 the Debtor, which has informed the Trustee that the Debtor's potential lending sources may insist on a discharge as a
type of "clean up" order.