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E. J. [Signature]
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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 DANIEL WATT, individually and on behalf of
11 all persons similarly situated; DOUGLAS
12 KRINSKY, individually and on behalf of all
13 persons similarly situated; JANINE HOGG,
14 individually and on behalf of all persons
15 similarly situated; SANJAY VARMA,
16 individually and on behalf of all persons
17 similarly situated,

18 Plaintiff,

19 vs.

20 NEVADA PROPERTY I, LLC, a Nevada limited
21 liability company; 3700 ASSOCIATES, LLC, a
22 Nevada limited liability company; DOES I
23 through X, inclusive, and ROE
24 CORPORATIONS I through X, inclusive,

25 Defendant.

Case No.: A582541
Dept. No.: XVI

CLASS ACTION COMPLAINT FOR:

- (1) BREACH OF CONTRACT
- (2) DECLARATORY RELIEF
- (3) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

ARBITRATION EXEMPTION CLAIMED:

- 1. DAMAGES IN EXCESS OF \$50,000 PER PLAINTIFF
- 2. CLASS ACTION

JURY TRIAL DEMANDED

26 **CLASS ACTION COMPLAINT**

27 COMES NOW, Plaintiffs DANIEL WATT, DOUGLAS KRINSKY, JANINE HOGG,
28 and SANJAY VARMA, who bring this action on behalf of themselves, and on behalf of all
similarly situated persons (hereinafter collectively referred to as "Plaintiffs"), against Defendants
Nevada Property 1, LLC, 3700 Associates, LLC, DOES I through X, inclusive, and ROE

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1 CORPORATIONS I through X, inclusive (hereinafter collectively referred to as "Defendants"),
2 and allege, based upon information and belief, except where otherwise stated, as follows:

3 **NATURE OF THE ACTION**

4 1. The instant Complaint involves a breach of contract by Defendants wherein
5 Defendants failed to complete construction of a condominium development in Las Vegas,
6 Nevada resulting in an unreasonable delay of completion of the development.

7 2. The Plaintiffs entered into Condominium Unit Purchase and Sale Agreements
8 (hereinafter "Agreement" or "Agreements") with 3700 Associates, LLC (hereinafter "3700 A")
9 for the purchase of condominium-hotel units ("Units") in the Cosmopolitan Resort Casino Las
10 Vegas (hereinafter "Cosmopolitan"). Plaintiffs all executed Agreements contemplating a closing
11 on their unit at a specified future date for a specific price.

12 **THE PARTIES**

13 3. The Plaintiffs, and each of them, all have deposits in excess of \$10,000.00.

14 4. Defendant 3700 A is, and at all relevant times mentioned herein was a Delaware
15 limited liability company. At all relevant times 3700 A conducted and conducts substantial
16 business in the State of Nevada and substantially avails itself of the Las Vegas economic market
17 in Nevada.

18 5. Defendant Nevada Property 1, LLC ("NP1") is, and at all relevant times
19 mentioned herein was a Delaware limited liability company. At all relevant times, NP1
20 conducted and conducts substantial business in the State of Nevada and substantially availed and
21 avails itself of the Las Vegas economic market in Nevada.

22 6. The true names and capacities, whether individual, corporation, associate, or
23 otherwise of the Defendants named herein as ROE Corporations I through X, and DOES I
24 through X, inclusive, are unknown to Plaintiffs at this time, who therefore sue said Defendants
25 by fictitious names and will ask leave of the court to amend this Complaint to show the true
26 names and capacities of Defendants when the same are ascertained. Same Defendants are sued
27 as principals and/or agents, servants, attorneys, and employees of said principals, and all the acts
28 performed by them were within the course and scope of their authority in employment. Plaintiffs

1 are informed and believe and thereupon allege that each of the said Defendants is legally
2 responsible in some manner for the events and happenings referred to herein, and directly and
3 proximately caused the damages and injuries to Plaintiffs hereinafter alleged.

4 **JURISDICTION AND VENUE**

5 7. This court has jurisdiction over this action, and venue is proper in Clark County,
6 Nevada, because the Defendants have, at all relevant times, maintained their offices in Clark
7 County, Nevada, and committed the wrongful conduct against each Plaintiff named herein and
8 other members of the Class, in Clark County, Nevada.

9 **ARBITRATION EXEMPTION CLAIMED**

10 8. Pursuant to Rule 3 of the Nevada Arbitration Rules, this matter should not be
11 subject to arbitration because (1) damages for each Plaintiff are in excess of 50,000.00; and (2)
12 this is a class action complaint.

13 **GENERAL FACTUAL ALLEGATIONS**

14 9. The Plaintiffs entered into Agreements with 3700 A to purchase Units at
15 Cosmopolitan. Plaintiffs all executed Agreements contemplating a closing on their unit at a
16 specified future date for a specific price.

17 10. Upon information and belief, the Plaintiffs executed the Agreements in 2005,
18 2006 and November of 2007.

19 11. The Plaintiffs made initial deposits into escrow in furtherance of the Agreements,
20 amounting to twenty percent (20%) of the purchase price. Upon information and belief, the
21 initial deposits are in an escrow account with Nevada Title Company ("NV Title").

22 12. The original developer of Cosmopolitan, 3700 A, defaulted on its loan. Deutsche
23 Bank Trust Company Americas ("DBTCA") held the defaulted note and, on March 13, 2008,
24 provided NV Title with a Declaration of Default and demand for sale.

25 13. The Cosmopolitan was sold at public auction to NP1 for \$1,000,000,000.00. A
26 Trustee's Deed Upon Sale between NV Title and NP1, was recorded on September 3, 2008 in
27 Clark County, Nevada ("Trustee's Deed").

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1 14. Upon information and belief, NP1 is a wholly owned subsidiary of DBTCA or its
2 related entities.

3 15. Pursuant to the Trustee's Deed, NP1 obtained the rights under "all contracts of
4 sale for" the units, as well as "all appurtenances in respect of or otherwise relating to contracts
5 for sale...." This included any rights its predecessor, 3700 A, had to down payments on the
6 Units.

7 16. 3700A initially represented that the Estimated Closing Date of the Cosmopolitan
8 would be late 2007 or early 2008.

9 17. Given the fact it is currently 2009 and the state of construction of the
10 Cosmopolitan at this time, the Plaintiffs believe the Defendants breached the Agreements.

11 **CLASS ALLEGATIONS**

12 18. Plaintiffs bring this action pursuant to Rule 23 of the Nevada Rules of Civil
13 Procedure as a class action on their own and on behalf of a class defined as:

14 ALL INDIVIDUALS WHO MADE A DEPOSIT TO PURCHASE ONE OR
15 MORE OF THE UNITS IN THE COSMOPOLITAN RESORT CASINO IN LAS
16 VEGAS FROM DEFENDANTS, AND WHO HAVE NOT HAD THEIR
DEPOSIT RETURNED IN FULL TO THEM.

17 Excluded from the Class are Defendants, any parent, subsidiary of affiliate of
18 Defendants, and their officers, directors, and employees, who are or have been
employed by Defendants during the above-defined Class Period, and any judicial
officer who may preside over this cause of action.

19 19. The requirements for maintaining this action as a class action under Rule 23 of the
20 Nevada Rules of Civil procedure are satisfied:

21 a. **NUMEROSITY:** It is impracticable to bring all members of the Class before
22 the Court. Plaintiffs estimate that there are hundreds of Class Members, geographically spread
23 throughout the United States, and that their identities can be ascertained from Defendants' books
24 and records. Attempting to join and name each Class member as a Co-Plaintiff would be
25 unreasonable and impracticable.

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1 b. **COMMONALITY:** There is a well-defined commonality of interest in the
2 questions of law and fact involving the Plaintiffs in that all consumers: (i) entered into an
3 identical Agreement with 3700A to purchase one or more Units at the Cosmopolitan; (ii)
4 deposited funds with NV Title as required by the terms of the Agreements; and (3) construction
5 of the Cosmopolitan has been unreasonably delayed. Among the common questions of law are:

6 (i) Whether Defendants' delay in completion of the construction of
7 the Cosmopolitan constitutes an "unreasonable delay;" and

8 (ii) Whether the Agreements, or portions thereof, are unconscionable
9 and thus unenforceable.

10 c. **PREDOMINANCE:** There are questions of law and fact common to the
11 Class, which are identical for each member of the Class and which predominate over the
12 questions affecting the individual Class members, if any.

13 d. **TYPICALITY:** The claims of the representative Plaintiffs are also typical of
14 the class members in that Plaintiffs are informed and believe that each class member executed an
15 Agreement containing substantially identical terms with 3700A and each Unit's Estimated
16 Closing Date was unreasonably delayed. In this action, Plaintiffs and the Class seek rescission
17 of the Agreements, return of their deposits, interest authorized under Nevada law, and reasonable
18 attorneys' fees and costs incurred in the prosecution of this action.

19 e. **ADEQUACY:** The Plaintiffs are willing to devote the time necessary to
20 serve as representatives of the class and work with class counsel, and their attorneys are
21 experienced and knowledgeable in class action litigation in Nevada, and they will fairly and
22 adequately represent the interests of the class and have no interests agnostic to the class.

23 f. **SUPERIORITY:** There is no plain, speedy or adequate remedy other than
24 maintenance of this class action since Plaintiffs are informed and believe that the prosecution of
25 individual remedies by members of the Plaintiff class would tend to establish inconsistent
26 standards of conduct for the Defendants, would lead to inconsistent legal and factual
27 adjudications, and would result in impairment of class members' rights and the disposition of
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1 their interest in actions to which they were not parties. Class action treatment is superior to any
2 other means of handling these claims.

3 g. **MANAGEABILITY:** There are no manageability problems due to variations
4 in state laws or choice of law provisions, because Nevada law applies to the claims of all the
5 members of the Class asserted herein.

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7 **FIRST CAUSE OF ACTION**
(Breach of Contract)

8 20. Plaintiffs reallege and incorporate herein by reference the allegations contained in
9 the preceding and subsequent Paragraphs of this Complaint as though fully set forth herein.
10 Plaintiffs bring this cause of action on behalf of themselves and the Class of similarly situated
11 persons as herein defined.

12 21. The Plaintiffs entered into Agreements with 3700 A for the purchase of the Units.

13 22. 3700 A's interests, rights, and obligations under the Agreements were purchased
14 by NP1 upon a Trustee's sale of the property.

15 23. Paragraph 9.5 of the Agreements provides in part: "Seller anticipates the Unit will
16 be substantially completed by the Estimated Closing Date set forth on Page 1 of this Agreement,
17 but Buyer understands and agrees that Seller cannot guarantee completion by such Estimated
18 Closing Date. Seller will not be liable for any delays and Seller will not have to make, provide
19 or compensate Buyer for any accommodations or costs as a result of any delays, and any delays
20 will not permit Buyer to cancel, amend or diminish any of Buyer's obligations."

21 24. Defendants initially represented that the Estimated Closing Date of the
22 Cosmopolitan would be late 2007 or early 2008.

23 25. As of the filing of this Complaint, the Cosmopolitan is not completed.

24 26. Under Nevada law, this delay in completion is unreasonable and constitutes a
25 material breach of the Agreement.

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FIFTH CAUSE OF ACTION
(Illusory Promise)

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3 53. Plaintiffs reallege and incorporate herein by reference the allegations contained in
4 the preceding and subsequent Paragraphs of this Complaint as though fully set forth herein.
5 Plaintiffs bring this cause of action on behalf of themselves and the Class of similarly situated
6 persons as herein defined.

7 54. Paragraph 9.5 of the Agreements provides in part: "Seller anticipates the Unit will
8 be substantially completed by the Estimated Closing Date set forth on Page 1 of this Agreement,
9 but Buyer understands and agrees that Seller cannot guarantee completion by such Estimated
10 Closing Date. Seller will not be liable for any delays and Seller will not have to make, provide
11 or compensate Buyer for any accommodations or costs as a result of any delays, and any delays
12 will not permit Buyer to cancel, amend or diminish any of Buyer's obligations."

13 55. Paragraph 9.5 allows for Defendants' non-performance at the Defendants' sole
14 discretion.

15 56. The Defendants drafted the Agreements which contain an illusory promise to
16 complete the Cosmopolitan within a certain time frame. Due to the fact the Agreement is one-
17 sided and requires no true obligation of the Defendants vis a vis completion of the Cosmopolitan
18 in a reasonable time, the Agreements are unenforceable.

19 57. Additionally, the Agreements are unenforceable because the language limits the
20 Plaintiffs' right to recover damages for Defendants' at will breach and extinguishes any realistic,
21 contractual obligation to complete the Cosmopolitan within the promised time frame, if at all.

22 58. Further, the Agreements lack mutuality of obligation by virtue of the "No
23 Damages for Delay" clause, which renders the Agreements unenforceable.

24 59. The Agreements are unenforceable and, as such, Plaintiffs are entitled to rescind
25 the Agreements, recovery any and all funds deposited on the Units by the Plaintiffs, and recovery
26 of all costs and reasonable attorneys' fees.

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REQUEST AND PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants as follows:

Plaintiffs pray for judgment and relief on behalf of themselves, and on behalf of the Class, and against Defendants as follows:

1. For rescission and restitution as required by law;
2. For interest on all damages as allowed by the laws of the State of Nevada according to proof at time of trial;
3. For reasonable attorneys' fees and costs; and
4. For an order of such other relief as the court deems just.

Dated this 10 day of February, 2009.

MARQUIS & AURBACH

By

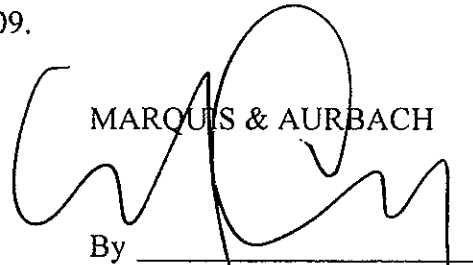
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DEMAND FOR JURY TRIAL

Plaintiffs demand jury trial on issues triable to a jury.

Dated this 1st day of February, 2009.

MARQUIS & AURBACH


By _____
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