

**SUMMONS  
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT: GRANDE BAHIA DE LOS SUEÑOS S. DE  
(AVISO AL DEMANDADO): R.L. DE C.V., PAUL JENNINGS,  
JOSEPH FRYZER, and DOES 1-30, inclusive**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY  
OF ORIGINAL FILED**  
Los Angeles Superior Court

NOV 15 2010

John A. Clarke, Executive Officer/Clerk  
By A. WILLIAMS  
DEPUTY

**YOU ARE BEING SUED BY PLAINTIFF: GARY M. WAGNER  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.aucorte.ca.gov](http://www.aucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

CASE NUMBER:  
(Número del Caso): **SC110354**

Superior Court of the State of California  
County of Los Angeles - West District  
1725 Main Street  
Santa Monica, CA 90401

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Laurie J. Howard [State Bar No. 111960] 858-720-8306

Bankhead & Howard LLP  
4730 Rancho Del Mar Trail  
San Diego, CA 92130-5210

DATE: NOV 15 2010  
(Fecha)

Clerk, by A. Williams, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Form Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

- as an individual defendant.
  - as the person sued under the fictitious name of (specify):
  - on behalf of (specify):
- under:
- |  |   |
|--|---|
| <input type="checkbox"/> CCP 416.10 (corporation)                | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify):                        |   |

4.  by personal delivery on (date): 11-18-10

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
**Laurie J. Howard** [State Bar No. 111960]  
 Bankhead & Howard LLP  
 4730 Rancho Del Mar Trail  
 San Diego, CA 92130-5210

TELEPHONE NO.: \_\_\_\_\_ FAX NO.: 858-720-8302

ATTORNEY FOR (Name): **Plaintiff GARY M. WAGNER**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES - WEST DISTRICT  
 STREET ADDRESS: 1725 Main Street  
 MAILING ADDRESS: \_\_\_\_\_  
 CITY AND ZIP CODE: Santa Monica, CA 90401  
 BRANCH NAME: Santa Monica

CASE NAME: **WAGNER V. GRANDE BAHIA, et al.**

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 Los Angeles Superior Court

NOV 15 2010

John A. Clarke, Executive Officer/Clerk  
 By **A. WILLIAMS**  
 DEPUTY

**CIVIL CASE COVER SHEET**

Unlimited (Amount demanded exceeds \$25,000)  Limited (Amount demanded is \$25,000 or less)

Complex Case Designation  
 Counter  Joinder  
 Filled with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **SC110354**

JUDGE: **JOHN L. SEGAL**

DEPT: \_\_\_\_\_

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p><b>Auto Tort</b></p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p><b>Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/WD (23) <p><b>Non-PIP/WD (Other) Tort</b></p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/WD tort (35) <p><b>Employment</b></p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p><b>Contract</b></p> <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p><b>Real Property</b></p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p><b>Unlawful Detainer</b></p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p><b>Judicial Review</b></p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b></p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p><b>Enforcement of Judgment</b></p> <input type="checkbox"/> Enforcement of judgment (20) <p><b>Miscellaneous Civil Complaint</b></p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p><b>Miscellaneous Civil Petition</b></p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify): Eight
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 12, 2010  
 Laurie J. Howard [State Bar No. 111960]  
 (TYPE OR PRINT NAME)

*Laurie J. Howard*  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SHORT TITLE: WAGNER, ET AL. V. GRANDE BAHIA, ET AL.	CASE NUMBER <span style="font-size: 1.2em; font-weight: bold;">SC110354</span>
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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL?  YES CLASS ACTION?  YES LIMITED CASE?  YES TIME ESTIMATED FOR TRIAL 10  HOURS/  DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column B below which best describes the nature of this case.

**Step 3:** In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |   |  |
|---|--|
| 1. Class Actions must be filed in the County Courthouse, Central District.<br>2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).<br>3. Location where cause of action arose.<br>4. Location where bodily injury, death or damage occurred.<br>5. Location where performance required or defendant resides. | 6. Location of property or permanently garaged vehicle.<br>7. Location where petitioner resides.<br>8. Location wherein defendant/respondent functions wholly.<br>9. Location where one or more of the parties reside.<br>10. Location of Labor Commissioner Office. |
|---|--|

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.
	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
Non-Personal Injury/Property Damage/Wrongful Death Tort	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

Non-Personal Injury/Property Damage/  
Wrongful Death Tort (Cont'd.)  
Employment  
Contract  
Real Property  
Judicial Review Unlawful Detainer

SHORT TITLE: WAGNER, ET AL. V. GRANDE BAHIA, ET AL.	CASE NUMBER
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A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input checked="" type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., (5.) 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6080 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE: WAGNER, ET AL. V. GRANDE BAHIA, ET AL.	CASE NUMBER
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Judicial Review (Cont'd.)  
  
 Provisionally Complex Litigation  
  
 Enforcement of Judgment  
  
 Miscellaneous Civil Complaints  
  
 Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

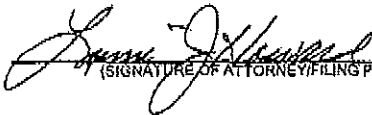
SHORT TITLE: WAGNER, ET AL. V. GRANDE BAHIA, ET AL.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE <input checked="" type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input checked="" type="checkbox"/> 3. <input type="checkbox"/> 4. <input checked="" type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.	ADDRESS: 11859 Wilshire Boulevard, Suite 600	
CITY: Los Angeles	STATE: CA	ZIP CODE: 90025

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Santa Monica courthouse in the West District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: 11/12/10

  
(SIGNATURE OF ATTORNEY FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

SC110354

CASE NO. \_\_\_\_\_

**NOTICE OF CASE ASSIGNMENT TO INDIVIDUAL CALENDAR COURT**

**TO PLAINTIFFS AND PLAINTIFFS' ATTORNEYS OF RECORD or PLAINTIFFS  
IN PRO PER:**

**IT IS HEREBY ORDERED AND YOU ARE HEREBY NOTIFIED** that this action shall be assigned to a Judge for all purposes, including trial, as follows:

**JOHN L. SEGAL**

Department: 0

Santa Monica Courthouse  
1725 Main Street  
Santa Monica, CA 90401

Judge Richard A. Stone  
Beverly Hills Courthouse  
Department WE-X  
9355 Burton Way  
Beverly Hills, CA 90210

**IT IS FURTHER ORDERED THAT PLAINTIFF OR COUNSEL FOR PLAINTIFF SHALL GIVE NOTICE OF THIS ALL-PURPOSE CASE ASSIGNMENT** by serving a copy of this Notice on all parties to this action at the time the Summons and Complaint are served, or, if not a served party, then when such party (including any cross-defendant or complainant-in-intervention) appears in the action.

**CASE MANAGEMENT REVIEW AND CONFERENCE:** Upon the filing of the Complaint, a Case Management Review and Conference will be calendared for hearing in the Court to which the case is assigned. The hearing date will be stamped upon the face of the Complaint. Plaintiff shall give notice of the Case Management Review and Conference to all named parties in conjunction with service of the Summons and Complaint and include any later appearing party such as a cross-defendant or complainant-in-intervention served within this time period. Proof of service must be brought to the hearing if not previously filed. Failure to timely file proof of service of Summons and Complaint within 60 days after filing the Complaint (CRC 3.110) may result in an Order to Show Cause re sanctions being issued. (CRC 3.110(f).)

If a case is assigned to Department X, located in the Beverly Hills Courthouse, all documents, pleadings, motions, and papers filed subsequent to the original Complaint shall be filed directly in the courtroom stamped upon the Complaint.

**TIME STANDARDS:** Cases will be subject to processing under the following time standards:

**COMPLAINTS:** All Complaints shall be served on all named defendants and proof of service filed within 60 days after the filing of the Complaint. The Court may set an OSC re failure to file proof of service of Summons and Complaint if not timely filed. (CRC 3.110(b).)

**CROSS-COMPLAINTS:** No Cross-Complaint may be filed by any party after its answer is filed without first obtaining leave of court. Cross-Complaints shall be served and proof of service filed within 30 days of the filing date, unless a party has appeared in the action. (CRC 3.110(c).)

**APPLICABLE RULES:** Counsel as well as self-represented parties are directed to familiarize themselves with the Local Rules for the County of Los Angeles, particularly Chapter 7 (Trial Court Delay Reduction), Chapter 8 (Civil Trial Procedure), Chapter 9 (Civil Law and Motion), and California Rules of Court relating to civil case management. These Rules apply to all general civil cases and shall have priority over all other Local Rules to the extent the others are inconsistent.

**CHALLENGE TO ASSIGNED JUDGE:** A challenge under Code of Civil Procedure Section 170.6 must be made within 15 days after notice of assignment of the Judge, or if a party has not yet appeared, within 15 days of the first appearance of that party. (Government Code Section 68616, subdivision (i); Local Rule 7.5.)

**PREPARATION AND PROCEDURES FOR CASE MANAGEMENT REVIEW AND CONFERENCE:** Pursuant to CRC 3.724, no later than 30 calendar days before the date set for the Case Management Conference, the parties must meet and confer, in person or by telephone, to consider each of the issues identified in Rule 3.727 and, in addition, to consider the following:

- (1) Resolving any discovery disputes and setting a discovery schedule;
- (2) Identifying and, if possible, informally resolving any anticipated motions;
- (3) Identifying the facts and issues in the case that are uncontested and may be the subject of stipulation;
- (4) Identifying the facts and issues in the case that are in dispute;
- (5) Determining whether the issues in the case can be narrowed by eliminating any claims or defenses by means of a motion or otherwise;
- (6) Determining whether settlement is possible;
- (7) Identifying the dates on which all parties and their attorneys are available or not available for trial, including the reasons for unavailability; and
- (8) Other relevant matters.



Pursuant to CRC 3.725, no later than 15 calendar days before the date set for the Case Management Conference or Review, each party must file a Case Management Statement and serve it on all other parties in the case. In lieu of each party's filing a separate Case Management Statement, any two or more parties may file a joint Statement.

The subjects to be considered at the Case Management Conference shall include the following (CRC Rule 3.727):

- (1) Whether there are any related cases;
- (2) Whether all parties named in the Complaint or Cross-Complaint have been served, have appeared, or have been dismissed;
- (3) Whether any additional parties may be added or the pleadings may be amended;
- (4) Whether, if the case is a limited civil case, the economic litigation procedures under Code of Civil Procedure Section 90 et seq. will apply to it or the party intends to bring a motion to exempt the case from these procedures;
- (5) Whether any other matters (e.g., the bankruptcy of a party) may affect the Court's jurisdiction or processing of the case;
- (6) Whether the parties have stipulated to, or the case should be referred to, judicial arbitration in courts having a judicial arbitration program or to any other form of alternative dispute resolution (ADR) process and, if so, the date by which the judicial arbitration or other ADR process must be completed;
- (7) Whether an early settlement conference should be scheduled and, if so, on what date;
- (8) Whether discovery has been completed and, if not, the date by which it will be completed;
- (9) What discovery issues are anticipated;
- (10) Whether the case should be bifurcated or a hearing should be set for a motion to bifurcate under Code of Civil Procedure Section 598;
- (11) Whether there are any Cross-Complaints that are not ready to be set for trial and, if so, whether they should be severed;
- (12) Whether the case is entitled to any statutory preference and, if so, the statute granting the preference;
- (13) Whether a jury trial is demanded and, if so, the identity of each party requesting a jury trial;

- (14) If the trial date has not been previously set, the date by which the case will be ready for trial and the available trial dates;
- (15) The estimated length of trial;
- (16) The nature of the injuries;
- (17) The amount of damages, including any special or punitive damages;
- (18) Any additional relief sought;
- (19) Whether there are any insurance coverage issues that may affect the resolution of the case; and
- (20) Any other matters that should be considered by the Court or addressed in its Case Management Order.

**SANCTIONS:** The Court has authority to impose appropriate sanctions for the failure or refusal to comply with provisions of the California Rules of Court and Local Rules governing time standards and case management conference requirements or deadlines. Such sanctions may be imposed upon counsel, a party, or both, as permitted by rule, statute, or law.

**This is not a complete representation of the applicable Local Rules or California Rules of Court, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under the Trial Court Delay Reduction Rules. Careful reading and compliance with the Local Rules and California Rules of Court are absolutely imperative.**

  
\_\_\_\_\_  
GERALD ROSENBERG, Supervising Judge  
Los Angeles Superior Court, West District

NAME, ADDRESS AND PHONE NUMBER  
OF ATTORNEYS

FILE STAMP

Attorney(s) for:

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

CASE NUMBER

PLAINTIFF(S).

vs.

DEFENDANT(S).

STIPULATION AND ORDER  
RE BINDING ARBITRATION

Status Conference Date:

At \_\_\_\_\_ a.m. in Department \_\_\_\_\_

THE PARTIES SHOULD CONSIDER BINDING ARBITRATION. BINDING ARBITRATION PROVIDES FINALITY AND ELIMINATES COURT APPEARANCES. THE ARBITRATION IS PROVIDED AT NO COST TO THE PARTIES. IF THIS STIPULATION IS SIGNED AND FILED DIRECTLY IN THE ABOVE DEPARTMENT, FIVE COURT DAYS PRIOR TO THE DATE SET FOR THE STATUS CONFERENCE, NO APPEARANCE IS REQUIRED AT THE STATUS CONFERENCE.

The parties and their attorneys, hereby stipulate as follows:

1. The matter shall be submitted to binding arbitration and the parties waive their right to a trial de novo as provided in California Code of Civil Procedure, Section 1141.20.
2. \_\_\_\_\_, a member of The Superior Court Arbitration panel, shall serve as arbitrator.
3. All cross complaints have been filed.
4. All fictitious and named defendants/cross-defendants who have not filed an answer are dismissed.
5. The court retains jurisdiction over motions to enforce the arbitration award and other post-arbitration motions.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Attorney for Defendant

**ORDER**

It is so ordered:

DATE: \_\_\_\_\_

JUDGE \_\_\_\_\_

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE**

[CRC 3.221 Information about Alternative Dispute Resolution]

For additional ADR information and forms visit the Court ADR web application at [www.lasuperiorcourt.org](http://www.lasuperiorcourt.org) (click on ADR).

The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (Civil only).

**What is ADR;**

Alternative Dispute Resolution (ADR) is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation (NE), and settlement conferences, are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

There are many different kinds of ADR. All of them utilize a "neutral", an impartial person, to decide the case or help the parties reach an agreement.

**Mediation:**

In mediation, a neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

**Cases for Which Mediation May Be Appropriate**

Mediation may be particularly useful when parties have a dispute between or among family members, neighbors, or business partners. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

**Cases for Which Mediation May Not Be Appropriate**

Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

**Arbitration:**

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. *Nonbinding arbitration* means that the parties are free to request a trial if they do not accept the arbitrator's decision.

**Cases for Which Arbitration May Be Appropriate**

Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

**Cases for Which Arbitration May Not Be Appropriate**

If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

**Neutral Evaluation:**

In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

**Cases for Which Neutral Evaluation May Be Appropriate**

Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

**Cases for Which Neutral Evaluation May Not Be Appropriate**

Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

**Settlement Conferences:**

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

## LOS ANGELES SUPERIOR COURT ADR PROGRAMS

### CIVIL:

- **Civil Action Mediation** (Governed by Code of Civil Procedure (CCP) sections 1775-1775.15, California Rules of Court, rules 3.850-3.868 and 3.870-3.878, Evidence Code sections 1115-1128, and Los Angeles Superior Court Rules, chapter 12.)
- **Retired Judge Settlement Conference**
- **Neutral Evaluation** (Governed by Los Angeles Superior Court Rules, chapter 12.)
- **Judicial Arbitration** (Governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, rules 3.810-3.830, and Los Angeles Superior Court Rules, chapter 12.)
- **Eminent Domain Mediation** (Governed by Code of Civil Procedure section 1250.420.)
- **Civil Harassment Mediation**
- **Small Claims Mediation**

### FAMILY LAW (non-custody):

- **Mediation**
- **Forensic Certified Public Accountant (CPA) Settlement Conference**
- **Settlement Conference**
- **Nonbinding Arbitration** (Governed by Family Code section 2554.)

### PROBATE:

- **Mediation**
- **Settlement Conference**

### NEUTRAL SELECTION

Parties may select a mediator, neutral evaluator, or arbitrator from the Court Party Select Panel or may hire someone privately, at their discretion. If the parties utilize the Random Select Mediation or Arbitration Panel, the parties will be assigned on a random basis the name of one neutral who meets the case criteria entered on the court's website.

### COURT ADR PANELS

- Party Select Panel** The Party Select Panel consists of mediators, neutral evaluators, and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged \$150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Random Select Panel** The Random Select Panel consists of trained mediators, neutral evaluators, and arbitrators who have not yet gained the experience to qualify for the Party Select Panel, as well as experienced neutrals who make themselves available pro bono as a way of supporting the judicial system. It is the policy of the Court that all Random Select panel volunteer mediators, neutral evaluators, and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Private Neutral** The market rate for private neutrals can range from \$300-\$1,000 per hour.

### ADR ASSISTANCE

For assistance regarding ADR, please contact the ADR clerk at the courthouse in which your case was filed.

COURTHOUSE	ADDRESS	ROOM	CITY	PHONE	FAX
Antonovich	42011 4th St. West	None	Lancaster, CA 93534	(661)974-7275	(661)974-7060
Chatsworth	9425 Penfield Ave.	1200	Chatsworth, CA 91311	(818)576-8565	(818)576-8687
Compton	200 W. Compton Blvd.	1002	Compton, CA 90220	(310)603-3072	(310)223-0337
Glendale	600 E. Broadway	273	Glendale, CA 91208	(818)500-3160	(818)548-5470
Long Beach	415 W. Ocean Blvd.	316	Long Beach, CA 90802	(562)491-6272	(562)437-3802
Norwalk	12720 Norwalk Blvd.	308	Norwalk, CA 90650	(562)807-7243	(562)462-9019
Pasadena	300 E. Walnut St.	109	Pasadena, CA 91101	(626)356-5685	(626)666-1774
Pomona	400 Civic Center Plaza	106	Pomona, CA 91766	(909)620-3183	(909)629-6283
San Pedro	505 S. Centre	209	San Pedro, CA 90731	(310)519-6151	(310)514-0314
Santa Monica	1725 Main St.	203	Santa Monica, CA 90401	(310)280-1829	(310)319-8130
Stanley Mosk	111 N. Hill St.	113	Los Angeles, CA 90012	(213)974-5425	(213)633-5115
Torrance	825 Maple Ave.	100	Torrance, CA 90503	(310)222-1701	(310)782-7326
Van Nuys	6230 Sylmar Ave.	418	Van Nuys, CA 91401	(818)374-2337	(818)902-2440

Partially Funded by the Los Angeles County Dispute Resolution Program

A complete list of the County Dispute Resolution Programs is available online and upon request in the Clerk's Office.

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

NOV 15 2010

John A. Clarke, Executive Officer/Clerk

~~By: A. WILLIAMS~~  
CASE MANAGEMENT CONFERENCE

**MAR 07 2011**

Date

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2 Murray M. Bankhead [State Bar No. 94776]  
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4 4730 Rancho Del Mar Trail  
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8 Attorneys for Plaintiff  
9 GARY M. WAGNER

**JOHN L. SEGAL**

*Dist. 0 830am*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - UNLIMITED CIVIL

(West District - Santa Monica Courthouse)

12 GARY M. WAGNER,

13 Plaintiff,

14 v.

15 GRAND BAHIA DEL LOS SUEÑOS S. DE  
16 R.L. DE C.V., PAUL JENNINGS, JOSEPH  
17 FRYZER; and DOES 1 through 30, inclusive,

18 Defendants.

Case No. **SC110354**

PLAINTIFF GARY M. WAGNER'S  
COMPLAINT FOR:

- 1) BREACH OF CONTRACT;
- 2) BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING;
- 3) BREACH OF FIDUCIARY DUTY;
- 4) AN ACCOUNTING;
- 5) NEGLIGENT MISREPRESENTATION;
- 6) INTENTIONAL MISREPRESENTATION (FRAUD);
- 7) DECLARATORY RELIEF;
- 8) INJUNCTION.

REQUEST FOR JUDICIAL REFERENCE  
PURSUANT TO C.C.P. §638

23 Plaintiff GARY M. WAGNER (hereinafter "Plaintiff") files this Complaint and complains  
24 against Defendants GRAND BAHIA DEL LOS SUEÑOS S. DE R.L. DE C.V., PAUL  
25 JENNINGS, JOSEPH FRYZER, and DOES 1 through 30 (hereinafter collectively referred to as  
26 "Defendants"), as follows:

**PRELIMINARY ALLEGATIONS**

28 1. Plaintiff GARY M. WAGNER is an individual currently residing in the State of

1 Colorado.

2 2. Plaintiff is informed and believes, and on that basis alleges, that Defendant  
3 GRANDE BAHIA DE LOS SUENOS S. DE R.L. DE C.V. ("Grande Bahia") is a Mexican  
4 corporation, organized and existing under the laws of the Country of Mexico, that Grande Bahia is  
5 authorized to and is doing business in the Country of Mexico, and that Defendants Paul Jennings  
6 and Joseph Fryzer own all or substantially all of the stock of Grande Bahia, either individually or  
7 through another entity, and that they control and manage the operations of Grande Bahia.

8 3. Plaintiff is informed and believes, and on that basis alleges, that Defendant PAUL  
9 JENNINGS ("Jennings") is an individual currently residing in the County of Los Angeles, in the  
10 State of California, and is a principal of Defendant Grande Bahia.

11 4. Plaintiff is informed and believes, and on that basis alleges, that Defendant JOSEPH  
12 FRYZER ("Fryzer") is an individual currently residing in the County of Los Angeles, in the State  
13 of California, and is a principal of Defendant Grande Bahia.

14 5. Plaintiff is informed and believes, and on that basis alleges, that there is a unity of  
15 interest between Defendants Grande Bahia, Jennings, and Fryzer in that Jennings and Fryzer own,  
16 either individually or through another entity, all or substantially all of the stock of Grande Bahia.  
17 Plaintiff is further informed and believes, and on that basis alleges, that at various times Jennings  
18 and Fryzer have commingled their personal funds with those of Grande Bahia, that corporate  
19 formalities for Grande Bahia have not been followed, that Grande Bahia was not adequately  
20 capitalized, that transactions between Grande Bahia and Jennings and Fryzer were not conducted at  
21 arm's length, that there has been a failure to maintain minutes or adequate corporate records, and  
22 that records of Grande Bahia, Jennings, and Fryzer have been commingled. As such, there is no  
23 separation between Grande Bahia and its owners, Jennings and Fryzer, and Grande Bahia is the  
24 alter ego of Jennings and Fryzer. Moreover, Plaintiff is informed and believes, and on that basis  
25 alleges, that it is necessary to pierce the corporate veil in order to avoid an inequitable result in this  
26 case.

27 6. Plaintiff is unaware of the true names or capacities, whether individual, corporate,  
28 associate, or otherwise, of defendants sued as DOES 1 through 30, inclusive, and therefore sues

1 these defendants, and each of them, by fictitious names. Plaintiff will seek leave of Court to  
2 amend this Complaint to allege the true names and capacities of the defendants named herein as  
3 DOES 1 through 30, inclusive, when those names and capacities have been ascertained. Plaintiff is  
4 informed and believes, and on that basis alleges, that each of the fictitiously named defendants are  
5 liable and responsible in some manner for the claims, demands, losses, acts, and damages alleged  
6 herein.

7 7. Plaintiff is informed and believes, and on that basis alleges, that in doing the acts  
8 alleged herein, each of the defendants was acting for himself, herself, or itself and was acting as the  
9 master, servant, agent, employee, alter ego, and/or representative of each of the other defendants  
10 within the course and scope of such agency, employment, and/or representation. Plaintiff is further  
11 informed and believes, and on that basis alleges, that the acts and conduct of each of the defendants  
12 as alleged herein were known to, authorized and ratified by each of the other defendants.

13 8. The agreements which are the subject of this action include a dispute resolution  
14 provision whereby the parties agree that they will resolve any controversy or claim arising out of or  
15 related to the agreements through a general judicial reference pursuant to California Code of Civil  
16 Procedure § 638 in Los Angeles, California. Further, Defendant Grande Bahia's principal place of  
17 business is 11859 Wilshire Boulevard, Suite 600, Los Angeles, CA 90025, which is within the  
18 jurisdictional boundaries of this Court and this District. Plaintiff is therefore informed and  
19 believes, and on that basis alleges, that this Court is the proper court for the commencement of this  
20 action pursuant to the terms of the subject agreements.

#### 21 FACTUAL ALLEGATIONS

22 9. Plaintiff and Stephen C. Games, a resident of the State of California, owned  
23 approximately 4,000 acres of land and improvements on such land located outside the Municipality  
24 of La Paz, Baja California Sur, Mexico, commonly known as "Bahia de los Suenos" or the Bay of  
25 Dreams (the "Project"). In or about 2006, Jennings and Fryzer expressed interest in purchasing a  
26 portion of the Project, and began negotiating a series of agreements with Plaintiff and Games,  
27 collectively and individually, for the purchase of portions of their respective interests in the  
28 Project. During those discussions, Jennings and Fryzer represented that they were highly skilled



1 and knowledgeable real estate developers who had vast financial resources, extensive real estate  
2 and construction capability, and an experienced team to complete the development of and to  
3 manage the Project. Further, Jennings represented that he would be involved in the day-to-day  
4 management and operations of the Project.

5 10. Based on those representations, from approximately April of 2006 through April of  
6 2008, Plaintiff and Games entered into various written agreements with Jennings and Fryzer as  
7 individuals to memorialize their agreements regarding ownership and control of the Project.

8 11. As of the beginning of April 2008, as a result of those prior agreements between  
9 Plaintiff and Games, on the one hand, and Jennings and Fryzer, on the other hand, Jennings and  
10 Fryzer had acquired a controlling interest in the Project, had been in possession and control of the  
11 Project and of all information and funds related to the Project for about two years, and were  
12 responsible for all of the operations, management, and development of the Project. As of the  
13 beginning of April 2008, Plaintiff had a 25% Developers Retained Interest in various aspects of the  
14 Project, and continued to own, both individually and in partnership with other Founders, several  
15 lots, some business interests, and other property at the Project.

16 12. On or about April 17, 2008, Plaintiff entered into a written Participation Agreement  
17 (the "Participation Agreement") with Games and Grande Bahia. A true and correct copy of the  
18 Agreement is attached hereto as Exhibit "A." Shortly thereafter, on or about June 30, 2008,  
19 Plaintiff entered into a written Addendum to the Participation Agreement (the "Addendum") which  
20 memorialized certain additional agreements between the parties. A true and correct copy of the  
21 Addendum is attached hereto as Exhibit "B." The Participation Agreement and the Addendum will  
22 be collectively referred to hereinafter as the "Agreements."

23 13. The Agreements provided for the sale and transfer of the remainder of Plaintiff's  
24 participation interests in the Project to Defendants in exchange for certain cash buyout and other  
25 payments from Defendants to Plaintiff, the transfer of certain property from Defendants to  
26 Plaintiff, and certain other consideration as set forth in the Agreements.

27 14. The terms of the cash buyout payments from Defendants to Plaintiff are set forth in  
28 Paragraph 5 of the Participation Agreement, which include payments for:

- 1 a. Plaintiff's Participation Interests in the amount of \$2,000,000;
- 2 b. Plaintiff's Original Capital Account Balance in the amount of \$1,046,157;
- 3 and
- 4 c. Plaintiff's Second Capital Account Balance, which is defined in Paragraph 1
- 5 of the Participation Agreement ("Founders Second Capital Accounts") to include Plaintiff's pro-
- 6 rata share of the proceeds from the sale of five lots in the Project (Lots 8, 9, 10, 37, and 38) that
- 7 were separately owned by Plaintiff and other Founders in various percentages, and the proceeds
- 8 from the sale of which had been loaned to Defendants to provide cash flow from 2006 through
- 9 2008.

10 15. As to Lots 8, 9, and 10, Paragraph 7 of the Participation Agreement summarizes the

11 agreements as to those lots, and confirms that (i) Defendants had and have no ownership interest in

12 Lots 8, 9, or 10, (ii) Plaintiff's ownership interest in each of Lots 8, 9, and 10 is 20%, and (iii)

13 Plaintiff is entitled to his pro-rata share of the balance of the proceeds from those lot sales which

14 were loaned to Defendants and are required to be repaid pursuant to Paragraph 5(c) as follows:

- 15 a. As to Lot 8, Plaintiff has received his pro-rata share of the proceeds.
- 16 b. As to Lot 9, some time in 2006 or 2007, Defendant Fryzer purchased Lot 6
- 17 at the Project, but pursuant to Paragraph 7(c) of the Participation Agreement, Fryzer intended to
- 18 trade Lot 6 for Lot 9, which is owned separately by Plaintiff and other Founders. Defendants
- 19 agreed to transfer title to Lot 6 to Plaintiff and the other Founders in exchange for Lot 9. Plaintiff
- 20 is informed and believes, and on that basis alleges, that that trade was completed and that Fryzer
- 21 now has title to Lot 9. Therefore, Defendants are required to transfer Lot 6 to Plaintiff and the
- 22 other Founders pursuant to Paragraph 7(c).

23 c. As to Lot 10, Plaintiff is entitled to receive \$420,000 from the balance of the

24 proceeds from the sale of that Lot, which proceeds were loaned to Defendants, pursuant to

25 Paragraphs 5(c) and 7(b) of the Participation Agreement, which amount remains due and owing.

26 16. As to Lots 37 and 38, Paragraph 5(c) of the Participation Agreement summarizes

27 the agreements as to those lots, and confirms that (i) Defendants had and have no ownership

28 interest in Lots 37 or 38, (ii) Plaintiff's ownership interest in each of those Lots is 24,755%, and

1 (iii) Plaintiff is entitled to his pro-rata share of the balance of the proceeds from those lot sales  
2 which were loaned to Defendants and are required to be repaid pursuant to Paragraph 5(c) as  
3 follows:

4 a. As to Lot 37, Plaintiff is entitled to \$108,303.12 pursuant to Paragraph 5(c),  
5 which amount remains due and owing.

6 b. As to Lot 38, Plaintiff is entitled to \$111,397.50 pursuant to Paragraph 5(c),  
7 which amount remains due and owing.

8 17. Because Defendants needed immediate cash flow to fund the ongoing development  
9 and operations of the Project, they requested the ability to make the cash buyout payments to  
10 Plaintiff as installment payments from future lot sales in the Project rather than as a lump-sum  
11 payment. Defendants also requested that eight lots be excluded from their obligation to pay  
12 Plaintiff a percentage of each lot sale because Defendants had already received and used the  
13 proceeds from those sales to fund its operations, or they were going to receive the proceeds from  
14 those sales imminently and needed that immediate cash flow for the Project's operations. Those  
15 eight lots were Lots 8, 9, 10, 42, 45, 46, 47, and 48.

16 18. In order to induce Plaintiff to accept this installment payment plan, Defendants  
17 represented that they would complete the sales transactions related to those eight lots before  
18 completing any sales transactions for other lots at the Project, and that the buyout payments due to  
19 Plaintiff would be made from the proceeds from the sale of every lot sold in the Project other than  
20 the eight lots that were excluded from the payment plan.

21 19. In reasonable reliance on Defendants' representations, Plaintiff agreed to accept  
22 payments from the proceeds of each lot sale at the Project, and further agreed to exclude those  
23 eight lots from the sales for which Defendants were required to make payments to Plaintiff. In  
24 reasonable reliance on Defendants' representations, Plaintiff signed the Agreements and performed  
25 all of his obligations under the Agreements.

26 20. Pursuant to Paragraph 5, at first Plaintiff was to receive five percent (5%) of the net  
27 proceeds from each lot sale, then Plaintiff was to receive ten percent (10%) of the net proceeds  
28 from each lot sale until the amounts due to Plaintiff pursuant to Paragraph 5(a), 5(b), and 5(c) were

1 paid in full.

2 21. As to the remaining Lots 42, 46, 47, and 48 referenced in Paragraph 5(a) of the  
3 Participation Agreement, all have all been sold and ownership transferred with the exception of Lot  
4 45. Plaintiff is informed and believes, and on that basis alleges, that Lot 45 was sold but that the  
5 sale has not yet been completed due to Defendants' gross mismanagement of the Project,  
6 unreasonable delays in Defendants' processing of the paperwork required to complete that  
7 transaction, and other negligence and misconduct by Defendants.

8 22. Pursuant to Paragraph 6 of the Participation Agreement, Plaintiff is also entitled to  
9 nine percent (9%) of any and all Profit Distributions made by Defendants.

10 23. Plaintiff is informed and believes, and on that basis alleges, that subsequent to the  
11 execution of the Agreements, Games sold and transferred the remainder of his interest in the  
12 Project to Jennings and Fryzer by a separate agreement. As a result of that transfer, Defendants  
13 became the successor to Games' interest in the Project and now own substantially all of the  
14 Project.

15 24. Recently, Defendants announced that they are in negotiations for the sale of all or  
16 substantially all of the Project to a third party, but have not provided Plaintiff with any written  
17 details of the proposed transaction. Plaintiff is informed and believes, and on that basis alleges,  
18 that the proposed transaction is scheduled to close on or about December 15, 2010. The amount of  
19 consideration Defendants expect to receive has not yet been disclosed and is unknown to Plaintiff.

20 25. Plaintiff is informed and believes, and on that basis alleges, that Defendants contend  
21 that the sale and transfer of all eight of the lots referenced in Paragraph 5(a) of the Participation  
22 Agreement is the "trigger" for the commencement of any obligation to pay Plaintiff for his  
23 Participation Interests and his Capital Account Balances.

24 26. Plaintiff is further informed and believes, and on that basis alleges, that Defendants  
25 have excluded Lot 45 (the one they now claim is the "trigger lot") from the contemplated sale of  
26 the Project, in a blatant attempt to completely avoid their obligations to pay Plaintiff for his cash  
27 buyout pursuant to Paragraph 5 of the Participation Agreement.

28 27. Defendants claim that, since they became involved with the Project in 2006, they

1 have expended in excess of \$58 million acquiring and developing the Project. Plaintiff is further  
 2 informed and believes, and on that basis alleges, that Defendants contend that the contemplated  
 3 sale of the Project will result in a sale price of less than their expenses to date (including capital  
 4 contributions and loans), that the contemplated sale will not result in the recognition of any  
 5 "profit," and that no funds are therefore due to Plaintiff pursuant to either Paragraph 5 or 6 of the  
 6 Participation Agreement now or at the time the contemplated sale is concluded.

7 28. The Agreements contain several provisions which memorialize various other  
 8 agreements between the parties, including but not limited to the following:

9 a. Paragraph 17(h)<sup>17</sup> (page 15) of Participation Agreement requires that  
 10 Defendants hold a meeting of Founders, including Plaintiff, at least twice each year, and that  
 11 Plaintiff be provided with detailed financial information related to the Project, including  
 12 information regarding the status of the Project, sales, financial position, and future plans.

13 b. Paragraph 17 (page 17) of the Participation Agreement provides that time is  
 14 of the essence and provides for the payment of certain damages for delays in the completion of the  
 15 various tasks required under the Participation Agreement at the rate of \$150 for each day of delay  
 16 for each task. Specifically, Paragraph 17 (page 17) states:

17 "The parties agree that, in the event they fail to meet the Deadline or any other time  
 18 frame set forth in this Agreement, they shall pay to the other party One Hundred  
 19 Fifty Dollars (\$150.00) for each day they delay in satisfying each such Deadline."  
 (Emphasis added.)

20 c. Paragraph 19 of the Participation Agreement requires that Defendants  
 21 maintain the books and records of the Project in accordance with generally accepted accounting  
 22 practices consistently applied during the periods involved, and that Defendants submit to Plaintiff  
 23 additional reports, records, data, information, and financial statements as Plaintiff reasonably  
 24 requests.

25 d. Paragraph 20 of the Participation Agreement acknowledges that Plaintiff  
 26

27 <sup>17</sup> There are two paragraphs in the Participation Agreement numbered "17." The first  
 28 paragraph 17 starting on page 14 sets forth the Founders' Rights, and the second paragraph 17 on  
 page 17 of the Participation Agreement sets forth damages for delays in performance of obligations.

1 will have a significant continuing financial interest in the Project and requires that Defendants  
2 provide Plaintiff with any and all information regarding the status of the Project that may affect his  
3 participation and financial interest as Plaintiff reasonably requests. Paragraph 20 further provides  
4 that if an audit reveals that Plaintiff has been underpaid by Defendants, Defendants will pay for the  
5 audit under certain circumstances.

6 e. Paragraph 1 of the Participation Agreement defines the "Deadline" as June  
7 30, 2008, for the completion of various obligations of the parties. Paragraph 3 of the Addendum  
8 extends the Deadline to July 15, 2008, as long as all of the documents required to be executed by  
9 Defendants to effectuate the transfer of all of the Lots referred to in the Agreements have been  
10 signed by that date.

11 f. Paragraph 26 of the Participation Agreement provides that Defendants shall  
12 pay to Plaintiff a late charge of six percent (6%) of any amounts that are not paid on their due date,  
13 and interest at the rate of ten percent (10%) from the due date until such payment, late charges, and  
14 accrued interest is paid in full.

15 g. Paragraph 28 of the Participation Agreement provides for a Dispute  
16 Resolution procedure for resolving any controversy or claim arising out of or related to these  
17 Agreements. The parties have agreed that they have informally met to attempt to resolve their  
18 disputes and that non-binding private arbitration would not therefore be productive. The parties  
19 have further agreed that they would proceed directly to the Judicial Reference procedure as set  
20 forth in Paragraph 28(b), et seq.

21 h. Paragraph 28(d) of the Participation Agreement provides that the cost of the  
22 Judicial Reference shall initially be borne equally by the parties, but that the "prevailing party"  
23 shall be entitled to obtain reimbursement for the reference costs and for an award of its attorneys'  
24 and experts' fees and all other costs and expenses of the litigation.

25 i. Paragraph 31 of the Participation Agreement provides that the Agreements  
26 shall inure to the benefit and be binding upon the parties and their respective heirs, nominees,  
27 successors, legal representatives, and assigns, and that the Agreements may not be assigned by any  
28 of the parties without the prior written consent of Plaintiff. No such consent has been requested

1 nor granted by Plaintiff.

2 29. Despite numerous requests by Plaintiff, since the Agreements were signed,  
3 Defendants have failed and refused to make payments to Plaintiff and to perform other obligations  
4 as required by the terms of the Agreements, including but not limited to their failure and refusal to:

5 a. pay to Plaintiff any of the monies due to him under the Participation  
6 Agreement, including but not limited to payments due to Plaintiff for his Participation Interest, his  
7 Original Capital Account Balance, and his Second Capital Account Balance, as required by  
8 Paragraph 5 of the Participation Agreement;

9 b. provide the infrastructure improvements to each of the lots transferred to  
10 Plaintiff pursuant to Paragraph 9(a) of the Participation Agreement;

11 c. timely transfer the lots to Plaintiff by the Deadline as required by Paragraph  
12 9(e) of the Participation Agreement and Paragraph 2 of the Addendum;

13 d. perform numerous tasks set forth in the Agreements by the Deadline or by  
14 the time frame as required by various provisions in the Agreements;

15 e. pay the damages for each delay as required by Paragraph 17 (page 17) of the  
16 Participation Agreement, including but not limited to delays in transferring lots to Plaintiff, paying  
17 taxes Defendants were required to pay, and other obligations;

18 f. transfer Lot 6 to Plaintiff and the other Founders who own that Lot, as  
19 required by Paragraph 7(c);

20 g. provide title insurance to Plaintiff for the lots transferred to Plaintiff as  
21 required by Paragraph 9(b) of the Participation Agreement;

22 h. provide to Plaintiff the Phase I Golf Course/Club Memberships as required  
23 by Paragraph 9(i) of the Participation Agreement and Paragraph 3 of the Addendum;

24 i. mark the corners of each of the lots transferred to Plaintiff as required by  
25 Paragraph 9(j) of the Participation Agreement;

26 j. develop a plan for construction of a retaining wall for the 15<sup>th</sup> Hole Tee Box  
27 and clean-up of the beach adjacent to the 15<sup>th</sup> Hole Tee Box, as required by Paragraph 11 of the  
28 Participation Agreement;

1 k. convene a meeting of every person having an ownership, participation, or  
2 economic interest in the Project, including Plaintiff, for the purpose of voting on the sale of  
3 substantially all of the Project that is currently contemplated by Defendants, as required by  
4 Paragraph 15 of the Participation Agreement;

5 l. provide Plaintiff with the perquisites and privileges provided to its  
6 Founders, Owners, Developers, and Investors, as required by Paragraph 17 (pages 14-17) of the  
7 Participation Agreement;

8 m. provide Plaintiff with the accounting and financial reports and other  
9 information, as requested by Plaintiff and as required by Paragraphs 19 and 20 of the Participation  
10 Agreement;

11 n. meet with Plaintiff and the other Founders at least twice per year as required  
12 by Paragraph 17(h) (page 15) of the Participation Agreement;

13 o. properly, adequately, and professionally manage the Project, the  
14 development of the Project, and the construction of infrastructure at the Project;

15 p. timely complete sales transactions for lots in the Project; and

16 q. satisfy their obligations as a fiduciary to Plaintiff, who holds a minority  
17 financial and economic interest in the Project.

### 18 FIRST CAUSE OF ACTION

#### 19 (For Breach of Contract as to Defendants)

20 30. Plaintiff hereby realleges and incorporates by reference all of the allegations set  
21 forth in Paragraphs 1 through 29 of this Complaint as though fully set forth herein.

22 31. Plaintiff and Defendants entered into a written Participation Agreement and a  
23 written Addendum to Participation Agreement, as alleged herein (collectively referred to  
24 hereinafter as the "Agreements").

25 32. Defendants breached the Agreements by failing and refusing to satisfy numerous  
26 obligations to Plaintiff as alleged in Paragraphs 1 through 29, above.

27 33. Plaintiff has fully performed all conditions, covenants, obligations, and  
28 promises required by Plaintiff to be performed in accordance with the terms and conditions of the



1 Agreements with Defendants, except to the extent that Plaintiff was prevented from or excused  
2 from performing by the breaches of Defendants as alleged herein or except to the extent that such  
3 performance was made impossible by actions or omissions of Defendants.

4 34. As a direct and proximate result of Defendants' breaches of the Agreements as set  
5 forth herein, Plaintiff has suffered damage and is entitled to recover damages from Defendants as  
6 prayed. The precise amount of Plaintiff's damages has not yet been ascertained, but will be proven  
7 at the trial of this action.

8 35. As a further direct and proximate result of the delays in satisfying their obligations  
9 under the Agreements set forth herein, Plaintiff is entitled to recover the amount of \$150 for each  
10 day Defendants delayed in satisfying each obligation by the Deadline or other time period set forth  
11 in the Agreements, as set forth in Paragraph 17 (page 17) of the Participation Agreement. The  
12 precise amount of such delay damages has not yet been ascertained, but will be proven at the trial  
13 of this action.

14 36. As a further direct and proximate result of Defendants' breaches of the Agreements  
15 as set forth herein, Plaintiff is entitled to recover late charges and interest at the contract rate as set  
16 forth in Paragraph 26 of the Participation Agreement. The precise amount of such late charges and  
17 interest has not yet been ascertained, but will be proven at the trial of this action.

18 37. As a further direct and proximate result of Defendants' breaches of the Agreements  
19 as set forth herein, Plaintiff is entitled to recover his attorneys' fees, expert fees, and all other costs  
20 and expenses of this litigation. The precise amount of such fees and costs has not yet been  
21 ascertained, but will be proven at the trial of this action.

22 **SECOND CAUSE OF ACTION**

23 **(For Breach of Implied Covenant of Good Faith**  
24 **and Fair Dealing as to Defendants)**

25 38. Plaintiff hereby realleges and incorporate by reference all of the allegations set forth  
26 in Paragraphs 1 through 37 of this Complaint as though fully set forth herein.

27 39. California law implies a covenant of good faith and fair dealing in all contracts  
28 between parties entered into in the State of California, which includes the obligation by each party

1 not to do anything which will deprive the other party of the benefit of the contract. The covenant  
2 not only imposes upon each contracting party the duty to refrain from doing anything which would  
3 render performance of the contract impossible, but also the duty to do everything that the contract  
4 presupposes that each party will do to accomplish the purpose of the contract. The Agreements  
5 were entered into in the State of California.

6 40. As alleged herein, Plaintiff is informed and believes, and on that basis alleges, that  
7 Defendants have taken certain actions, are taking certain positions, are making certain contentions,  
8 and are interpreting the terms of the Agreements in such a way as to completely frustrate the  
9 purpose of the contract and to completely deprive Plaintiff of the benefit of his bargain.

10 41. Furthermore, by Defendants' numerous breaches of the Agreements and  
11 Defendants' gross mismanagement of the Project (claiming they have expended in excess of \$58  
12 million on the Project without producing any vertical construction in over four years),  
13 unreasonable delays in performing their obligations under the Agreements (including but not  
14 limited to Defendants' failure to timely transfer lots to Plaintiff and to complete sales transactions  
15 on other lots at the Project), and misrepresentations of material facts and other misconduct as  
16 alleged in this Complaint, Defendants have breached the covenant of good faith and fair dealing  
17 contained in the Agreements with Plaintiff.

18 42. The actions of Defendants as alleged herein, in violation of the implied covenant of  
19 good faith and fair dealing, have caused Plaintiff to suffer damages in that those actions have  
20 frustrated the purpose of the Agreements, that those actions have resulted in a failure of  
21 consideration for the Agreements, and that Plaintiff has been deprived of the benefit of his bargain.

22 43. As a direct and proximate result of Defendants' breach of the covenant of good faith  
23 and fair dealing implied in the Agreements as set forth herein, Plaintiff has suffered damage and is  
24 entitled to recover damages from Defendants as prayed. The precise amount of the Plaintiff's  
25 damages has not yet been ascertained, but will be proven at the trial of this action.

26 **THIRD CAUSE OF ACTION**

27 **(For Breach of Fiduciary Duty as to Defendants)**

28 44. Plaintiff hereby realleges and incorporates by reference all of the allegations set

1 forth in Paragraphs 1 through 43 of this Complaint as though fully set forth herein.

2 45. As set forth in Paragraph 5 of the Participation Agreement, Defendants are  
3 obligated to make cash buyout payments to Plaintiff from the proceeds of the sale of all lots in the  
4 Project except the eight lots specifically excluded by that Paragraph. At first, Plaintiff was to  
5 receive five percent (5%) of the net proceeds of each lot sale for a specified period of time, then  
6 Plaintiff was to receive ten percent (10%) of the net proceeds of each lot sale until the amounts due  
7 to Plaintiff pursuant to Paragraph 5(a), 5(b), and 5(c) were paid in full.

8 46. Pursuant to Paragraph 6 of the Participation Agreement, Defendants were also  
9 obligated to pay Participation Payments to Plaintiff of nine percent (9%) of any and all profit  
10 distributions made by Defendants.

11 47. As a result of those contractual obligations and the relationship created between  
12 Defendants and Plaintiff by those obligations, Defendants are acting as the agent for Plaintiff in  
13 connection with payment of the proceeds of the sale of lots in the Project. Furthermore, because  
14 Plaintiff has a minority financial and economic interest in the Project and Defendants have a  
15 majority financial and economic interest in the Project, Defendants are acting as the agent for  
16 Plaintiff for the purpose of properly managing the Project and maintaining the profitability of the  
17 Project and with respect to making payments for Plaintiff's Participation Interests in the Project.  
18 Further, because of the relationship between Defendants and Plaintiff in connection with the  
19 Agreements and Defendants' contractual obligations to Plaintiff, Defendants owe a fiduciary duty  
20 to Plaintiff.

21 48. Defendants breached their fiduciary duty to Plaintiff in numerous material respects,  
22 including but not limited to: (i) breaching their contractual obligations to Plaintiff, grossly  
23 mismanaging the Project, (ii) unreasonably delaying the transfer of lots to Plaintiff as required by  
24 the Agreements, (iii) failing to provide title insurance to Plaintiff for those lots, (iv) unreasonably  
25 delaying the completion of sales transactions on other lots in the Project, (v) falsely representing to  
26 Plaintiff the status of lot sales transactions, (vi) wrongfully inducing Plaintiff to enter into the  
27 Agreements and accept a payment plan for his cash buyout, (vii) mismanaging and/or commingling  
28 the funds of the Project with Defendants' own funds, (viii) charging non-Project related expenses

1 to the Project, (ix) interpreting the Agreements so as to deprive Plaintiff of the benefit of his  
2 bargain and to frustrate the purpose of the contracts with Plaintiff, and (x) other misconduct.

3 49. As a result of Defendants' breach of their fiduciary duty to Plaintiff, Plaintiff has  
4 been damaged in numerous respects, including but not limited to following: (i) Plaintiff has not  
5 received payments from Defendants to which he is entitled under Paragraphs 5 and 6 of the  
6 Participation Agreement, (ii) Plaintiff has not received payments on lot sales that should have been  
7 completed but for Defendants' gross mismanagement of the Project, (iii) the transfer of lots to  
8 Plaintiff was unreasonably delayed, and (iv) Defendant has failed to provide title insurance to  
9 Plaintiff for the lots transferred to him.

10 50. The actions of Defendants as described herein, in breach of their fiduciary duty to  
11 Plaintiff, have caused Plaintiff to suffer further damages in that Plaintiff has not received the  
12 consideration promised in the Agreements or the benefit of his bargain with Defendants. The  
13 precise amount of Plaintiff's damages has not yet been ascertained, but will be proven at the trial of  
14 this action.

15 51. In addition, Plaintiff is informed and believes, and on that basis alleges, that in  
16 doing the acts alleged and engaging in the misconduct alleged herein, Defendants have obtained  
17 secret profits that belong, in part, to Plaintiff. The precise amount of Defendants' secret profits and  
18 Plaintiff's share of those profits has not yet been ascertained, but will be proven at the trial of this  
19 action.

#### 20 FOURTH CAUSE OF ACTION

##### 21 (For an Accounting as to Defendants)

22 52. Plaintiff hereby realleges and incorporates by reference all of the allegations set  
23 forth in Paragraphs 1 through 51 of this Complaint as though fully set forth herein.

24 53. Paragraphs 17(h), 19, and 20 of the Participation Agreement require that Defendants  
25 provide extensive financial and accounting reports, records, and information to Plaintiff on a  
26 periodic basis and as requested by Plaintiff.

27 54. Plaintiff has demanded various financial and accounting reports, records, and  
28 information from Defendants throughout the past four years, including information regarding the

1 aforementioned sales of lots at the Project, and has further demanded payment of the amounts due  
2 to Plaintiff pursuant to Paragraph 5 of the Participation Agreement, but Defendants have failed and  
3 refused, and continue to fail and refuse, to render such an accounting or to pay such sums.

4 55. As set forth above, Paragraph 5 of the Participation Agreement provides for certain  
5 payments to be made to Plaintiff for his Participation Interest in the amount of \$2,000,000, his  
6 Original Capital Account in the amount of \$1,046,157, and his Second Capital Account in an  
7 amount which is currently unknown to Plaintiff, from the proceeds from the sale of each lot in the  
8 Project with the exception of the lots specifically excluded by Paragraph 5.

9 56. Plaintiff is informed and believes, and on that basis alleges, that Defendants have  
10 sold certain lots and other property in the Project, and have retained all of the proceeds from the  
11 sale of those lots and other property, and have failed and refused to pay to Plaintiff his share of  
12 those proceeds pursuant to Paragraph 5 of the Participation Agreement.

13 57. The precise amount of money due to Plaintiff from Defendants for his share of the  
14 proceeds from the sale of lots and other property in the Project is unknown to Plaintiff, and cannot  
15 be ascertained without an accounting of the purchase price of and the proceeds from the sale of lots  
16 and other property at the Project. Because Defendants have not provided any of the accounting,  
17 financial, or sales information to Plaintiff, Plaintiff has no information or belief upon which to  
18 allege the amounts due to Plaintiff from the proceeds of those lot sales.

19 58. Plaintiff has demanded an accounting of the sales of lots and other property from  
20 Defendants and payment of the amounts due to Plaintiff pursuant to Paragraph 5 of the  
21 Participation Agreement, but Defendants have failed and refused, and continue to fail and refuse,  
22 to render such an accounting or to pay such sums.

23 59. Further, as set forth above, Paragraph 6 of the Participation Agreement provides for  
24 the payment to Plaintiff of nine percent (9%) of all Profit Distributions made by Defendants.

25 60. Plaintiff is further informed and believes, and on that basis alleges, that Defendants  
26 may have made some Profit Distributions but have failed and refused to pay to Plaintiff his share of  
27 those Distributions pursuant to Paragraph 6 of the Participation Agreement.

28 61. Defendants have received and, by the contemplated sale of all or substantially all of

1 the Project to a third party, will receive certain monies from the sale of lots and other property at  
 2 the Project. As a result of Plaintiff's nine percent (9%) Participation Interest in the Project, a  
 3 portion of the true profits made by Defendants as to the sale of those lots and other property is or  
 4 will be due to Plaintiff from Defendants, as previously alleged.

5 62. The precise amount of money due to Plaintiff from Defendants for Plaintiff's nine-  
 6 percent (9%) Participation Interest in the Project is unknown to Plaintiff, and cannot be ascertained  
 7 without an accounting of the proceeds from the contemplated sale of the Project, and of  
 8 Defendants' income and expenses related to the operations and development of the Project.  
 9 Because Defendants have not provided any of the relevant information to Plaintiff other than  
 10 stating that they have expended over \$58 million over the past four years, Plaintiff has no  
 11 information or belief upon which to allege the amounts due to Plaintiff for his share of the Profit  
 12 Distributions that have been made or that will result from the contemplated sale of all or  
 13 substantially all of the Project to a third party.

14 63. Plaintiff has demanded an accounting of the aforementioned profits from  
 15 Defendants and payment of the amount found due, but Defendants have failed and refused, and  
 16 continue to fail and refuse, to render such an accounting and to pay such sum.

17 **FIFTH CAUSE OF ACTION**

18 **(For Negligent Misrepresentation as to all Defendants)**

19 64. Plaintiff hereby realleges and incorporates by reference all of the allegations set  
 20 forth in Paragraphs 1 through 51 of this Complaint as though fully set forth herein.

21 65. As alleged herein, prior to execution of the Agreements, Defendants made false and  
 22 fraudulent representations to Plaintiff to induce Plaintiff to enter into the Agreements and to fully  
 23 perform his obligations under the Agreements.

24 66. Those representations as alleged herein include but are not limited to  
 25 representations that: (i) Defendants were highly skilled and knowledgeable real estate developers  
 26 who had vast financial resources, extensive real estate and construction capability, and an  
 27 experienced team to complete the development of and to manage the Project, (ii) Defendants  
 28 intended to perform their obligations under the Agreements, (iii) Lots 8, 9, 10, 42, 45, 46, 47, and

1 48 were either sold or the sales transactions would be completed imminently, (iv) Defendants  
2 intended to complete the sales contracts on the eight excluded lots before completing the sales  
3 transactions on any other lots at the Project, (v) the cash buyout payments due to Plaintiff pursuant  
4 to Paragraph 5 would be made from the proceeds from the sale of every lot sold in the Project other  
5 than the eight excluded lots, (vi) Defendant Jennings would be involved in the day-to-day  
6 management and operations of the Project, and (vii) Defendants intended to give Plaintiff the  
7 benefit of his bargain and to deal honestly with Plaintiff.

8 67. The representations made by Defendants were in fact false or Defendants had no  
9 reason to believe them to be true at the time such representations were made by them. The true  
10 facts were that: (i) Defendants were not highly skilled and knowledgeable real estate developers  
11 who had vast financial resources, extensive real estate and construction capability, and an  
12 experienced team to complete the development of and to manage the Project, and Defendants had  
13 no one experienced in developing real estate in Mexico, (ii) Defendants had no intention of  
14 performing their obligations under the Agreements, (iii) not all of Lots 8, 9, 10, 42, 45, 46, 47, and  
15 48 were either sold or the sales transactions would be completed imminently, (iv) Defendants did  
16 not intend to complete the sales contracts on the eight excluded lots before completing the sales  
17 transactions on any other lots at the Project, (v) Defendants did not intend to make cash buyout  
18 payments due to Plaintiff pursuant to Paragraph 5 from the proceeds from the sale of every lot sold  
19 in the Project other than the eight excluded lots, (vi) Defendant Jennings was not involved in the  
20 day-to-day management and operations of the Project, and (vii) Defendants did not intend to deal  
21 honestly with Plaintiff, but instead intended to deprive Plaintiff of the benefit of his bargain and to  
22 frustrate the purpose of the Agreements with Plaintiff by interpreting the Agreements in bad faith.

23 68. When Defendants made these representations, they knew or should have know that  
24 the representations were false, and these representations were made by Defendants with the intent  
25 to defraud and deceive Plaintiff and with the intent to induce Plaintiff to enter into the Agreements  
26 and to fully perform his obligations under the Agreements.

27 69. Plaintiff, at the time these representations were made by Defendants, and at the time  
28 Plaintiff entered into the Agreements and performed his obligations under the Agreements, was

1 ignorant of the falsity of Defendants' representations and believed them to be true.

2 70. In reliance on Defendants' representations, Plaintiff was induced to and did enter  
3 into the Agreements and fully performed his obligations under the Agreements, including  
4 executing documents transferring title to and ownership of his interests in the Project to  
5 Defendants. Had Plaintiff known the actual facts, Plaintiff would not have taken such action.

6 71. Plaintiff is informed and believes, and on that basis alleges, that at the time  
7 Defendants made the promises to Plaintiff set forth in the Agreements and at the time the parties  
8 executed the Agreements, Defendants had no intention of keeping those promises or performing  
9 their obligations under the Agreements.

10 72. Further, Plaintiff, at the time these promises were made and at the time the parties  
11 executed the Agreements, were ignorant of Defendants' secret intention not to perform its  
12 obligations under the Agreements, and that Plaintiff could not, in the exercise of reasonable  
13 diligence, have discovered Defendants' secret intention.

14 73. If Plaintiff had known of the actual intentions of Defendants, Plaintiff would not  
15 have taken such action, would not have entered into the Agreements, and would not have  
16 performed his obligations under the Agreements, including but not limited to executing the  
17 documents to transfer title and ownership of his interest in the Project to Defendants.

18 74. Plaintiff's reliance on Defendants' representations was justified because Plaintiff  
19 had previously entered into agreements with Defendants and Defendants had thus far satisfied their  
20 obligations under those prior agreements, except to the extent the terms of those prior agreements  
21 were modified, excused, or changed by the terms of the subsequent Agreements.

22 75. As a proximate result of Defendants' fraud and deceit and the facts herein alleged,  
23 Plaintiff was deprived of the benefit of his bargain in that he transferred his ownership interest and  
24 control of the Project to Defendants and did not receive the consideration promised by Defendants.  
25 As a proximate result of Defendants' fraud and deceit and the facts herein alleged, Plaintiff has  
26 been damaged in an amount which has not yet been ascertained, but which will be proven at the  
27 trial of this action.

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SIXTH CAUSE OF ACTION

**(For Intentional Misrepresentation (Fraud) as to all Defendants)**

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76. Plaintiff hereby realleges and incorporates by reference all of the allegations set forth in Paragraphs 1 through 51, and Paragraphs 64 through 75 of this Complaint as though fully set forth herein.

77. As alleged herein, prior to execution of the Agreements, Defendants made false and fraudulent representations to Plaintiff to induce Plaintiff to enter into the Agreements and to fully perform his obligations under the Agreements.

78. Those representations as alleged herein include but are not limited to representations that: (i) Defendants were highly skilled and knowledgeable real estate developers who had vast financial resources, extensive real estate and construction capability, and an experienced team to complete the development of and to manage the Project, (ii) Defendants intended to perform their obligations under the Agreements, (iii) Lots 8, 9, 10, 42, 45, 46, 47, and 48 were either sold or the sales transactions would be completed imminently, (iv) Defendants intended to complete the sales contracts on the eight excluded lots before completing the sales transactions on any other lots at the Project, (v) the cash buyout payments due to Plaintiff pursuant to Paragraph 5 would be made from the proceeds from the sale of every lot sold in the Project other than the eight excluded lots, (vi) Defendant Jennings would be involved in the day-to-day management and operations of the Project, and (vii) Defendants intended to give Plaintiff the benefit of his bargain and to deal honestly with Plaintiff.

79. The representations made by Defendants were in fact false and Defendants had no reason to believe them to be true at the time such representations were made by them. The true facts were that: (i) Defendants were not highly skilled and knowledgeable real estate developers who had vast financial resources, extensive real estate and construction capability, and an experienced team to complete the development of and to manage the Project, and Defendants had no one experienced in developing real estate in Mexico, (ii) Defendants had no intention of performing their obligations under the Agreements, (iii) not all of Lots 8, 9, 10, 42, 45, 46, 47, and 48 were either sold or the sales transactions would be completed imminently, (iv) Defendants did

1 not intend to complete the sales contracts on the eight excluded lots before completing the sales  
2 transactions on any other lots at the Project, (v) Defendants did not intend to make cash buyout  
3 payments due to Plaintiff pursuant to Paragraph 5 from the proceeds from the sale of every lot sold  
4 in the Project other than the eight excluded lots, (vi) Defendant Jennings was not involved in the  
5 day-to-day management and operations of the Project, and (vii) Defendants did not intend to deal  
6 honestly with Plaintiff, but instead intended to deprive Plaintiff of the benefit of his bargain and to  
7 frustrate the purpose of the Agreements with Plaintiff by interpreting the Agreements in bad faith.

8 80. When Defendants made these representations, they knew that the representations  
9 were false, and these representations were made by Defendants with the intent to defraud and  
10 deceive Plaintiff and with the intent to induce Plaintiff to enter into the Agreements and to fully  
11 perform his obligations under the Agreements.

12 81. Plaintiff, at the time these representations were made by Defendants, and at the time  
13 Plaintiff entered into the Agreements and fully performed his obligations under the Agreements,  
14 was ignorant of the falsity of Defendants' representations and believed them to be true.

15 82. In reliance on Defendants' representations, Plaintiff was induced to and did enter  
16 into the Agreements and fully performed his obligations under the Agreements, including  
17 executing documents transferring title to and ownership of his interests in the Project to  
18 Defendants. Had Plaintiff known the actual facts, Plaintiff would not have taken such action.

19 83. Plaintiff is informed and believes, and on that basis alleges, that at the time  
20 Defendants made the promises to Plaintiff set forth in the Agreements and at the time the parties  
21 executed the Agreements, Defendants had no intention of keeping those promises or performing  
22 their obligations under the Agreements.

23 84. Further, Plaintiff, at the time these promises were made and at the time the parties  
24 executed the Agreements, were ignorant of Defendants' secret intention not to perform its  
25 obligations under the Agreements, and that Plaintiff could not, in the exercise of reasonable  
26 diligence, have discovered Defendants' secret intention.

27 85. If Plaintiff had known of the actual intentions of Defendants, Plaintiff would not  
28 have taken such action, would not have entered into the Agreements, and would not have

1 performed his obligations under the Agreements, including but not limited to executing the  
2 documents to transfer title and ownership of his interest in the Project to Defendants.

3 86. Plaintiff's reliance on Defendants' representations was justified because Plaintiff  
4 had previously entered into agreements with Defendants and Defendants had thus far satisfied their  
5 obligations under those prior agreements, except to the extent the terms of those prior agreements  
6 were modified, excused, or changed by the terms of the subsequent Agreements.

7 87. As a proximate result of Defendants' fraud and deceit and the facts herein alleged,  
8 Plaintiff was deprived of the benefit of his bargain in that he transferred his ownership interest and  
9 control of the Project to Defendants and did not receive the consideration promised by Defendants.  
10 As a proximate result of Defendants' fraud and deceit and the facts herein alleged, Plaintiff has  
11 been damaged in an amount which has not yet been ascertained, but which will be proven at the  
12 trial of this action.

13 88. In doing the acts herein alleged, Defendants acted with malice, fraud, and  
14 oppression, with wrongful intent to injury Plaintiff, from an improper and evil motive amounting  
15 to malice, and in conscious disregard of Plaintiff's rights. The acts alleged herein were known to,  
16 authorized by, and ratified by defendants, thereby justifying an award of punitive damages against  
17 Defendants, and each of them, in an amount which shall be established at the trial of this action.

18 **SEVENTH CAUSE OF ACTION**

19 (For Declaratory Relief as to all Defendants)

20 89. Plaintiff hereby realleges and incorporates by reference all of the allegations set  
21 forth in Paragraphs 1 through 88 of this Complaint as though fully set forth herein.

22 90. Plaintiff and Defendants entered into the Agreements, as alleged herein. By the  
23 Agreements, Plaintiff agreed to transfer to Defendants his remaining interest in the Project in  
24 exchange for certain cash buyout payments by Defendants to Plaintiff, the transfer of certain  
25 properties in the Project to Plaintiff, and other good and valuable consideration.

26 91. Plaintiff is informed and believes, and on that basis alleges, that Defendants now  
27 contend that the sale and transfer of all eight of the lots referenced in Paragraph 5 of the  
28 Participation Agreement is the "trigger" for the commencement of any obligation whatsoever to

1 make any payments to Plaintiff. They make those contentions despite the representations made by  
2 Defendants to induce Plaintiff to enter into the Agreements, as alleged herein, and the fact that the  
3 failure to transfer all eight of those lots was caused solely by Defendants gross mismanagement,  
4 unreasonable delays, and other negligence and misconduct.

5 92. As a result of Defendants' misinterpretation of the terms of the Agreements,  
6 Defendants have failed and refused to make any payments to Plaintiff with respect to his  
7 Participation Interest, Original Capital Accounts, or his Second Capital Accounts, as required by  
8 Paragraph 5 of the Participation Agreement.

9 93. Defendants further contend that the contemplated sale of all or substantially all of  
10 the Project to a third party is a "bulk sale" under the Agreements which will not result in the  
11 recognition of any "profit" to Defendants because Defendants' "loans" to the Project exceed the  
12 expected proceeds from the sale. Defendants further contend that no payments are therefore due to  
13 Plaintiff pursuant to either Paragraph 5 or 6 of the Participation Agreement from the operations of  
14 the Project over the past four years or the sale of all or substantially all of the Project to a third  
15 party.

16 94. Plaintiff is informed and believes, and on that basis alleges, that Defendants further  
17 contend that their obligations to Plaintiff under the Agreements, including but not limited to the  
18 obligations to pay Plaintiff their Participation Interests and their Capital Account Balances, will be  
19 terminated upon the contemplated sale of all or substantially all of the Project to a third party

20 95. As a result of Defendants' misinterpretation of the terms of the Agreements and  
21 Defendants other misconduct, Defendants have failed and refused to provide any information to  
22 Plaintiff regarding the proposed sale of all or substantially all of the Project to the third-party and  
23 have stated their intention to retain all of the proceeds from that sale without making any payments  
24 to Plaintiff as required by the terms of the Agreements, to pay Plaintiff any monies due to him  
25 pursuant to Paragraph 5 of the Participation Agreement, or to perform any of the acts required of  
26 them under the terms of the Agreements.

27 96. Plaintiff disputes Defendants' contentions and their interpretation of the terms of  
28 the Agreements and their obligations under the Agreements. Rather, Plaintiff contends that

1 Defendants are immediately obligated to make cash buyout payments to Plaintiff pursuant to  
2 Paragraph 5 of the Participation Agreement on all lots sold at the Project other than the eight  
3 excluded lots, and to perform their other obligations to Plaintiff as required by the terms of the  
4 Agreements. Plaintiff further contends that Defendants' obligations to Plaintiff under the  
5 Agreements will survive the contemplated sale of substantially all of the Project to a third party,  
6 and that, in addition to Defendants' continuing liability under the Agreements, the third party will  
7 also be liable as Defendants' successor in interest under the Agreements.

8 97. This dispute still exists and is an actual controversy over the respective rights and  
9 duties of the parties with respect to the Agreements.

10 98. Plaintiff desires a judicial determination of his rights and duties under the  
11 Agreements, and of Defendants' rights and duties under the Agreements, including but not limited  
12 to a declaration as to when Defendants must pay Plaintiff for his Participation Interest in the  
13 Project and his Capital Account Balances under Paragraph 5, and his Profit Distributions under  
14 Paragraph 6, if any, the amount of such payments, and as to when Defendants' must satisfy their  
15 other obligations under the Agreements.

16 99. A judicial determination is necessary and appropriate at this time in order that  
17 Plaintiff may ascertain the parties' respective his rights and duties under the Agreements. A  
18 judicial determination is particularly necessary due to Defendants' contemplated sale of all or  
19 substantially all of the Project to a third party and Defendants' stated intention not to pay any of the  
20 proceeds of that sale to Plaintiff for Plaintiff's interest in the Project.

21 **EIGHTH CAUSE OF ACTION**

22 (For Injunction as to all Defendants)

23 100. Plaintiff hereby realleges and incorporates by reference all of the allegations set  
24 forth in Paragraphs 1 through 99 of this Complaint as though fully set forth herein.

25 101. As alleged herein, although Defendants agreed to provide title insurance to Plaintiff  
26 at Defendants' own expense for each of the lots transferred to Plaintiff pursuant to the terms of the  
27 Agreements, Defendants have failed and refused, and continue to fail and refuse, to do so. Without  
28 title insurance, there is a cloud on the title of the transferred lots, and Plaintiff does not have the

1 legal protection of title insurance for which he bargained.

2 102. As alleged herein, although Defendants had agreed to transfer title of Lot 6 to  
3 Plaintiff and the other Founders as a result of the trade of Lot 6 for Lot 9, Defendants have failed  
4 and refused to do so. Because Defendants have failed and refused to transfer title of Lot 6 to  
5 Plaintiff and the other Founders, Plaintiff and the other Founders do not have the ability to sell or  
6 transfer that Lot to a prospective buyer, and Plaintiff does do not have the benefit of his bargain.  
7 Because of the contemplated sale of the Project to a third party, an injunction is need to ensure that  
8 that transfer is made.

9 103. As alleged herein, beginning shortly after executing the Agreements in 2008, and  
10 continuing to the present time, Defendants and each of them have wrongfully and unlawfully failed  
11 to provide to Plaintiff the consideration due to Plaintiff under the Agreements, including but not  
12 limited to payment of the sums due to Plaintiff for his Participation Interest in the Project and his  
13 Capital Account Balances, as required by Paragraph 5 of the Participation Agreement, and to  
14 satisfy Defendants' other obligations under the terms of the Agreements.

15 104. As alleged herein, since those Agreements were signed in 2008, Plaintiff has  
16 repeatedly demanded that Defendants stop their wrongful conduct, and that Defendants satisfy their  
17 contractual obligations under the terms of the Agreements. Defendants and each of them have  
18 failed and refused, and still fail and refuse, to refrain from their wrongful conduct or to satisfy their  
19 contractual obligations under the terms of the Agreements.

20 105. Defendants now seek to sell all or substantially all of the Project to a third party and  
21 have stated their intention to do so without paying Plaintiff any of the proceeds from that sale to  
22 satisfy Defendants' cash buyout obligations to Plaintiff, and without satisfying any of the other  
23 obligations under the Agreements, including but not limited to those obligations referred to in  
24 Paragraph 101 and 102, above. Defendants further seek to retain all of the proceeds from the  
25 contemplated sale of all or substantially all of the Project to a third party without paying Plaintiff  
26 any of those proceeds and without first providing title insurance to Plaintiff and transfer of Lot 6 to  
27 Plaintiff and the other Founders. Defendants further seek, after conclusion of the contemplated  
28 sale of all or substantially all of the Project to a third party, to be relieved of any further liability to

1 Plaintiff for their obligations under the Agreements.

2 106. Defendants' wrongful and unlawful conduct, unless and until enjoined and  
3 restrained by order of this court, will cause great and irreparable injury to Plaintiff in that  
4 Defendants' contemplated sale of all or substantially all of the Project to a third party will result in  
5 a transfer to a third party of all of the property and assets of the Project and will result in  
6 Defendants receiving cash from that sale which could very likely vanish and be unavailable to  
7 Plaintiff after that transaction is concluded.

8 107. Plaintiff has no adequate remedy at law for the injuries currently being suffered in  
9 that it will be impossible for Plaintiff to determine the precise amount of damages which they will  
10 suffer if Defendants' conduct is not restrained. Moreover, once Defendants transfer all or  
11 substantially all of the Project to a third party, this court may not have jurisdiction over the Project  
12 or the new owners of the Project, and will not thereafter be able to provide the relief Plaintiff seeks  
13 in this Complaint.

14 108. As a result of Defendants' wrongful conduct, Plaintiff has been damaged in an  
15 amount as yet not fully ascertained, and in several other material respect that are not quantifiable in  
16 that other promises were made by Defendants that do not include the payment of cash but involve  
17 the performance of certain acts by Defendants as they relate to the Project and/or property in the  
18 Project. Plaintiff will be further damaged in like manner so long as Defendants' conduct continues  
19 and the contemplated sale of the Project is allowed to conclude without first protecting Plaintiff.  
20 The full amount of such damage is not now known to Plaintiff, and Plaintiff will amend this  
21 Complaint to state such amount when the same becomes known to Plaintiff, or on proof thereof at  
22 the trial of this action.

23 **REQUEST FOR JUDICIAL REFERENCE**

24 Paragraph 28(b) of the Participation Agreement provides for a Dispute Resolution  
25 procedure for resolving any controversy or claim arising out of or related to the Agreements. That  
26 provision states that such disputes are to be determined under an order of general judicial reference  
27 as set forth in that Paragraph. Plaintiff will petition the Court for an order of general judicial  
28 reference order and request that this Court issue such an order pursuant to Paragraph 28(b) of the

1 Participation Agreement.

2 PRAYER

3 WHEREFORE, Plaintiff prays judgment as follows:

4 1. On the breach of contract cause of action, for judgment against Defendants in favor  
5 of Plaintiff in an amount to be established at the trial of this action;

6 2. On the breach of the covenant of good faith and fair dealing cause of action, for  
7 judgment against Defendants in favor of Plaintiff in an amount to be established at the trial of this  
8 action;

9 3. On the breach of fiduciary duty cause of action, for judgment against Defendants in  
10 favor of Plaintiff in an amount to be established at the trial of this action and for recovery of  
11 Defendants' secret profits in an amount to be established at the trial of this action;

12 4. On the accounting cause of action, for an order that Defendants immediately  
13 provide Plaintiff with an accounting as required by the Agreements and as set forth herein;

14 5. On the negligent misrepresentation and intentional misrepresentation causes of  
15 action, for judgment against Defendants in favor of Plaintiff in an amount to be established at the  
16 trial of this action;

17 6. On the intentional misrepresentation (fraud) cause of action, for an award of  
18 punitive damages in an amount to be established at the trial of this action;

19 7. On the declaratory relief cause of action, for a declaration of the respective rights  
20 and duties of the parties with respect to the Agreements;

21 8. On the injunction cause of action, for an order requiring Defendants, and each of  
22 them, to show cause, if any, why they should not be enjoined as set forth herein, during and after  
23 the pendency of this action;

24 9. For a temporary restraining order, a preliminary injunction, and a permanent  
25 injunction, all enjoining Defendants, and each of them, and their agents, servants, and employees,  
26 and all persons acting under, in concert with, or for them:

27 a. From selling or transferring any or all of the property in the Project to any  
28 third party during the pendency of this action; and/or



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b. From retaining any funds from the proceeds from a sale or transfer of any or all of the property in the Project to any third party during the pendency of this action;

10. For late charges, delay damages, and interest on the damages as set forth in the Agreements and allowable by law;

11. For attorneys' fees and other costs of suit as allowable by the Agreements between the parties;

12. For such other and further relief as the court deems just and proper; and

13. For an order of a general judicial reference pursuant to Paragraph 28(b) of the Participation Agreement.

Dated: November 12, 2010

BANKHEAD & HOWARD LLP

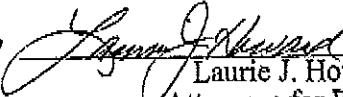
By   
Laurie J. Howard  
Attorneys for Plaintiff  
GARY M. WAGNER

EXHIBIT "A"

## PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT ("Agreement") dated as of the 17th day of April, 2008 (the "Effective Date"), is made by and between Gary Wagner ("Wagner"), Rancho de Costa Plenty SRI. de CV ("Rancho"), and the Wagner Family Trust ("WFTTrust") (Wagner, Rancho and WFTTrust are sometimes collectively referred to herein as ("Wagner"), and Stephen C. Games ("Games") and Grand Bahia de los Suenos S. de R.L. de C.V. ("BOD"), and is made with reference to the following facts:

### Recitals:

A. BOD through its affiliates intends to acquire a real estate project commonly known as "*Bahia de los Suenos*", consisting of approximately 4,000 acres of land located outside the Municipality of La Paz, Baja California Sur, Mexico, and described more fully in Exhibit A (the "Land") and the improvements to be constructed thereon (the "Improvements"). The Land and the Improvements (collectively, the "Project") shall be owned by an affiliate of BOD ("Property Company"), whose principal purpose shall be the acquisition, construction, development, ownership, operation, management, leasing, refinancing and disposition of the Project.

B. Wagner owned certain direct and indirect ownership or participation interests in BOD's predecessor in interest, in the Project, and in certain Project related amenities and assets, all of which are identified on Exhibit B (the "Participation Interests"). Pursuant to various prior agreements, all of which are identified on Exhibit C (the "Prior Agreements") between Wagner and its affiliates and certain individuals and entities now owning interests in the Project, Wagner and its affiliates have sold, transferred and conveyed all of their beneficial interests in the Participation Interests. The parties hereto intend to provide for the legal transfer of the Participation Interests to various entities, all as directed by BOD. In addition, the parties hereto intend that Wagner be fully relieved from any and all further liability, known or unknown, with respect to the Project and any and all further capital calls with respect to the Project.

C. In consideration of the transfer of the legal and beneficial interests in the Participation Interests, Wagner is entitled to participate in certain economic benefits of the Project and to receive certain Project amenities. The parties hereto desire to provide for such participation and benefits, upon all of the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein, the parties hereto agree as follows:

1. Certain Definitions. When used in this Agreement, the following terms shall have the meanings set forth below:

"Airport" shall mean the Las Arenas airport strip and related property currently located on the Las Arenas property, which shall include any other location to which the Airport is moved at any time in the future.

"BOD Property" shall mean any and all property owned by BOD or purchased with BOD's funds or funds borrowed by BOD, whether such property is on site or off site, including but not limited to any and all equipment, machinery, and other assets (e.g., water rights, etc.) currently owned or subsequently purchased by BOD.

"Bulk Sale" shall mean the sale of (i) all or substantially all of the property remaining in any of Phase I, II or III, (ii) all or substantially all of the property remaining in any Phase I Subdivision or Other Subdivisions, and/or (iii) one (1) or more Subdivision, to a single buyer or buying group. For purposes of this Agreement, the terms "Phase" and "Subdivision" shall have meanings as set forth in Paragraph 1 of this Agreement. The term Bulk Sale shall also include the sale of any or all of the other BOD Property such as equipment, machinery, etc.

"Capital Event" shall mean (i) the financing or refinancing of the Project, (ii) the sale, exchange or other disposition of all or any portion of the Project (other than individual Lot sales), including the condemnation of the Project or conveyance in lieu thereof, or (iii) the dissolution of BOD.

"CC&Rs" shall mean the covenants, conditions and restrictions that apply to all properties in the Project.

"Deadline" shall mean that upon execution of this Agreement by all parties, BOD will immediately commence with the preparation of any and all documentation necessary to submit to any governmental agency in order to effect the transfers of property contemplated herein, and shall have submitted any and all such documentation and required fees to such governmental agency no later than June 30, 2008.

"Developers" shall mean Gary Wagner, Stephen Games, Paul Jennings and Joseph Fryzer.

"Founders" shall mean Gary Wagner, Stephen Games, Kyle Turley, Kenneth Melby and Nyda Jones-Church.

"Founders Second Capital Accounts" shall mean the amounts credited or to be credited to each of the Capital Accounts of Founders Wagner, Games, Jones-Church, and Melby for their respective pro-rata shares of the proceeds received by BOD from the sale of Lots 8, 9, 10, 37 and 38, which proceeds were "loaned" to BOD, and which amounts shall be repaid to such Founders in accordance with Paragraph 5(c), below. However, all pre-2006 expenses paid or to be paid by BOD on behalf of any of the predecessor companies, including Old Bay, shall first be deducted from such capital accounts on a pro-rata basis. As of the date of this Agreement, the pre-2006 expenses paid by BOD on behalf of Old Bay are in the amount of Three Hundred Eighty-Nine Seven Hundred Thousand and 95/xx (\$389,700.95). A true and correct summary of such expenses is attached hereto as Exhibit "D."

"Games' Original Capital Account Balance" shall mean the amounts actually contributed to Bay of Dreams S. de R.L. de C.V., Property Research and Sales, S. de R.L. de C.V., and other related entities (collectively "BOD SRL Entities") by Games. As of the date of this Agreement, Games' Original Capital Account had a balance of One Million Seven Hundred Forty-One Thousand Seven Hundred One Dollars (\$1,741,701), which amount does not include

the deposit on the sale of Beach Colony Lots 8, 9 and 10, and the proceeds from the sale of Spanish Hill Lots 37 and 38 as set forth in Paragraph 5(c) below or the proceeds from the sale of lots to Fryzer. The balance of Games' Original Capital Account Balance has been verified by an audit and approved by Games.

"HOA" shall mean the Homeowners Association organization that will govern the residential properties in the Project.

"Investors" shall mean Stephen Games, Nyda Jones-Church, Kenneth Melby, Kyle Turley, Paul Jennings and Joseph Fryzer.

"Lender" shall mean any lender that provides a Loan with respect to the Project.

"Lots" shall mean any subdivided parcel of the Land offered for sale to third parties.

"Loan" shall mean any loan from a Lender secured by the Project or any portion thereof, or any refinancing thereof.

"Members' Equity" shall mean and include the cumulative total of any and all sums contributed or loaned by any member of BOD with respect to the acquisition, development, construction, management and operation of the Project, plus any and all additional sums paid by a member of BOD to third parties for any Project cost to the extent not paid from Project revenues. Members' Equity shall be reduced by the cumulative total of any and all amounts of Net Capital Proceeds and Net Operating Proceeds previously distributed to the members of BOD. Members' Equity shall not include the proceeds of any Loan, except to the extent such proceeds are distributed to the members of BOD.

"Net Capital Proceeds" shall mean an amount equal to the cash proceeds from a Capital Event, any condemnation award or casualty insurance payment not utilized to restore or replace the Project, and all amounts held in reserves established by BOD, less:

(i) any amounts paid in connection with such Capital Event including, without limitations, all fees and customary broker's fees, and other transaction costs, and in the case of a sale, exchange or other disposition, normal and customary closing costs and other costs of the transaction, including broker's commissions;

(ii) any debt service on a Loan, including payments of any outstanding principal, interest, costs and expenses due and arising under such Loan; and

(iii) any amounts paid to third party creditors of BOD other than a Lender.

"Net Operating Proceeds" shall mean the gross revenues on a cash basis from Project operations, including without limitation rental income, interest income and the proceeds of Lot sales of lost rental insurance and forfeited security deposits, less:

(i) the portion thereof used to pay all operating expenses and fund reserves of BOD and the Project;

(ii) current debt service on a Loan, including payments of any outstanding principal, interest, costs and expenses due and arising under such Loan;

(iii) actual capital improvements, commissions, replacements and contingencies, and to the extent not funded by the Loan, any Lender holdback or paid from reserve accounts; and

(iv) an amount sufficient to establish and maintain a reserves for (a) recurring operating expenses and the non-recurring operating expenses referenced in clause (iii) of this definition and (b) real estate taxes and insurance premiums (to the extent not impounded by Lender under the Loan).

"Net Proceeds" of a Lot Sale shall mean fifty percent (50%) of the gross purchase price paid for a Lot without any deduction for any expenses. Net Proceeds shall be distributed pursuant to this Agreement on a cash basis (i.e., in the event a buyer purchases a Lot on terms, the Net Proceeds shall be the amount of cash actually received from a buyer, whether as a deposit or a payment on terms, less fifty percent (50%) for expenses).

"Net Proceeds" of a Bulk Sale shall mean the purchase price for the Property included in the Bulk Sale less the transaction costs and expenses incurred by the seller with respect to the Bulk Sale, including, without limitation, a reasonable allocation of Mexico's capital gain or other income taxes resulting directly from the sale of each such lot (but does not include any transfer or acquisition tax which shall be paid by the buyer of such property), brokerage and sales commissions payable as a result of such sale, costs of title insurance premiums, charges for any concessions granted to the transferee in connection with such Lot sale, documentary stamp taxes, escrow fees and recording charges, prepayment fees payable to any lender and applicable attorneys' fees and costs actually paid by the seller, but excluding any foreign, U.S., state or federal income taxes, franchise taxes or other taxes based on income. For purposes of this definition, the term "Property" shall mean any and all land, equipment, machinery, rights, or other assets currently owned by or later acquired by BOD. Net Proceeds of a Bulk Sale shall be distributed pursuant to this Agreement on a cash basis (i.e., in the event a Bulk Sale buyer purchases on terms, the Net Proceeds shall be the amount of cash actually received from a buyer, whether as a deposit or a payment on terms, less fifty percent (50%) for expenses).

"Other Subdivisions" shall mean any of the subdivisions that will be planned in Phases II and III.

"Owners" shall mean any other persons not already included in the definitions of "Founders," "Developers" or "Investors" who may acquire an ownership, participation or economic interest in the Project.

"Phase" shall mean Phase I, Phase II or Phase III of the Land (as defined in Paragraph A of the Recitals), and as set forth in the subdivision maps for the Land existing as of the date of execution of this Agreement.

"Phase I" shall mean the approximately 2,372 acres of land referred to as Phase I on the Map of the Project, a true and correct copy of which is attached hereto as Exhibit "E."

"Phase II" shall mean the approximately 242 acres of land referred to as Phase II on the Map of the Project, a true and correct copy of which is attached hereto as Exhibit "F."

"Phase III" shall mean the approximately 1,657 acres of land referred to as Phase III on the Map of the Project, a true and correct copy of which is attached hereto as Exhibit "G"

"Phase I Subdivision" shall mean one of the five (5) Subdivisions of Phase I (as defined in Paragraph 1 of this Agreement) commonly referred to as Golf Envelope (Beach Club), Spanish Hill, Puerto, Ocean Golf, and Marina Ocean. A true and correct copy of a Map of the Phase I Subdivisions is attached hereto as Exhibit "H"

"Profit Distribution" shall mean any and all distributions made by BOD after all obligations set forth in Paragraph 5 of this Agreement have been paid in full and all BOD Member Equity has been returned and paid in full. Such distributions shall be made from time to time based on the majority approval of the shareholders of BOD from the proceeds resulting from Net Capital Proceeds and Net Operating Proceeds, as such terms are defined herein.

"Wagner Entities" shall mean Wagner's family and all entities owned by or controlled by Wagner.

"Wagner's Original Capital Account Balance" shall mean the amounts actually contributed to Bay of Dreams S. de R.L. de C.V., Property Research and Sales, S. de R.L. de C.V., and other related entities (collectively "BOD SRL Entities") by Wagner. As of the date of this Agreement, Wagner's Original Capital Account had a balance of One Million Forty-Six Thousand One Hundred Fifty-Seven Dollars (\$1,046,157), which amount does not include distribution of the proceeds from the sale of Lots 8, 9 and 10 of Four Hundred Thirty-One Thousand Dollars (\$431,000), nor does it include the deposit originally received on Lots 37 and 38 as set forth in Paragraph 5(c) below. The balance of Wagner's Original Capital Account Balance has been verified by an audit and approved by Wagner.

2. Legal Transfer of Participation Interests. From and after the Effective Date, upon the written request of BOD, Wagner shall cause the Participation Interests to be legally transferred to such entities as designated by BOD. Except for such consideration previously paid to Wagner pursuant to the Prior Agreements and as provided for herein, each transfer of an Participation Interest shall be without further consideration. Wagner, Rancho and WFTrust each agree and shall each cause any affiliated entity owning an Participation Interest to execute such documents and instruments and to perform such acts as may be necessary or convenient to effectuate and perform the transfer of the Participation Interests. BOD shall have all of the appropriate documents prepared at BOD's expense and shall notify Wagner in writing that such documents are ready for his signature. Once BOD prepares the appropriate documents, each party shall then be responsible for their own attorneys' fees and costs in reviewing and revising subsequent drafts until the documents are finalized and signed by the parties. Upon any failure by Wagner to perform any of the above acts, BOD may make, execute, publish and record any and all such instruments, certificates and documents for and in the name of any transferor of an

Participation Interest, all at the sole expense of BOD. Wagner hereby appoints BOD as its agent and attorney-in-fact to execute such instruments; however, such appointment is limited to the transfers specifically set forth in this Agreement. As limited, this appointment being coupled with an interest is irrevocable.

3. Representations and Warranties of Wagner, Rancho and WFTrust. Wagner, Rancho and WFTrust each hereby represents and warrants to BOD that: (i) the declaring party has the full right and authority to enter into this Agreement; (ii) this Agreement is a legal, valid and binding obligation of the declaring party and is enforceable against the declaring party in accordance with its terms; (iii) the declaring party has not made any agreement for the benefit of creditors or taken any action or suffered any action under any insolvency, bankruptcy, reorganization, moratorium or other debtor-relief act or statute; (iv) each of the Participation Interests shall be conveyed free and clear of all liabilities, obligations and liens, pledges, mortgages, security interests, encumbrances, charges, restrictions and claims or any other adverse claim or right whatsoever; and (v) the delivery to each transferee of the instruments of transfer contemplated by this Agreement with respect to each Participation Interest will at the time of transfer vest good and marketable title to and the valid and enforceable right to receive and use each such Participation Interest, free and clear of all liens, liabilities or other adverse claim or right whatsoever.

4. Representations and Warranties of BOD and Games. BOD and Games hereby represent and warrant to Wagner, Rancho and WFTrust that: (i) BOD and Games have the full right and authority to enter into this Agreement; (ii) this Agreement is a legal, valid and binding obligation of the declaring parties and is enforceable against the declaring parties in accordance with its terms; (iii) neither BOD nor Games have made any agreement for the benefit of creditors or taken any action or suffered any action under any insolvency, bankruptcy, reorganization, moratorium or other debtor-relief act or statute; (iv) Bay of Dreams JV, LLC is a duly organized and existing Delaware limited liability company as of the date of this Agreement; (v) BOD is the sole owner of the Project as of the date of this Agreement; (vi) the signators to this Agreement have the full right and authority to execute this Agreement on behalf of the entity for which they are signing; (vii) each of the transfers of property to Wagner contemplated by this Agreement shall be conveyed free and clear of all liabilities, obligations and liens, pledges, mortgages, security interests, encumbrances, charges, restrictions and claims or any other adverse claim or right whatsoever, with the exception that each such property may be subject to Project CC&Rs and HOA obligations and dues; and (viii) the delivery to each transferee of the instruments of transfer contemplated by this Agreement with respect to each such transfer will at the time of transfer vest good and marketable title to and the valid and enforceable right to receive and use each such property free and clear of all liens, liabilities or other adverse claim or right whatsoever.

5. LLC Participation Interests and Payment for Participation Interests. BOD shall make or cause the following consideration to be paid as provided for in this Paragraph 5 in exchange for and in consideration of the promises made to Wagner by BOD in the Interim Agreement dated February 25, 2006 (the "Interim Agreement"), the Share Purchase Agreement dated March 7, 2006 (the "Share Purchase Agreement") and the Ownership Interest Purchase Agreement dated April 29, 2006 (the "Ownership Purchase Agreement"), including but not limited to Wagner's interest in the Developer Assets as set forth in Paragraph 12 of the Interim



Agreement. Unless and until this Agreement is executed by all parties, the Interim Agreement, the Share Purchase Agreement and the Ownership Purchase Agreement shall continue to remain in full force and effect as it relates to Wagner.

a. Payment for Participation Interests. Commencing with the closing of the first Lot sale to occur after the transfer of Lots 8, 9, 10, 42, 45, 46, 47 and 48, BOD shall pay Wagner the sum of Two Million Dollars (\$2,000,000) (the "Participation Interest Payment"), which shall be paid upon the receipt of from each Lot Sale and each Bulk Sale escrow. Upon the close of escrow of each Lot Sale, Wagner shall be paid an amount equal to five percent (5%) of the Net Proceeds of each such Lot Sale and/or each Bulk Sale until all amounts due to Rafael Brito pursuant to BOD's agreement with Rafael M. Brito Anderson ("Brito"), a true and correct copy of which is attached to this Agreement as Exhibit I, are paid in full. BOD reserves the right to enter into a modification agreement with Brito, provided that such modification does not increase the amount payable to Brito. When all amounts due to Brito pursuant to that agreement (as modified) are paid in full, Wagner shall be paid an amount equal to ten percent (10%) of the Net Proceeds of such Lot Sale and/or each Bulk Sale until the Participation Interest Payment has been paid in full. Upon the full payment of the Participation Interest Payment, Wagner's right to receive any Net Proceeds from the sale of Lots shall automatically terminate, except as otherwise set forth in this Agreement. For purposes of this Paragraph, "Net proceeds" shall have the definition set forth in Paragraph 1.

b. Payment of Wagner's and Games' Original Capital Account Balances. Once the Participation Interest Payment set forth in Paragraph 5(a) has been paid in full, BOD will immediately begin paying to Wagner and Games the balance of their respective Original Capital Accounts. For purposes of this Paragraph, "Original Capital Account Balances" shall have the definition set forth in Paragraph 1. Payment of Wagner's and Games' Original Capital Account Balance shall be made immediately upon the disbursement of funds from each subsequent Lot Sale and Bulk Sale escrow as set forth herein. Upon the close of each subsequent Lot Sale and Bulk Sale, Wagner and Games, shall each be paid their Pro-rata Share of an amount equal to ten percent (10%) of the Net Proceeds of each such Lot Sale and Bulk Sale. For purposes of this Paragraph, "Net Proceeds" shall have the meaning set forth in Paragraph 1. Wagner's and Games' "Pro-rata Share" shall mean the percentage of each of Wagner and Games to the combined total of their Original Capital Accounts,

c. Payment of Founder's Second Capital Account Balances (related to the Founder's participation or ownership in interest in Lots 10, 37 and 38). Once the Participation Interest Payment has been paid in full pursuant to Paragraph 5(a), and Wagner's and Games' Original Capital Account Balances have been paid in full pursuant to Paragraph 5(b), BOD will immediately begin paying Founders the balance of their respective Second Capital Accounts. "Founders' Second Capital Account Balances" shall have the meaning set forth in Paragraph 1. Payment of Founders' Second Capital Account Balance shall be made immediately upon the disbursement of funds from each subsequent Lot Sale and Bulk Sale escrow as set forth herein. Upon the close of each subsequent Lot Sale and Bulk Sale, each of the Founders, including Wagner, shall be paid their Pro-rata Share of an amount equal to ten percent (10%) of the Net Proceeds of each such Lot Sale and Bulk Sale. For purposes of this Paragraph, "Net Proceeds" shall have the meaning set forth in Paragraph 1. The Founders' "Pro-rata Share" shall mean the percentage of each of the Founders' Second Capital Account to the total amount of all of the

Founders' Second Capital Accounts, as set forth on Exhibit J to this Agreement. The parties agree that the following accurately reflects the loan to BOD of the proceeds already received with respect to the sale of Lots 10, 37 and 38 as of the date of this Agreement:

(1) Lot 10. The parties understand that Lot 10 was sold for Two Million Four Hundred-Fifty Thousand Dollars (\$2,450,000), and that a deposit of Two Million One Hundred Thousand Dollars (\$2,100,000) received for the sale of Lot 10 was loaned by the owners of Lot 10 (including Wagner) to BOD. On or before the Deadline, Wagner's Capital Account will be credited for his 20% share of the \$2,100,000 deposit on the sale of Lot 10.

(2) Lot 37. The parties understand that Lot 37 was sold for Four Hundred Thirty-Seven Thousand Five Hundred Dollars (\$437,500), and that the proceeds from the sale of Lot 37 were loaned by the owners of Lot 37 (including Wagner) to BOD. On or before the Deadline, Wagner's Capital Account will be credited for his 24.755% pro-rata share of the \$437,500 sale price.

(3) Lot 38. The parties understand that Lot 38 was sold for Four Hundred Fifty Thousand Dollars (\$450,000), and that the proceeds from the sale of Lot 38 were loaned by the owners of Lot 38 (including Wagner) to BOD. On or before the Deadline, Wagner's Capital Account will be credited for his 24.755% share of the \$450,000 sale price.

6. Participation Payment. In addition to the Participation Interest Payment set forth in Paragraph 5, above, Wagner shall be entitled to receive an amount equal to nine percent (9%) of any and all Profit Distributions made by BOD as and when made. For example, if One-Hundred Dollars (\$100.00) of Profit Distributions is distributed by BOD, of that amount Wagner will receive the first Nine Dollars (\$9.00) and the remaining Members will receive the remaining Ninety-One Dollars (\$91.00) on a prorata basis.

7. Proceeds From Sale of Lots 8, 9, 10 and 4. The financial terms set forth in the Interim Agreement with respect to Lots 8, 9 and 10 (Beach Colony) will not be affected by this Agreement. The parties agree that the following accurately reflects the status of Lots 8, 9, 10 as of the date of this Agreement:

a. Lot 8. The parties understand that Lot 8 has been sold for a total of One Million Eight Hundred Fifty-Five Thousand Dollars (\$1,855,000), and Wagner acknowledges that he has received his pro rata share of the proceeds from the sale of Lot 8.

b. Lot 10. The parties understand that Lot 10 has been sold for a total of Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000), that the deposit of Two Million One-Hundred Thousand Dollars (\$2,100,000) received with respect to that sale was loaned to BOD as set forth in Paragraph 5.c(1), and that the balance of Three Hundred-Fifty Thousand Dollars (\$350,000) has subsequently been paid. Wagner acknowledges that he has received his pro rata share of the balance of the proceeds from the sale of Lot 10.

c. Lots 9 and 6. The parties understand that the owner of Lot 6 intends to trade Lot 6 for Lot 9. Since Wagner had a 20% ownership interest in Lot 9, through this trade, Wagner will acquire a 20% ownership interest in Lot 6. Wagner will be entitled to a 20% interest in the proceeds of the sale of Lot 6. The owners of Lot 6, including Wagner, will

determine as a group how they want to hold title to such Lot, and each such owner shall be involved in all decisions related to the marketing and sale of that Lot. As of the date of this Agreement, Lot 6 is priced at Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000). Upon the sale of Lot 6, Wagner shall be paid his 20% share of the net proceeds from such sale within ten (10) days of the close of escrow. For purposes of this Section, "net proceeds" shall mean the total sale price less any sales commissions.

d. Proceeds From the Sale of Beach Colony Lot 4. In connection with the sale of Lot 4 to Jennings for One Million Seven Hundred Ninety Thousand (\$1,790,000), Games agreed to pay to Wagner fifty percent (50%) of the sale price of Lot 4 in excess of One Million Seven Hundred Ninety Thousand (\$1,590,000) (i.e., \$100,000). Although Jennings has not paid the full amount of that purchase price, Games and/or Jennings shall pay to Wagner One Hundred Thousand Dollars (\$100,000) within thirty (30) days of Effective Date of this Agreement.

8. Giggling Marlin Beach Club Easement. The Giggling Marlin Beach Club ("GMBC") currently operating at the Project is the sole property of Wagner and Games or his assignee, as equal owners, and all profits from the operation of GMBC will be distributed equally between Wagner and Games, and all capital expenditures will be paid equally by Wagner and Games. It is anticipated that as part of the master plan for the Project, at a future date the current physical location of GMBC may be changed and a new retail center may be constructed on the beach in the same general vicinity as the existing GMBC. The general location of the planned retail center is depicted on Exhibit K to this Agreement. BOD shall cause Property Company to grant GMBC, Wagner and/or Games an exclusive, irrevocable easement (the "Easement") for the use of the space within the Project (the "Easement Area") currently used by GMBC. The Easement will be at no cost to GMBC, including but not limited to any rent, dues, or special assessments, with the exception that GMBC shall be responsible for the payment of its own operating costs such as electricity and other utilities, and its prorata share of any direct operating and maintenance expenses associated with the retail space based on the square-footage of GMBC and the other retail space. GMBC will receive its reasonable water needs at BOD's cost. The Easement shall provide that in the event of any construction within the Easement Area and/or temporary relocation of the GMBC during construction of the permanent facility, BOD will relocate the GMBC to a comparable temporary location and will pay for such construction and for all improvements at the temporary location. BOD and/or Property Company will provide GMBC with reasonably comparable space to the Easement Area at no cost to GMBC. The new location will be at least the same size as the existing GMBC building and will be on the ground floor at the forefront of the new retail space. Upon completion of construction, GMBC shall have the first right to select ground floor space on the beach of the same size as the Easement Area in the new construction and BOD/Property Company, at its sole expense, shall build out the replacement space to a comparable level of finish as existing in the original Easement Area as of the date the new construction is completed. The Easement Area shall be used for restaurant and related retail purposes as they exist in the Easement Area as of the date of this Agreement. The Easement shall terminate in the event the Easement Area is used for purposes other than as provided for herein or Wagner and/or Games collectively own less than fifty one percent (51%) of GMBC. If either Wagner or Games buys out the other partner, the Easement will continue in full force and effect. During construction of the Easement Area, BOD will guarantee GMBC a space to continually operate its business and BOD shall pay for any and all costs of construction

the temporary location. Parking spaces shall be provided to GMBC for its use and the use of its patrons on the same or more favorable basis as the other retail tenants.

9. Lot Transfers. In exchange for and in partial consideration of Wagner's participation interest in the Developers Assets as set forth in the Prior Agreement and in exchange for the land swap needed to complete the 15<sup>th</sup> Hole of the Golf Course as set forth in Paragraph 5(g) of this Agreement, BOD shall cause Property Company to transfer the following six (6) Lots to Wagner, or his nominee, at no cost or expense except as provided for herein: (1) Lot 70 in Spanish Hill, (2) Lot 126 in Enclave 52, (3) Lot 127 in Enclave 52, (4) Lot 153 in Enclave 62, (5) Lot 154 in Enclave 62, and (6) Lot 102 in Section 40, as shown on the Vita Architects Illustrative Map dated April 1, 2008, attached hereto as Exhibit L.

a. All of the infrastructure improvements to each such Lot will be included at BOD's cost, with the exception that, at the time Wagner sells each such Lot to a third party, Wagner shall pay to BOD the sum of Forty Thousand Dollars (\$40,000) per Lot. Wagner reserves the right to assign such payment through escrow at the time of the conveyance to the third party.

b. BOD shall be solely responsible for the cost and expense of the transfer of each such Lot, including but not limited to transfer taxes and escrow, closing and title insurance costs.

c. BOD shall pay any and all costs and expenses to transfer each such Lot to Wagner, including but not limited to transfer or acquisition taxes, brokerage and sales commissions payable as a result of such transfer, costs of title insurance premiums, documentary stamp taxes, escrow fees and recording charges, and any taxes owed by BOD as a result of the transfer of such Lots. Such Lots shall be transferred to Wagner at the lowest possible value so as to minimize the acquisition/transfer taxes to be paid by BOD.

d. Each such Lot shall be conveyed free and clear of all HOA fees, liens, pledges, mortgages, security interests and encumbrances, but shall be subject to any Project-wide CC&Rs, with the understanding that Wagner will be subject to only those CC&Rs applicable to other Founders, Developers, Investors and Owners.

e. Transfer of each of these Lots shall occur as soon as is practicable, but no later than the Deadline.

f. With respect to such Lots, neither Wagner nor any of the Wagner Entities shall be charged any HOA dues or other assessments so long as such Lots continue to be owned by Wagner or any of the Wagner Entities.

g. Upon execution of this Agreement by all parties, Wagner will have the right to immediate possession of the Lots set forth above, regardless of the date of legal transfer.

h. So that the marketing of Wagner's Lots will not unduly compete with the lots being offered for sale by BOD, Wagner agrees that he will list no more than one (1) such Lot for sale during 2008 and no more than two (2) lots for sale during 2009. However, Wagner or a

Wagner Entity may at any time offer for sale or sell any of the Lots as a "pocket listing" and may trade any of the Lots in Wagner's sole discretion.

i. BOD shall provide to Wagner one (1) Phase I Golf Course/Club Membership, which Wagner can transfer to the buyer of one of his six Lots without cost to such buyer or Wagner. BOD shall also provide to Wagner five (5) additional Phase I Golf Course/Club Memberships at one-half of the then-prevailing Membership Fee which Wagner can transfer to the buyers of the other five (5) Lots. Wagner or the buyers of such Lots shall pay the Membership Fee to BOD at the time of close of escrow on each such Lot. No membership dues or other assessments shall be charged on any of the six (6) Memberships until each such Lot is transferred to a third party, then BOD shall charge any and all membership dues and other assessments as are charged to other Golf Course/Club Members.

j. Within ninety (90) days of the Effective Date of this Agreement, BOD shall mark the corners of each of the six (6) Lots with BOD's pole system in accordance with the Illustrative Map.

10. Golf Course 15<sup>th</sup> Hole Parcel Transfer. In order for BOD to properly design the 15<sup>th</sup> Hole of the Golf Course, it requires some additional parcels of land that Wagner currently owns. The parties agree to swap certain land needed by BOD for the 15<sup>th</sup> Hole with similar land and view type. To accomplish the goals of BOD, Wagner shall transfer certain of his property adjacent to the planned 15<sup>th</sup> Hole to BOD, and BOD shall transfer certain of its property adjacent to the planned 15<sup>th</sup> Hole to Wagner. Such properties are depicted in the drawing attached as Exhibit M to this Agreement (the "Rainbow" map will be modified so that the property line for the 15<sup>th</sup> Hole shall follow the existing road on the north-east side of the 15<sup>th</sup> Hole). BOD shall be solely responsible for the cost and expense of the transfer of such properties, including but not limited to acquisition/transfer taxes and escrow, closing and title insurance costs. BOD and Wagner shall transfer such property to the other at the lowest possible value so as to minimize the acquisition/transfer taxes to be paid by BOD. Such property shall be conveyed free and clear of all liens, pledges, mortgages, security interests and encumbrances, but shall be subject to any Project-wide CC&Rs. Such transfer shall occur as soon as is practicable, but no later than the Deadline. In exchange, Wagner shall receive one (1) Lot which is included in the six (6) Lots to be conveyed pursuant to Paragraph 9 of this Agreement. Further, BOD agrees to develop a release form describing the risk to adjacent property owners of golf balls coming from the Projects' Golf Courses and releasing BOD from any and all liability related to such risk. The release form shall be signed by any and all owners of property adjacent to any of the Projects' Golf Courses. Wagner agrees to obtain the transferee's signature on such release at the time of transfer to a third party of property he owns that are adjacent to the Projects Golf Courses, which release shall include a release of both Wagner and BOD from such risk.

11. Retaining Wall for 15<sup>th</sup> Hole Tee Box. As soon as is practicable, but no later than the Deadline, BOD shall develop a plan for construction of the retaining wall for the 15<sup>th</sup> Hole tee box, and shall submit such plan to Wagner for his review and input. Construction of the retaining wall for the 15<sup>th</sup> Hole Tee Box will be commenced in accordance with such plan as soon as is practicable and will be paid for in its entirety by BOD. BOD agrees to provide, at BOD's sole expense, all vegetation needed for landscaping the 15<sup>th</sup> Hole Tee Box and for providing maximum protection to the adjacent properties. BOD agrees to place the tees for the

15<sup>th</sup> Hole Tee Box as far to the south of the Tee Box as possible. The retaining wall will be constructed of materials native to the area and consistent with the rest of the golf course construction. BOD further agrees to place a meter high rock wall along the length of the 15<sup>th</sup> Hole Tee Box along with local vegetation to protect life and property along the north-east side of the Tee Box. BOD agrees to complete cleaning of the post-construction contamination on the beach (rock and any foreign objects that are mixed with the sand) consistent with the rest of the beach-front property in the vicinity of the 15<sup>th</sup> Hole Tee Box as soon as is practicable, but not later than sixty (60) days after completion of the retaining wall for the 15<sup>th</sup> Hole Tee Box. Wagner shall have the right to inspect and approve the location and design of the retaining wall, as well as the adequacy of the BOD's clean-up efforts related to contamination of the beach.

12. Transfer of Participation Interest in Various BOD Properties.

a. Transfer of Participation Interest in Rancho Villas Property. The parties acknowledge that, prior to April of 2006, the owners of the Rancho Villas Property, which consists of approximately fifteen (15) acres of property and is depicted in Exhibit N to this Agreement, were Rancho de Costa Plenty and Villas de Convenciones, each as 50% owners. Pursuant to the Ownership Interest Purchase Agreement dated April 29, 2006 (the "Prior Agreement"), Jennings and Fryzer each acquired a 25% participation interest in the Rancho Villas Property, leaving Wagner (as Rancho de Costa Plenty) with a 25% Participation interest and Games (as Villas de Convenciones) with a 25% Participation interest; however, that transfer has not yet been documented. The parties desire that BOD own all of the Rancho Villas Property. Therefore, in connection with and in consideration of this Agreement, Wagner, Games, Jennings and Fryzer shall transfer to BOD each of their participation interest in that property. BOD shall be solely responsible for the cost and expense of the transfer of such property to BOD, including but not limited to transfer or acquisition taxes, brokerage and sales commissions, if any, costs of title insurance premiums, documentary stamp taxes, escrow fees, closing costs and recording charges. Such property shall be conveyed free and clear of all liens, pledges, mortgages, security interests and encumbrances. Wagner, Games, Jennings and Fryzer shall transfer such property to BOD at the lowest possible value so as to minimize the acquisition/transfer taxes to be paid by BOD. The parties shall sign any and all documents necessary to effect such transfer no later than the Deadline. BOD hereby grants to Wagner and Wagner Entities unlimited access to such property and a ten (10) year easement (the "easement period") to use the bodega (storage unit) that Wagner is currently using on that property, free and clear of any obligation to pay rent, dues or any other charges. The easement period shall commence on the date of execution of this Agreement by all parties.

b. Transfer of Portion of Rancho Property. Pursuant to the Prior Agreement, Wagner retained a 25% participation interest in the approximately fifty-five (55) acres commonly referred to as the Rancho property that is adjacent to the Rancho Villas Property which is depicted in Exhibit O to this Agreement. In connection with and in consideration of this Agreement, Wagner shall release his 25% Participation interest in such properties to BOD at no cost or expense except as provided for herein. Such property shall be released to BOD free and clear of all liens, pledges, mortgages, security interests and encumbrances. Release of Wagner's participation interest in such properties shall be effective upon execution of this Agreement by all parties.

c. Release of Participation Interest in Four Other Properties. Pursuant to the Prior Agreement, Wagner retained a 25% participation interest in four other properties located in Los Planes and La Paz, commonly referred to as two houses and two lots, and depicted in Exhibit P to this Agreement. In connection with and in consideration of this Agreement, Wagner shall release his 25% participation interest in such properties to BOD at no cost or expense except as provided for herein. Such property shall be released to BOD free and clear of all liens, pledges, mortgages, security interests and encumbrances. Release of Wagner's participation interest in such properties shall be effective upon execution of this Agreement by all parties.

13. Property Sales and Marketing Research ("PSMR"). Wagner shall convey his Participation interest in PSMR, including any and all tangible assets of PSMR, to BOD as soon as is practicable, but no later than the Deadline, with the exception that Wagner or his assignee will be given exclusive ownership of the 2001 Ford F150 Pickup Truck and the 2001 Dodge Dakota 4-door Pickup Truck, as set forth below. BOD and/or the other appropriate entities shall execute such documents as may be necessary to effect the transfer of such vehicles to Wagner or his assignee.

a. 2001 Ford F150 Pickup Truck. Wagner, individually, purchased the 2001 Ford F150 Pickup Truck, which he used to travel to the Project to conduct business with respect to the Project the period of several years. The purchase price of the F150 Pickup Truck was added to Wagner's Capital Account. Wagner acknowledges that title to this vehicle has been transferred by PSMR to Wagner. The Kelly Blue Book Value of approximately Thirteen Thousand Two Hundred Eighty-Five Dollars (\$13,285) shall be deducted from Wagner's Capital Account on or before the Deadline.

b. 2001 Dodge Dakota 4-door Pickup Truck. Wagner, individually, purchased the 2001 Dodge 4-door Pickup Truck, which Diego Trevino has been using to travel to the Project and elsewhere. Although Wagner paid for that vehicle individually and has not received credit in his Capital Account for the purchase price or any other expenses related to this vehicle, the title has been held by PSMR. Therefore, PSMR shall provide a bill of sale to Wagner and shall transfer title to this vehicle to Wagner on or before the Deadline.

14. Landscaping Needs. Wagner and/or Wagner Entities shall have the ability to take various plant materials that are located within the Project for Wagner's future landscaping needs for his current residence at the Project if such plant material is removed as part of the Project's construction and landscaping process or is designated by the person responsible for the Project's landscaping as plant materials no longer needed for the Project.

15. Minimum Bulk Sale. If BOD desires to accept an offer which, if accepted, would result in the sale of all or substantially all of the Project, BOD shall convene a meeting of every person or entity having an ownership, participation or economic interest in the Project, including Wagner, for the purpose of voting on the sale.

16. Prudential California Realty Baja Sur. The provisions of Paragraph 13 of the Interim Agreement relating to Prudential California Realty Baja Sur ("Prudential") shall remain in full force and effect. In the event Prudential California Realty Baja Sur is unable to

satisfactorily perform such services, BOD shall choose another realty/marketing company to take Prudential's place.

17. Founders, Owners, Developer's and Investors' Rights. In the event that Property Company provides any Project perquisites or privileges to its Founders, Owners, Developers and/or Investors, or access and use of any Project facilities, such as a free membership in any golf course and club of the Project, or the use of any of the Project clubs, hotels, spas and or other special services, Wagner and his family will receive the same perquisites and privileges as those granted to the other Founders, Developers, Owners and Investors. Specifically, these perquisites and privileges shall include, but are not limited to, the following:

a. Discount on Future Property Purchases. Wagner and the Wagner Entities, shall be offered the most favorable discount offered to any other person, including Founders and Investors, for any properties offered for sale by BOD.

b. Founders Names on Plaques. The name of each of the Founders shall be included on plaques and/or signs commemorating the Founders which shall be located at the entrance to the Land, or at such other strategic location as BOD shall determine. On such plaques or signs, the names of the Founders shall appear as follows: Stephen and Sandy Games, Gary and Tracy Wagner, Kenneth O. and Cheryl Melby, Amalia LaCombe, Nyda Jones-Church and Kyle and Stacy Turley.

c. Project Membership Clubs. Wagner and his family shall receive memberships to any and all of the Project membership clubs, hotels, spas and/or special services, at the same or equal level as the other Founders, Owner, Developer or Investor, at no cost to Wagner or his family. Guests of Wagner or his family may accompany Wagner or his family at no charge to Wagner or his family.

d. Las Arenas Airport Usage. Wagner and Wagner Entities shall be entitled to the same or better benefits relating to the use of the Airport strip, facilities, and hangar sites, as are offered to any other Founder, Owner, Developer or Investor at no cost to Wagner or the Wagner Entities. However, in the case of the build out of hangars, Wagner will be responsible for his own hangar costs. The area allocated to Wagner for the hangar site shall be no less than 100 feet by 100 feet, or a size similar to those of any other Founder, Owner, Developer or Investor, whichever is greater, in the area of the hangar sites designated for the Founders. In the event a hangar is built by BOD for use by its Founders, Owners, Developers or Investors, Wagner will have the right to use such hangar at no cost to Wagner or Wagner Entities. In the event the Airport is relocated, as proposed by the Las Arenas group, at any time in the future, then all improvements, including but not limited to hangars, airstrip, power, windsocks, communications, FBO, security and fencing, etc., shall be paid by Las Arenas and/or their investors or successors. Wagner's rights as set forth in this paragraph shall continue regardless of what entity will own such Airport. Wagner is entitled to use the airstrip, airport and hangars at no cost to Wagner, including no landing fees, assessments, rents, or other usage charges.

e. Water Usage by Founders, Wagner and Wagner Entities. BOD shall establish a three-tiered consumption criteria and limits which shall apply equally to the



residences and other properties owned by Founders, including Wagner. Water usage within the established consumption limits shall be charged to Founders, including Wagner, as follows: (i) water usage up to a certain reasonable limit per residence shall be provided to the Founders free of charge in perpetuity; (ii) water usage above the free usage shall be provide to the Founders at BOD's actual cost; and (iii) water usage in excess of the established consumption limits shall be charged to the Founders at the most favorable rate charged by BOD to other residents of the Project. With respect to any lots sold by Wagner or the other Founders to third parties, such third parties shall be responsible for paying the standard rate charged by BOD to other residents of the Project. BOD shall supply to Wagner and Wagner Entities a sufficient amount, within reason, for Wagner's and Wagner Entities' properties as well as reasonable access to the Ranch's well site as needed by Wagner and Wagner Entities. In the event that BOD is unable to or fails to supply water to Wagner's properties as needed by Wagner, Wagner shall have the right to access any of BOD water sources, including reservoirs and well sites, in order to satisfy Wagner's water needs, at the prevailing rate based on Wagner's water usage consumption limits set forth above. In the event the reservoirs or other available water supplies are not able to supply such water needs, BOD shall cooperate with Wagner to refit water wells to allow for such access by Wagner.

f. Phase I Golf Course. With respect to the future Golf Course in Phase I, Wagner will be given one free membership for him and his family, at no cost to Wagner, including but not limited to membership fees, round charges, cart fees, dues or assessment obligations. In addition, Wagner and his family will be given lockers in the Locker Room designated for Founders, Owners, Developers or Investors of a size comparable to those given to the other Founders, Owners, Developers and Investors. Any guests playing golf with Wagner shall play free of charge. With respect to any other special guest privileges extended to other Founders, Developers, Investors or Owners, Wagner will be granted the same guest privileges, including but not limited to any special guest-fee program. In addition, Wagner will be granted four (4) additional Golf Course memberships, free of any membership fees, dues or assessment obligations, for Wagner to offer with the sale of lots owned by Wagner or Wagner Entities. In the event Wagner transfers or sells these additional memberships to a third party, such third party shall be responsible for all dues obligations after the date of the transfer, but shall not be responsible for any membership or transfer fees on those memberships.

g. Founders, Owners, Developers and Investors Events. Wagner and his family shall be informed of and be invited to all events designated for Founders, Owners, Developers or Investors that may occur from time to time. Wagner shall be entitled to bring up to four (4) invited guests to any such event.

h. Founders', Owners', Developers' and Investor Meetings. Wagner shall be informed of and be invited to any Founders', Owners, Developers and Investors' meetings, which shall take place a minimum of twice a year, at which time Wagner will be provided with detailed financial information related to the Project. Wagner shall be provided with updates on the status of the Project, including but not limited to sales, financial position and future plans.

i. Golf Vouchers. Wagner shall be entitled to give up to two (2) vouchers each month for a free round of golf at the Golf Course to be constructed in the Project to any

individuals whom he believes may be a potential purchaser of property in the Project, at no cost to Wagner. BOD will honor all such vouchers for a period of 15 years from the Effective Date.

j. Access to BOD Airplanes. Wagner and Wagner Entities will have the same rights as the other Founders, Owners, Developers and Investors with respect to reasonable access to any airplane owned, leased or used by BOD or a related entity at BOD's actual cost on a per hour billed rate. If fees are waived for Jennings, Fryzer, Games or Church's personal use, such fees will also be waived for Wagner and Wagner Entities. Otherwise, Wagner will reimburse BOD for its actual cost of such airplane on the most favorable per hour billed rate actually charged to the other Founders, Owners, Developers and Investors. Wagner and his family and guests will also be granted "jump on" use of such airplanes (e.g., if a BOD airplane is flying to a location that Wagner and his guests want to fly) at no charge to Wagner, his family and his guests. BOD will advise Wagner via email on a monthly or more frequent basis of the flight schedule for each airplane showing destination, dates, times of departure and the number of available seats, which shall then be available on a first-come, first-served basis.

k. Boat Moorings and Marina Slip. Wagner will retain his right to continue to use the two mooring sites he is currently using. Upon the establishment of a mooring plan for the Project, Wagner will be granted the same rights as the other Founders, Owners, Developers and Investors, but no less than the right to unlimited use of two similar mooring sites. In the event BOD proceeds with the development of a marina, whether on site or off site, Wagner will be granted the right to one marina slip no smaller than to accommodate a fifty (50) foot boat or the same as any other Founder, Owner, Developer or Investor, whichever is larger, free of any membership fees, maintenance charges, special assessments, rent or dues obligations. Wagner's mooring sites and slips shall be in the same general location as his existing mooring sites. Wagner will have the right to choose his mooring sites and marina slips in a lottery with equal rights as the other Founder, Developer, Investor or Owner.

l. Access to BOD's Property. Wagner and his family shall have unlimited access to all BOD property, including but not limited to land, roads and gates as any other Founder, Developer, Investor or Owner, and shall be provided with a key to all gates constructed on Project property.

m. HOA Dues and Assessments. Neither Wagner nor any of the Wagner Entities shall be charged HOA dues or other assessments on any of their property owned by them in perpetuity, with the exception that, in the event Wagner and/or any of the Wagner Entities sell property to a third party, all applicable HOA dues and assessments will be charged to the new homeowner from the effective date of the transfer.

n. Heavy Equipment. Wagner and BOD have entered into a Purchase Agreement dated February 20, 2007, with respect to the transfer of Wagner's interest in certain heavy equipment. The terms of that Purchase Agreement remain in full force and effect and Wagner shall continue to enjoy the benefits granted to him thereunder, including but not limited to the right to use any or all of the heavy equipment owned or used by BOD or the Project at the discounted rate of 35% off of the standard hourly rates for such equipment in Cabo San Lucas and LaPaz. In addition, Wagner and Wagner Entities shall be given the benefit of any more favorable rental programs that are given to other Founders, Owners, Developers or Investors.

n. Use of BOD and Project Facilities. Wagner and Wagner Entities shall have the same right to unlimited use of all facilities of BOD and the Project as that granted to any other Founder, including but not limited to boat ramps, etc., at no cost or expense to Wagner or Wagner Entities.

p. Golf Course and Club Reciprocity Programs. To the extent that the BOD Founders, Owners, Developers or Investors negotiate any resort or golf course or club reciprocity programs with any other resort or golf course or club, Wagner and his family will be granted the same reciprocity rights as the other Founders, Owners, Developers or Investors.

q. No Capital Call Position and No Liability on Any BOD Loans. Neither Wagner nor any Wagner Entity will be in a capital call position with respect to the Project or any of the BOD's obligations. Neither Wagner nor any Wagner Entity will be obligated to pay any loan principal, interest, costs, fees, or any other expenses related to any loans made to BOD or which are secured in whole or in part by the Project.

17. Time is of the Essence and Damages for Delays. The parties to this Agreement agree that time is of the essence of this Agreement, and that delays in satisfying their respective obligations under this Agreement will be detrimental to the other parties. The parties further agree to use their best efforts to satisfy their respective obligations as soon as is practicable under the circumstances. However, in order to prevent unreasonably delays, the parties agree to the following liquidated damages and agree that they are reasonable as the damages for such delays cannot be accurately determined: The parties agree that, in the event they fail to meet the Deadline or any other time frame set forth in this Agreement, they shall pay to the other party One Hundred Fifty Dollars (\$150.00) for each day they delay in satisfying each such Deadline. In the event that either party can establish that the delay in meeting a specific deadline was due solely to circumstances and/or delays outside of their control, the Deadline shall be extended one (1) day for each day that such other delays continued to occur. The parties agree that, with respect to any act on the part of BOD or Games herein that requires action on the part of a governmental agency, BOD and/or Games shall submit, by the Deadline, any and all documents, fees and other items required by the governmental agency to perform the tasks the governmental agency is being requested to perform. In the event any party is entitled to liquidated damages as set forth in this Paragraph, such liquidated damages will be added to or deducted from, as appropriate, Wagner's Capital Account, and which shall be distributed in accordance with the provisions of this Agreement.

18. Further Assurances and Cooperation. Each of the parties hereby agree to execute any and all other documents and take any and all further steps which may be necessary or appropriate to further or implement the terms of this Agreement, as may be requested from time to time by any of the other of the parties, including without limitation, Games, Wagner, BOD and other related entities which any of the parties has control. Wagner will also make himself available to answer any questions related to the historical operation of the Project as reasonably needed.

19. Accounting and Records. BOD shall prepare and maintain its books and records in accordance with generally accepted accounting practices consistently applied during the periods involved, and shall retain all books and records for any period required by the laws of the

United States and Mexico. In connection with each payment made to Wagner, BOD shall submit to Wagner an accounting with respect to the calculation of such payment. BOD shall submit to Wagner such additional reports, records, data, information and financial statements as Wagner may reasonably require, and which relate to a determination of amounts due to Wagner hereunder. Wagner will be provided with detailed up-to-date financial information regarding the Project at least two (2) times each year.

20. Project Information and Audit Rights. The parties acknowledge that Wagner will have a significant continuing financial interest in the Project. Therefore, Wagner shall be provided any and all information regarding the status of the Project that may affect his participation and financial interest, including but not limited to financial information, sales information, maps, coordinates, and other information as reasonably requested by Wagner within five (5) business days of each such request. Not more than twice during any calendar year, Wagner (or his agents) may inspect copy and audit all of the documents and information specified in Paragraph 19 and the books, records and tax returns of BOD, at any time during normal business hours upon ten (10) business days prior notice. In addition, Wagner shall be provided with any and all such information that is provided to any other Founder, Developer, Investor or Owner. In the event any such inspection or audit reveals an underpayment by BOD to Wagner, BOD shall, within ten (10) business days of receipt of notice, pay Wagner the amount of the underpayment. In the event of an underpayment of 5% or more of the amount owed for any period, BOD shall reimburse Wagner for all reasonable costs and expenses of such inspection or audit.

21. Representations Regarding Participation Interests. If any Founders, Developers or Investors provide loans to BOD, BOD hereby represents that none of these individuals has the right, at any time, to foreclose on the Project or any part thereof.

22. Indemnification. BOD hereby agrees to indemnify, defend and hold harmless Wagner, Wagner Entities, Wagner's family, his heirs and any related companies and companies that Wagner controls that are or have been related to BOD, from and against any and all liabilities, claims, losses, actions, damages, fines, costs, expenses, lawsuits, causes of action and demands (collectively "Actions"), including, without limitation, attorneys' fees and other costs or expenses arising out of the Project and/or breach of any of Wagner's and/or BOD's representations and warranties, known or unknown, and breach of any of BOD's obligations pursuant to this Agreement. Within a reasonable period of time, Wagner shall notify BOD upon learning of any Actions for which he might seek indemnification. BOD's obligation to indemnify hereunder shall be reduced if and to the extent that the failure to give such notice prejudices BOD. BOD may participate in the defense of all Actions against Wagner where BOD may be held liable pursuant to this Paragraph. Neither party shall settle any Action on behalf of the other party without the other party's prior approval. Wagner shall at all times have the right to retain counsel of his own choosing in connection with any Action.

23. Releases by Wagner. EFFECTIVE AS OF THE EFFECTIVE DATE AND EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, WAGNER SHALL RELEASE PROPERTY COMPANY AND BOD AND THEIR MEMBERS, MANAGERS, ADVISORS, AND OTHER AGENTS AND EACH OF THEIR RESPECTIVE MEMBERS, PARTNERS, TRUSTEES, BENEFICIARIES, EMPLOYEES, OFFICERS, DIRECTORS,

OWNERS AND SHAREHOLDERS (THE "RELEASED PARTIES") FROM ALL CLAIMS WHICH WAGNER OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MEMBER, SERVANT, OWNER, SHAREHOLDER OR OTHER PERSON OR ENTITY ACTING ON WAGNER'S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH WAGNER (EACH, A "WAGNER RELATED PARTY") HAS OR MAY HAVE ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE PROJECT, THE PARTICIPATION INTERESTS, OR THE PRIOR AGREEMENTS INCLUDING WITHOUT LIMITATION, ANY CLAIM FOR INDEMNIFICATION OR CONTRIBUTION OR OTHERWISE (COLLECTIVELY, "RELEASED MATTERS"), AND WAGNER SHALL NOT LOOK TO BOD OR ANY OF THE RELEASED PARTIES IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION. THIS RELEASE SHALL NOT APPLY TO ANY OF BOD'S OBLIGATIONS UNDER THIS AGREEMENT OR ANY REPRESENTATIONS OF BOD CONTAINED IN THIS AGREEMENT.

WITH RESPECT TO THE RELEASED MATTERS, WAGNER FURTHER ACKNOWLEDGES IT HAS HAD FULL ADVICE OF LEGAL COUNSEL OF WAGNER'S CHOICE AND HAS READ AND CONSIDERED THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

WAGNER HEREBY EXPRESSLY WAIVES AND RELINQUISHES ANY RIGHT OR BENEFIT WHICH WAGNER HAS OR SHALL HAVE UNDER CALIFORNIA CIVIL CODE SECTION 1542 AS IT RELATES TO THE RELEASED MATTERS, AND IN THIS CONNECTION WAGNER ACKNOWLEDGES AND HEREBY EXPRESSLY AGREES THAT THIS AGREEMENT SHALL EXTEND TO ALL UNKNOWN, UNSUSPECTED AND UNANTICIPATED CLAIMS OR DAMAGES, AS WELL AS THOSE WHICH ARE NOW DISCLOSED, WITH RESPECT TO THE RELEASED MATTERS.

WAGNER'S INITIALS: *JW*

24. Release by BOD and Games. EFFECTIVE AS OF THE EFFECTIVE DATE AND EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, BOD AND GAMES SHALL RELEASE WAGNER AND HIS FAMILY, WAGNER ENTITIES, HEIRS, ADVISORS, COMPANIES, AND OTHER AGENTS AND EACH OF THEIR RESPECTIVE MEMBERS, PARTNERS, TRUSTEES, BENEFICIARIES, EMPLOYEES, OFFICERS, DIRECTORS, OWNERS AND SHAREHOLDERS (THE "RELEASED PARTIES") FROM ALL CLAIMS WHICH BOD AND GAMES OR ANY OF THEIR AGENTS, REPRESENTATIVES, AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS, PARTNERS,

MEMBERS, SERVANTS, OWNERS, SHAREHOLDERS OR OTHER PERSONS OR ENTITIES ACTING ON BOD'S OR GAMES' BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH BOD OR GAMES (EACH, A "BOD-RELATED OR GAMES-RELATED PARTY") HAS OR MAY HAVE ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE PROJECT, THE PARTICIPATION INTERESTS, OR THE PRIOR AGREEMENTS INCLUDING WITHOUT LIMITATION, ANY CLAIM FOR INDEMNIFICATION OR CONTRIBUTION OR OTHERWISE (COLLECTIVELY, "RELEASED MATTERS"). AND BOD AND GAMES SHALL NOT LOOK TO WAGNER OR ANY OF THE RELEASED PARTIES IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION. THIS RELEASE SHALL NOT APPLY TO ANY OF WAGNER'S OBLIGATIONS UNDER THIS AGREEMENT OR ANY REPRESENTATIONS OF WAGNER CONTAINED IN THIS AGREEMENT.

WITH RESPECT TO THE RELEASED MATTERS, BOD AND GAMES FURTHER ACKNOWLEDGE THAT THEY HAVE HAD FULL ADVICE OF LEGAL COUNSEL OF THEIR CHOICE AND HAVE READ AND CONSIDERED THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BOD AND GAMES HEREBY EXPRESSLY WAIVE AND RELINQUISH ANY RIGHT OR BENEFIT WHICH BOD OR GAMES HAVE OR SHALL HAVE UNDER CALIFORNIA CIVIL CODE SECTION 1542 AS IT RELATES TO THE RELEASED MATTERS, AND IN THIS CONNECTION BOD AND GAMES ACKNOWLEDGE AND HEREBY EXPRESSLY AGREE THAT THIS AGREEMENT SHALL EXTEND TO ALL UNKNOWN, UNSUSPECTED AND UNANTICIPATED CLAIMS OR DAMAGES, AS WELL AS THOSE WHICH ARE NOW DISCLOSED, WITH RESPECT TO THE RELEASED MATTERS.

BOD'S INITIALS:



GAMES' INITIALS:

25. Disclaimer. Each of the parties hereto, by entering into this Agreement or by taking any action hereunder or with respect to the Project, shall not be deemed a partner or joint venturer of any other party hereto or a fiduciary of any other party. Each of the parties hereto acknowledge and agree that they may own, operate, manage and dispose of their own property as they each determine in their sole and absolute discretion and that they each have no duty to any other party except as expressly provided for in this Agreement. None of the parties shall have personal liability for the promises made under this Agreement except as expressly provided for

in this Agreement. In no event shall any of the parties be liable to any of the other parties for punitive, exemplary or consequential damages, including, without limitation, lost profits, whatever the nature or breach by the party hereunder. Wagner acknowledges and agrees that nothing contained in this Agreement creates an ownership interest in the Project except with respect to the property to be conveyed to Wagner in accordance with this Agreement. The parties acknowledge and agree that this Agreement creates an economic interest in the Project as set forth herein. Each party expressly waives any right to file a lis pendens against the property of any other party or any part thereof.

26. Late Charges and Interest. In the event that any payment due to Wagner hereunder is not paid when due, BOD shall pay to Wagner a late charge of six percent (6%) of the amount due, and shall pay interest at the rate of ten percent (10%), compounded monthly, on the amount due from the due date until the payment, all late charges, and all accrued interest is made in full.

27. Remedies. In the event BOD and/or Games breaches any of the agreements set forth in this Agreement, Wagner shall be entitled to any and all remedies available to him under the laws of the United States and/or Mexico, including but not limited to injunctive relief, declaratory relieve, and a money judgment.

28. Dispute Resolution/Judicial Reference

a. Non-binding Private Arbitration. Prior to commencing any judicial reference action as provided for in this Paragraph, any controversy or claim arising out of or relating to this Agreement shall be submitted to non-binding private arbitration in a mutually agreeable California location, in accordance with the commercial arbitration rules of the American Arbitration Association or other similar standards. The parties shall bear the arbitrator's fees and any filing fees equally.

b. Dispute Resolution. Any dispute, claim, controversy or action (collectively "Dispute") arising directly or indirectly out of or in any way relating to this Agreement which is not resolved by the private arbitration as provided for in paragraph 14 herein, shall be resolved by a general judicial reference pursuant to California Code of Civil Procedure Section 638, and/or other successor or applicable statute, court rule or provision of law, in accordance with the provisions set forth in this Agreement.

c. Judicial Reference. Any dispute between the parties shall be tried by a judicial referee as judge pro tem under an order of general judicial reference to try and determine all issues of fact and law, whether legal or equitable, to be chosen by the parties from a list of retired California superior, appellate and supreme court judges and justices. The parties expressly waive any right to a trial by jury. If the parties are unable to agree, then the retired judge or justice who shall act as the referee shall be appointment by the Los Angeles Superior Court in accordance with Code of Civil Procedure Section 640, and/or other successor or applicable statute, court rule, or provision of law, with each of the parties entitled to only one disqualification pursuant to Code of Civil Procedure Section 170.6, which right to disqualification must be exercised, if at all, at the hearing on the petition to obtain the judicial

reference order and/or to have the referee hearing on the petition to obtain the judicial reference order and/or to have the referee appointed. The action shall be conducted and the issues determined in compliance with all judicial rules and all statutory and decisional law of the state of California as if the matter were formally litigated in Superior Court and not by way of judicial reference.

d. Cost. The cost of the reference shall initially be borne equally by the parties, but the prevailing party shall be entitled to obtain reimbursement for its share of the reference cost and shall be awarded its attorneys' and experts' fees and all other costs and expenses of litigation.

e. Procedures. The referee shall conduct and decide all pre-trial, trial and post-trial procedures which may arise as if the matter were formally litigated in the Superior Court. The judgment entered upon the decision of the referee shall be subject to all post-trial procedures and to appeal in the same manner as an appeal from any order or judgment in a civil action. All rules of evidence as set forth in the Evidence Code, all rules of discovery as set forth in the Code of Civil Procedures, other applicable California and federal statutory and decisional law, and all rules of court shall be applicable to any proceeding before the referee.

f. Specific Enforcement. This reference provision may be specifically enforced by the filing of a complaint or petition or motion seeking specific enforcement as may be directed by applicable statute and/or rule of court. The parties may apply to the Los Angeles Superior Court for injunctive or other pre-judgment relief prior to the appointment of the referee, and such application and related proceedings prior to the appointment of the referee shall not be a waiver of the enforceability and application of this judicial reference provision to such Dispute or any other Dispute.

g. Governing Law: Venue. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California. The parties hereby consent to the exclusive jurisdiction and venue of the Los Angeles Superior Court, and specifically recognize the waiver of their right to remove any action to federal court on the basis of diversity jurisdiction or on any other basis.

29. Amendments. This Agreement may only be amended in writing signed by each of the parties to this Agreement.

30. Attachments. The parties acknowledge that, as of the date of execution of this Agreement by all parties, not all of the attachments described herein are actually attached. The parties agree to use their best efforts to finalize any and all such attachments and BOD agrees to provide Wagner with a complete copy of this Agreement, along with all attachments, no later than April 30, 2008.

31. Binding Effect and Assignment. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, nominees, successors, legal representatives and assigns. This Agreement may not be assigned by any of the parties without the prior written consent of Wagner. Upon Wagner's approval to such an assignment, the original party shall no longer be liable to Wagner for any amounts due Wagner after such



assignment, provided the assignee acknowledges in writing that it is bound by the terms and conditions of this Agreement.

32. Caption Headings. Captions at the beginning of each numbered or lettered Paragraph of this Agreement are solely for the convenience of the parties and shall not be deemed part this Agreement.

33. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes any prior written or oral agreement or statement by the parties or any third party concerning the subject matter of this Agreement, with the exception of the Purchase Agreement-Construction Equipment dated February 20, 2007, which shall remain in full force and effect. This Agreement may only be amended in writing, signed by the parties hereto.

34. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one agreement.

35. Notices. All notices required to be given under this Agreement shall be in writing and shall be transmitted either by personal delivery, overnight courier (such as Federal Express) or through the facilities of the United States Post Office, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be effective upon delivery, if delivered by personal delivery or overnight courier, and forty-eight (48) hours after dispatch, if mailed in accordance with the above. Notices to the respective parties shall be sent to the following addresses unless written notice of a change of address has been previously given pursuant hereto:

Wagner: Gary M. Wagner  
12152 Moorpark Street, Suite 304  
Studio City, CA 91604  
Fax: 818-907-7301  
Email: [sr.gw@comcast.net](mailto:sr.gw@comcast.net)

With a copy to: Bankhead Nesthus & Howard LLP  
Attn: Laurie J. Howard  
4730 Rancho Del Mar Trail  
San Diego, CA 92130-5210  
Fax: 858-720-8302  
Email: [howard@bnhllp.com](mailto:howard@bnhllp.com)

BOD: Grand Bahia de los Suenos S. de R.L. de C.V.  
Attn: Paul Jennings  
11859 Wilshire Boulevard, Suite 600  
Los Angeles, California 90025

With a copy to:

Russ, August, Kabat & Kent  
Attn.: Steven M. Siemens  
5959 Topanga Canyon Boulevard, Suite 130  
Woodland Hills, CA 91367

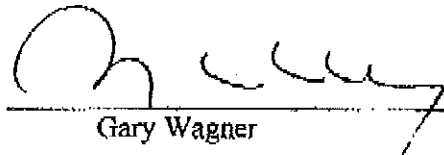
36. Waivers. The failure by BOD or Wagner to insist upon strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any subsequent breach or default in any of the terms or conditions hereof.

37. Partial Invalidity. If any portion of this Agreement as applied to either party or to any circumstances shall be adjudged by a court of competent jurisdiction to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

*[Signatures on following page]*


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

"Wagner"

  
\_\_\_\_\_  
Gary Wagner


"Rancho"

Rancho de Costa Plenty S de RL de CV

By:   
Name: GARY WAGNER  
Title: ADMINISTRADOR

"WFTrust"

Wagner Family Trust

By:   
Name: GARY WAGNER  
Title: MANAGER

"Games"

\_\_\_\_\_  
Stephen C. Games

"BOD"

Grand Bahia de los Suenos S. de R.L. de C.V.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

"Wagner"

\_\_\_\_\_  
Gary Wagner

"Rancho"

Rancho de Costa Plenty S de RL de CV

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"WFTrust"

Wagner Family Trust

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"Games"

  
Stephen C. Games

"BOD"

Grand Bahía de los Suenos S. de R.L. de C.V.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

"Wagner"

\_\_\_\_\_  
Gary Wagner

"Rancho"

Rancho de Costa Plenty S de RL de CV

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"WFTrust"

Wagner Family Trust

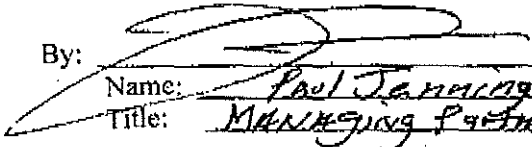
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"Games"

\_\_\_\_\_  
Stephen C. Games

"BOD"

Grand Bahia de los Sueños S. de R.L. de C.V.

By:   
Name: Paul Jennings  
Title: MANAGING PARTNER

Schedule of Exhibits

- Exhibit A Description of Bay of Dreams Project
- Exhibit B Wagner's Participation Interests
- Exhibit C Prior Agreements
- Exhibit D Summary of Pre-2006 Expenses Paid by BOD
- Exhibit E Map of Phase I of Project
- Exhibit F Map of Phase II of Project
- Exhibit G Maps of Phase II of Project
- Exhibit H Map of Phase I Subdivisions
- Exhibit I Agreement with Rafael M. Brito Anderson
- Exhibit J Founders' Capital Accounts
- Exhibit K Map of Location of GMBC
- Exhibit L Map of Six Lots Selected by Wagner
- Exhibit M Map of 15<sup>th</sup> Hole Golf Course Land Swap (i.e., "Rainbow Map")
- Exhibit N Map of Rancho Villas Property to be retained by BOD
- Exhibit O Map of Rancho Property and Property to be Retained by BOD
- Exhibit P Map of Four Other Properties to be Retained by BOD

**EXHIBITS TO AGREEMENT OMITTED**

EXHIBIT "B"



### ADDENDUM TO PARTICIPATION AGREEMENT

THIS ADDENDUM, dated as of the 30<sup>th</sup> day of June, 2008, modifies the PARTICIPATION AGREEMENT ("Participation Agreement") dated as of the 17<sup>th</sup> day of April, 2008 by and between Gary Wagner ("Wagner"), Rancho de Costa Plenty SRL de CV ("Rancho"), and the Wagner Family Trust ("WFTrust") (Wagner, Rancho and WFTrust are sometimes collectively referred to herein as ("Wagner")), and Stephen C. Games ("Games") and Grand Bahia de los Sueños S. de R.L. de C.V. ("BOD"), and is made with reference to the following facts:

#### Recitals:

A. Wagner, Games and BOD entered into a Participation Agreement dated as of the 17<sup>th</sup> day of April, 2008.

B. Subsequent to the execution of the Participation Agreement, Wagner, Games and BOD entered into a Termination Agreement dated as of the 30<sup>th</sup> day of June, 2008. The Termination Agreement provided that Wagner would surrender his interest in the GMBC and that the restaurant site, certain furniture, fixtures and inventory of GMBC would be transferred to BOD in exchange for certain consideration, which included the transfer of certain lots and Golf Club/Course Memberships to Wagner.

C. Since the Participation Agreement provided for the transfer of certain lots to Wagner and the granting of certain Golf Club/Course Memberships to Wagner, the parties desire to modify the terms of the Participation Agreement to reflect the additional consideration for the Termination Agreement.

D. Further, in order to complete certain transactions set forth in the Participation Agreement, BOD has requested and Wagner has granted an extension of the Deadline set forth in that Agreement.

E. The parties hereto desire to provide for such participation and benefits, upon all of the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein, the parties hereto agree as follows:

1. The definition of "Deadline" set forth in Paragraph 1 of the Participation Agreement shall be modified as follows:

"Deadline" shall mean that upon execution of this Agreement by all parties, BOD will immediately commence with the preparation of any and all documentation necessary to submit to any governmental agency in order to effect the transfers of property contemplated herein, and shall have submitted any and all such documentation and required fees to such governmental agency no later than July 15, 2008."

2. Paragraph 9 of the Participation Agreement is modified as follows:

"Lot Transfers. In exchange for and in partial consideration of Wagner's participation interest in the Developers Assets as set forth in the Prior Agreement and in exchange for the land swap needed to complete the 15<sup>th</sup> Hole of the Golf Course as set forth in Paragraph 5(g) of this Agreement, BOD shall cause Property Company to transfer the following seven (7) Lots to Wagner, or his nominee, at no cost or expense except as provided for herein: (1) Lot 58 in Spanish Hill (Section 43), (2) Lot 115 in Enclave 52, (3) Lot 116 in Enclave 52, (4) Lot 143 in Enclave 62, (5) Lot 144 in Enclave 62, (6) Lot 222 in Section 45, and (7) Lot 223 in Section 45, as shown on the Revised Vita Architects Illustrative Map dated April 1, 2008, attached hereto as Exhibit Q."

3. Paragraph 9(i) of the Participation Agreement is modified as follows:

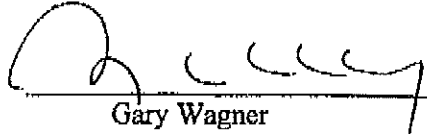
"i. BOD shall provide to Wagner three (3) Phase I Golf Course/Club Membership, which Wagner can transfer to a third party without cost to such third party or Wagner. BOD shall also provide to Wagner four (4) additional Phase I Golf Course/Club Memberships at one-half of the then-prevailing Membership Fee which Wagner can transfer to third parties. Neither Wagner nor the third parties shall pay the Membership Fees to BOD at the time of transfer of the Memberships. No membership dues or other assessments shall be charged on any of the seven (7) Memberships until each such transfer is finalized, then BOD shall charge any and all membership dues and other assessments as are charged to other Golf Course/Club Members."

4. With the exception of the modifications set forth herein, all other provisions of the Participation Agreement shall remain in full force and effect.

*[Signatures on following page]*


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

"Wagner"

  
\_\_\_\_\_  
Gary Wagner


"Rancho"

Rancho de Costa Plenty S de RL de CV

By:   
\_\_\_\_\_  
Name: GARY WAGNER  
Title: ADMINISTRADOR

"WFTrust"

Wagner Family Trust

By:   
\_\_\_\_\_  
Name: GARY WAGNER  
Title: MANAGER

"Games"

\_\_\_\_\_  
Stephen C. Games

"BOD"

Grand Bahía de los Suenos S. de R.L. de C.V.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

"Wagner"

\_\_\_\_\_  
Gary Wagner

"Rancho"

Rancho de Costa Plenty S de RL de CV

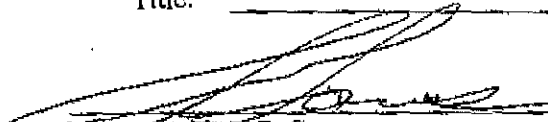
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"WFTrust"

Wagner Family Trust

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"Games"

  
\_\_\_\_\_  
Stephen C. Games

"BOD"

Grand Bahia de los Suenos S. de R.L. de C.V.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

"Wagner"

\_\_\_\_\_  
Gary Wagner

"Rancho"

Rancho de Costa Plenty S de RL de CV

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

"WFT Trust"

Wagner Family Trust

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

"Games"

\_\_\_\_\_  
Stephen C. Games

"BOD"

Grand Bahia de los Suenos S. de R.L. de C.V.

By: \_\_\_\_\_

Name: Paul Jennings

Title: Managing Partner