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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, a New Jersey
corporation; PRUDENTIAL-LV LLC, a
Delaware limited liability company,

Plaintiffs,

vs.

TURNBERRY WEST, L.L.C., a Nevada
limited liability company; TURNBERRY
RESIDENTIAL PIPELINE, L.P., a Delaware
limited partnership; TURNBERRY
RESIDENTIAL LIMITED PARTNER, L.P.,
a Delaware limited partnership; and JEFFREY
SOFFER, an individual,

Defendants.

Case No.

COMPLAINT

For their Complaint against defendants, plaintiffs The Prudential Insurance
Company of America and Prudential-LV, LLC ("Plaintiffs") allege:

NATURE OF ACTION

1. By this action, Plaintiffs seek to recover compensatory damages from
defendants Turnberry West, L.L.C. and Turnberry Residential Pipeline, L.P. (collectively,
"Developer") as a result of their breaches of contract, fiduciary duty, and bad faith.
Plaintiffs seek to recover compensatory damages from defendants Jeffrey Soffer and

1 Turnberry Residential Limited Partner, L.P. (collectively “Guarantors”) for their failure to
2 honor two guarantees. Plaintiffs also seek declaratory relief.

3 2. Plaintiffs and Developer entered into a limited partnership to develop,
4 construct, market and sell 636 luxury condominiums. The limited partnership is named
5 Turnberry Towers, L.P. (the “Partnership”), and the project is commonly known as
6 Turnberry Towers (the “Project”).

7 3. The Partnership’s terms and conditions are documented in written contracts
8 among the partners that set forth: (a) Plaintiffs’ maximum financial obligation with respect
9 to the Project; (b) Developer’s commitment to contribute \$10,000,000 to pay down the
10 construction loan on the Project; (c) Developer’s promise to fund costs and expenses in
11 excess of the Project’s budget; and (d) the order and extent to which the Partnership’s
12 managing general partner (Turnberry West, L.L.C.) is required to disburse condominium
13 sales proceeds and deposits collected on the Project.

14 4. Plaintiffs have met their obligations under the contracts – and more. They
15 have contributed over \$164,000,000 to the Project and this sum increases daily. By
16 contrast, Developer has not honored its promises and responsibilities. For example,
17 Developer has not contributed the agreed-upon \$10,000,000 to pay down the construction
18 loan; nor has it funded the costs and expenses in excess of the Project’s budget.

19 5. Developer also breached its fiduciary duties to Plaintiffs by, among other
20 things, wrongfully applying condominium sales proceeds and earnest money deposits to
21 Developer’s personal benefit. Developer’s misconduct has left Plaintiffs on the hook for
22 substantially more – in excess of \$35,000,000 – than Plaintiffs’ maximum financial
23 obligation with respect to the Project; and their damages continue to accrue.

24 6. Plaintiffs have been forced to assume control of the Project due to
25 Developer’s misconduct and been compelled to honor and satisfy obligations that
26 Developer had promised to honor and satisfy under the contracts, including liens, claims,
27 tax obligations, and other costs and expenses.

28

7. Defendant Jeffrey Soffer is the beneficial owner and principal of Developer. Mr. Soffer is also principal of defendant Turnberry Residential Limited Partner, L.P. He and Turnberry Residential Limited Partner, L.P. executed two guarantees in connection with the Project. Their first guarantee, which is in favor of Plaintiffs, promised that Developer would meet its financial obligations under the contracts. Their second guarantee, which was in favor of a third-party lender, promised that the Partnership would meet its repayment and other obligations under a construction loan. Plaintiffs have, for good consideration, acquired the second guarantee from the lender. Like Developer, however, Guarantors have failed to honor their promises and are in breach of both guarantees.

PARTIES

8. Plaintiff The Prudential Insurance Company of America (“Prudential”) is a New Jersey corporation that has its principal place of business in New Jersey. Prudential is registered to conduct and is conducting business in the State of Nevada.

9. Plaintiff Prudential-LV LLC (“PLV”) is a Delaware limited liability company. PLV is registered to conduct and is conducting business in the State of Nevada. Prudential is the sole manager and member of PLV.

10. Defendant Turnberry West, L.L.C. (“TW”) is a Nevada limited liability company that is registered to conduct and is conducting business in the State of Nevada.

11. Defendant Turnberry Residential Pipeline, L.P. (“TP”) is a Delaware limited partnership that is registered to conduct and is conducting business in the State of Nevada.

12. Defendant Turnberry Residential Limited Partner, L.P. (“TRLP”) is a Delaware limited partnership that is registered to conduct and is conducting business in the State of Nevada.

13. Defendant Jeffrey Soffer (“Soffer”) is an unmarried resident of Florida. He conducts business in the State of Nevada individually and through several entities that he controls.

JURISDICTION AND VENUE

14. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds the sum or value of \$75,000 and complete diversity of citizenship exists between defendants and Plaintiffs, including their respective partners and members as applicable.

15. The Court has personal jurisdiction over defendants TW, TP, TRLP, and Soffer under either specific or general jurisdiction because each defendant operates, conducts, engages in, or carries on a business or business venture in the District of Nevada and is engaged in substantial and not isolated activity within the District. In addition, the defendants have consented to the exercise of jurisdiction by this Court in the relevant contracts.

16. Venue is proper in the District of Nevada pursuant to 28 U.S.C. § 1391(a) because at least one defendant resides in the District, a substantial part of events giving rise to this action occurred in the District, and a substantial part of the property at issue is situated in the District. In addition, each defendant transacts business in the District, is subject to personal jurisdiction in the District and has consented to venue in Clark County and this Court.

FACTUAL BACKGROUND

The Turnberry Towers Project

17. The Partnership was formed as a Nevada limited partnership to own, construct, develop, operate, manage, improve, finance, maintain and sell 636 condominium units contained in two 45-story high-rise condominium buildings located at the northeast corner of Karen Avenue and Paradise Road in Las Vegas, Nevada.

18. The Partnership consists of four partners. TW and PLV were its General Partners. Prudential and TP were its Limited Partners.

19. The Partnership adopted the Second Amended and Restated Limited Partnership Agreement of Turnberry Towers, L.P. (the "Partnership Agreement") on

1 February 9, 2006, which sets forth the terms that govern the affairs of the Partnership and
2 the conduct of its business.

3 20. The Partnership Agreement designated TW as the Managing General Partner
4 and vested management and control of the Partnership in TW.

5 21. By virtue of its management position, TW, on behalf of the Partnership,
6 collected earnest money deposits ("Deposits") and condominium net sales proceeds
7 ("Proceeds") from customers who entered into contracts to purchase individual
8 condominium units in the Project.

9 *Three Agreements*

10 22. On February 9, 2006, the Partnership, Plaintiffs, and Developer entered into
11 the Condominium Development Agreement with Agreement to Make Subsequent
12 Contribution (the "Contribution Agreement").

13 23. The Contribution Agreement sets forth the duties and responsibilities of each
14 partner in connection with the development, construction, and financing of the Project.
15 Among other things, the Contribution Agreement directs the Partnership to obtain a
16 construction loan from a third-party lender, outlines the capital contribution requirements
17 for each partner, and requires Developer to cover all costs and expenses in excess of the
18 Project's budget (hereinafter, "Cost Overruns").

19 24. On February 9, 2006, Guarantors executed an unconditional joint and several
20 guarantee in favor of Prudential (the "Contribution Guarantee") that Developer would
21 timely make its payment obligations under the Contribution Agreement. The Contribution
22 Agreement required Guarantors to provide the Contribution Guarantee.

23 25. On February 9, 2006, the Partnership entered into a Construction Loan
24 Agreement with LaSalle Bank, N.A., Comerica Bank, U.S. Bank, Bank of Scotland,
25 MidFirst Bank, Amalgamated Bank, Sumitomo Mitsui Banking Corporation, National City
26 Bank, The Union Labor Life Insurance Company, and Commerzbank ("Lenders") to
27 borrow up to \$360,000,000 ("Loan") with a maturity date of February 9, 2009. Bank of
28 America is the successor in interest to LaSalle Bank and has served as Administrative

1 Agent for Lenders. For purposes of this Complaint, LaSalle Bank and Bank of America are
2 collectively referred to as “Bank of America” or the “Administrative Agent.”

3 26. Guarantors executed an unconditional joint and several guarantee in favor of
4 Bank of America as the Administrative Agent on February 9, 2006 (the “Construction Loan
5 Guarantee”). Guarantors guaranteed the punctual payment and performance of the
6 Partnership’s indebtedness and other obligations under the Construction Loan Agreement.
7 Guarantors promised: “If for any reason [the Partnership] shall fail or be unable to pay,
8 punctually and fully, any of [its payment obligations under the Construction Loan],
9 Guarantors shall pay such obligations to [Bank of America] in full immediately upon
10 demand.”

11 27. Bank of America, the Partnership, Developer, and Prudential also entered into
12 a Multi-Party Agreement on February 9, 2006, which outlines the duties and
13 responsibilities between and among Bank of America, the Partnership, and the individual
14 partners.

15 ***The Construction Loan Agreement and***
16 ***Lien Release Provision***

17 28. The Partnership executed a deed of trust on the Project in favor of Lenders
18 when it executed the Construction Loan Agreement, which also granted Lenders a first-
19 position lien on each condominium unit (the “Lien”). The Lien secured the Partnership’s
20 indebtedness under the Loan.

21 29. Bank of America was to release its Lien on individual condominium units
22 under the Construction Loan Agreement upon receipt of an amount equivalent to the
23 “Minimum Release Price” from the Partnership. Thus, in exchange for receiving the
24 Minimum Release Price in connection with the sale of an individual condominium unit,
25 Bank of America would release its Lien on that unit. Bank of America then was obligated
26 to apply the Minimum Release Price that it had received to reduce the outstanding balance
27 of the Loan.

28 30. “Minimum Release Price” is defined in the Construction Loan Agreement as
“an amount equal to the greater of: (i) ninety-five percent (95%) of the Gross Sales Price

1 for the Unit in question less Purchaser Deposits used for construction of the Improvements,
2 or (ii) one hundred percent (100%) of the Net Sales Proceeds.”

3 ***The Contribution Agreement and Subsequent***
4 ***Contribution Requirement***

5 31. The Contribution Agreement directs Developer and Plaintiffs to make a
6 capital contribution (“Aggregate Subsequent Contribution”) to the Partnership five (5)
7 business days prior to the Loan maturity date (“Subsequent Funding Date”) if the Proceeds
8 (i.e., net proceeds from condominium sales) were insufficient at that point to reduce the
9 outstanding Loan balance to zero.

10 32. The Contribution Agreement provides that the Aggregate Subsequent
11 Contribution is the lesser of (a) the actual amount of costs and expenses incurred by
12 Developer, subject to several express limitations, prior to the Subsequent Funding Date
13 (“Actual Development Costs”), or (b) \$405,000,000 (“Maximum Funding”).

14 33. When calculating the Aggregate Subsequent Contribution under the
15 Contribution Agreement, both the Actual Development Costs and Maximum Funding are to
16 be reduced by the aggregate amount of (a) Deposits applied by Developer to pay Actual
17 Development Costs and (b) Proceeds applied to pay principal and interest on the Loan
18 and/or to pay Actual Development Costs.

19 34. The Contribution Agreement explains how the Aggregate Subsequent
20 Contribution is to be apportioned between Developer and Plaintiff. Developer is
21 responsible for \$10,000,000 (“Developer’s Subsequent Contribution”), while Prudential is
22 responsible for the Aggregate Subsequent Contribution less Developer’s Subsequent
23 Contribution (“Plaintiffs’ Subsequent Contribution”).

24 35. The Contribution Agreement states that Plaintiffs could not and would not be
25 obligated to contribute in excess of the Maximum Funding to the Project.

26 36. The Contribution Agreement states that Developer is in default if it fails to
27 make Developer’s Subsequent Contribution or meet its other financial obligations.
28

1 37. If Developer fails to make Developer's Subsequent Contribution on the
2 Subsequent Funding Date, the Contribution Agreement directs that:

- 3 ▪ Plaintiffs will be required to make the Aggregate Subsequent
- 4 Contribution;
- 5 ▪ Plaintiffs shall acquire a 100% interest in the Partnership;
- 6 ▪ Plaintiffs shall be entitled to pursue the Guarantors under the
- 7 Contribution Guarantee;
- 8 ▪ All terms and conditions of the Contribution Agreement shall be
- 9 deemed modified to provide that Plaintiffs own a 100% interest in the
- 10 Partnership.

11 38. Section 13 of the Contribution Agreement requires Developer to indemnify
12 Plaintiff against Developer's failure to make Developer's Subsequent Contribution. As
13 security for its indemnification obligation, Developer granted Plaintiffs a security interest in
14 Developer's Partnership interest. The Contribution Agreement and the Partnership
15 Agreement state that Developer's indemnification obligation survives termination of the
16 Contribution Agreement or the removal of the Developer from the Partnership.

17 ***Developer's Duty to Fund Cost Overruns***

18 39. Both the Contribution Agreement and the Partnership Agreement provide
19 that, to the extent the Partnership incurs Cost Overruns -- costs in excess of the Maximum
20 Funding amount -- Developer is required to satisfy them with no right of reimbursement
21 from Plaintiffs or the Partnership.

22 40. In this regard, the Contribution Agreement provides:

23 The parties acknowledge that the actual amount of costs and
24 expenses actually incurred may be more or less than the amount
25 set forth on the Development Budget, which variations may be
26 caused by construction cost overruns or savings, earlier or later
27 occurrence of the Substantial Completion Date or Sell Out Date
28 than is presently anticipated, and similar factors, and that
29 Developer bears the burden of any and all of such costs and
30 expenses to the extent in excess of the Maximum Funding.

***Developer's Misuse and Misapplication
of Sales Proceeds and Deposits***

41. The Contribution Agreement dictates the order and extent to which Proceeds must be applied and distributed upon collection: Proceeds must first be applied to the outstanding Loan balance, and then to construction costs up to the Maximum Funding amount and as set forth in the Development Budget for the Project. Under no circumstances are Proceeds to be applied to fund Cost Overruns.

42. As explained above, the Construction Loan Agreement directs Developer to cause the Partnership to pay Bank of America a Minimum Release Price upon receipt of Proceeds from the sale of an individual condominium unit. Payment of the Minimum Release Price to Bank of America would, in turn, reduce the outstanding Loan balance.

43. Developer regularly failed to pay the full Minimum Release Price to Bank of America on behalf of the Partnership.

44. Developer regularly caused the Partnership to pay less than the full Minimum Release Price to Bank of America and, instead, used the remaining Proceeds for Developer's personal benefit.

45. Between 2006 and 2009, TW wrongfully diverted approximately \$12,000,000 in Proceeds to fund Cost Overruns. These diverted Proceeds should have been used to pay down the outstanding Loan balance. Developer benefited from its misconduct because it was otherwise responsible under the Contribution Agreement for payment of such Cost Overruns.

46. The Construction Loan Agreement allows the Partnership to use Deposits for construction purposes, provided that (a) the Partnership's use of Deposits for this purpose "shall result in a dollar-for-dollar reduction in . . . the maximum principal amount" of Lender's loan commitment and (b) the Deposits are bonded and administered in accordance with Nevada law.

47. Developer used Deposits to fund Cost Overruns, but failed to account for this reduction in the maximum principal commitment, which, in turn, enabled Developer to continue drawing down on the Loan beyond the maximum principal amount. Accordingly,

1 the outstanding balance of the Loan at maturity was greater than it should have been had
2 Developer honored its obligations to Plaintiffs.

3 48. In addition, Developer failed to refund certain Deposits to unit purchasers
4 entitled to such refunds. As a result, the Partnership now owes in excess of \$4,200,000 to
5 unit purchasers entitled to refunds.

6 49. Developer benefited from its misconduct in misusing the Deposits without
7 reducing the Loan amount and in failing to make reserves for or actually fund appropriate
8 customer refunds.

9 ***The Loan Matures and Developer***
10 ***Breaches Its Financial Obligations***

11 50. The Loan matured on February 9, 2009. At the time of maturity, a substantial
12 unpaid balance remained outstanding.

13 51. Developer and Plaintiffs were required to make their respective subsequent
14 contributions shortly before the Loan matured.

15 52. Plaintiffs' internal calculations showed that the Loan's unpaid balance upon
16 maturity should have been approximately \$150,000,000, which meant Developer's
17 Subsequent Contribution would be \$10,000,000 and Plaintiffs' Subsequent Contribution
18 would be approximately \$140,000,000.

19 53. Bank of America, however, determined that the unpaid balance upon maturity
20 was approximately \$164,000,000, approximately \$12,000,000 more than Plaintiffs believed
21 should have been owed.

22 54. By virtue of its misconduct, Developer is responsible for the discrepancy
23 because TW improperly diverted Proceeds and Deposits that should have served to reduce
24 the Loan balance at maturity by approximately \$12,000,000.

25 ***Prudential Is Forced to Purchase the Loan***

26 55. As the maturity date approached, Bank of America insisted that the Loan be
27 repaid in full and refused to extend the Loan, despite the discovery that TW had failed to
28 apply Proceeds and Deposits appropriately to reduce the outstanding Loan balance.

1 56. Developer refused to make Developer's Subsequent Contribution of
2 \$10,000,000.

3 57. Rather than honor its contractual duty to make its \$10,000,000 Subsequent
4 Contribution, Developer claimed that it was excused from doing so by virtue of Plaintiffs'
5 alleged prior material breach of the Contribution Agreement.

6 58. As the maturity date approached, Plaintiffs were faced with either (a) paying
7 what they believed should have been owed (approximately \$140 million), in which case the
8 loan would be in default, encumbered by a mortgage lien, and subject to foreclosure, or (b)
9 paying a much larger sum to acquire the Loan and avoid foreclosure, which included the
10 sum it should have owed (approximately \$140 million), plus Developer's Subsequent
11 Contribution, and plus the remaining balance of the Loan attributable to TW's misuse of
12 Sales Proceeds and Deposits.

13 59. On February 9, 2009, in order to avoid a default and likely foreclosure and to
14 protect its investment in the Project, Prudential purchased the Loan by paying Bank of
15 America more than \$164,000,000, which included \$10,000,000 to satisfy Developer's
16 Subsequent Contribution and the additional amount remaining on the Loan due to
17 Developer's misuse of Proceeds and Deposits.

18 60. In connection with their purchase of the Loan, Plaintiffs acquired Bank of
19 America and the Lenders' rights and remedies under the Construction Loan Agreement,
20 including the rights to pursue Guarantors for payment and performance under the
21 Construction Loan Agreement.

22 ***Plaintiffs Are Forced to Satisfy Additional Cost Overruns***

23 61. PLV automatically was entitled to assume the role of Managing General
24 Partner for the Partnership on February 9, 2009 as a result of Plaintiffs' payment of funds
25 sufficient to satisfy Plaintiffs' Subsequent Contribution.

26 62. Plaintiffs thereafter learned that Developer misdirected retention monies set
27 aside for eventual payment of subcontractors working on the Project and instead used them
28 to fund Cost Overruns.

63. In addition to problems associated with the discovery that Developer misapplied earmarked retention monies, Plaintiffs have incurred substantial costs and expenses relating to the Project since February 9, 2009, including satisfaction of construction-related invoices, liens, property taxes and several obligations that Developer was and is responsible for paying but has failed to pay.

64. Plaintiffs will continue to incur similar expenses relating to the Project until the sell out date. Plaintiffs currently estimate that these expenses will exceed \$7,000,000 on an annual basis. Under the Contribution Agreement and the Partnership Agreement, Developer remains responsible to indemnify Plaintiffs for any amounts advanced to satisfy these expenses, notwithstanding Developer's forfeiture of its interest in the Project.

Damages

65. Despite demand, Developer has refused to indemnify Plaintiffs for the Proceeds and Deposits (approximately \$16,200,000) that Developer wrongfully diverted to fund Cost Overruns rather than using to pay down the Loan. Plaintiffs were forced to satisfy this amount at Loan maturity.

66. Developer failed to make Developer's Subsequent Contribution of \$10,000,000 at the Loan's maturity. Plaintiffs paid Bank of America that \$10,000,000 sum and are entitled to be indemnified by defendants for that amount.

67. Developer failed to pay Cost Overruns incurred prior to the Loan's maturity, which Plaintiffs were forced to satisfy. Developer has refused to indemnify Plaintiffs for these Cost Overruns.

68. The Project is continuing to incur Cost Overruns that Plaintiffs are having to satisfy. Developer had denied and repudiated any responsibility for such Cost Overruns.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

(Defendants Turnberry West, L.L.C. and Turnberry Residential Pipeline, L.P.)

69. Plaintiffs incorporate by reference all allegations contained above.

70. Plaintiffs and Developer entered into the Partnership Agreement, Contribution Agreement, and Multi-Party Agreement.

73. Plaintiffs advanced funds to satisfy Developer's payment obligations and, therefore, are entitled to indemnification from Developer for having advanced such funds.

75. Plaintiffs have been forced to retain the services of an attorney to maintain this action and, consequently, seek recovery of their reasonable attorneys' fees and costs incurred herein.

(Breach of Contract)

76. Plaintiffs incorporate by reference all allegations contained above.

78. Because of Developer's breach, the outstanding Loan balance was substantially higher at maturity than it would have been had Developer honored its obligations in the contracts.

5 80. Plaintiffs have been forced to retain the services of an attorney to maintain
6 this action and, consequently, seek recovery of their reasonable attorneys' fees and costs
 incurred herein.

1 **THIRD CLAIM FOR RELIEF**
2 **(Lack of Good Faith and Fair Dealing – Contract)**
3 **(Defendants Turnberry West, L.L.C. and Turnberry Residential Pipeline, L.P.)**

4 81. Plaintiffs incorporate by reference all allegations contained above.

5 82. Developer owed a duty of good faith and fair dealing to Plaintiffs under the
6 Partnership Agreement, Contribution Agreement, and Multi-Party Agreement.

7 83. Developer breached its duty by performing in a manner that was unfaithful to
8 the purpose of the Partnership Agreement, Contribution Agreement, and Multi-Party
9 Agreement. Developer denied Plaintiffs of their justified expectations under the contracts.
10 Developer engaged in arbitrary and unfair acts that worked to Plaintiffs' disadvantage.

11 84. Plaintiffs have sustained damages as a result of Developer's breach of the
12 implied covenant in an amount to be proven at trial.

13 85. Plaintiffs have been forced to retain the services of an attorney to maintain
14 this action and, consequently, seek recovery of their reasonable attorneys' fees and costs
15 incurred herein.

16 **FOURTH CLAIM FOR RELIEF**
17 **(Lack of Good Faith and Fair Dealing – Tort)**
18 **(Defendants Turnberry West, L.L.C. and Turnberry Residential Pipeline, L.P.)**

19 86. Plaintiffs incorporate by reference all allegations contained above.

20 87. TW owed a duty of good faith and fair dealing to Plaintiffs under the
21 Partnership Agreement, Contribution Agreement, and Multi-Party Agreement.

22 88. A special relationship existed between Developer and Plaintiffs, which
23 included a special element of reliance and fiduciary responsibility. TW held a superior or
24 entrusted position as the Managing General Partner of the Partnership. Among other
25 things, TW oversaw the development and construction of the Project and was responsible
26 for monitoring compliance with the terms of the Construction Loan Agreement.

27 89. TW breached this duty by engaging in misconduct, including but not limited
28 to diverting Proceeds and Deposits for its personal benefit.

89. Plaintiffs have sustained damages as a result in an amount to be proven at
trial.

1 91. The Contribution Agreement states that TW and TP are jointly and severally
2 liable and responsible for all duties and liabilities owed under the Agreement.

3 **FIFTH CLAIM FOR RELIEF**
4 **(Breach of Fiduciary Duty)**
5 **(Defendants Turnberry West, L.L.C. and Turnberry Residential Pipeline, L.P.)**

6 92. Plaintiffs incorporate by reference all allegations contained above.

7 93. TW owed a fiduciary duty to Plaintiffs. TW served the individual partners as
8 the Partnership's Managing General Partner.

9 94. TW breached its fiduciary duty when, among other things, it diverted
10 Proceeds and Deposits to fund its personal obligations.

11 95. Plaintiffs have sustained damages as a result in an amount to be proven at
12 trial.

13 96. The Contribution Agreement states that TW and TP are jointly and severally
14 liable and responsible for all duties and liabilities owed under the Agreement.

15 **SIXTH CLAIM FOR RELIEF**
16 **(Declaratory Relief)**
17 **(Defendants Turnberry West, L.L.C. and Turnberry Residential Pipeline, L.P.)**

18 97. Plaintiffs incorporate by reference all allegations contained above.

19 98. 28 U.S.C. § 2201(a) provides: "In a case of actual controversy within its
20 jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading,
21 may declare the rights and other legal relations of any interested party seeking such
22 declaration, whether or not further relief is or could be sought."

23 99. There is an actual controversy between the parties as to whether Developer
24 has satisfied its financial obligations under the Contribution Agreement, Multi-Party
25 Agreement, and Construction Loan Agreement, whether Developer continues to own or has
26 forfeited its interest in the Partnership, whether the Contribution Agreement, Multi-Party
27 Agreement, and Construction Loan Agreement are deemed modified to reflect that
28 Plaintiffs own 100% of the Partnership, and whether PLV is the Partnership's Managing
General Partner.

100. Plaintiffs are thus entitled to a declaratory judgment declaring that Developer has breached its financial obligations under the Contribution Agreement, Multi-Party Agreement, and Construction Loan Agreement and anticipatorily repudiated its continuing obligations, that the Contribution Agreement, Multi-Party Agreement, and Construction Loan Agreement are deemed modified to reflect that Plaintiffs own 100% of the Partnership, that Developer has forfeited its interest in the Partnership, and that PLV is the Partnership's Managing General Partner.

**SEVENTH CLAIM FOR RELIEF
(Unjust Enrichment)**

(Defendants Turnberry West, L.L.C. and Turnberry Residential Pipeline, L.P.)

101. Plaintiffs incorporate by reference all allegations contained above.

102. Plaintiffs have been forced to honor and satisfy substantial obligations with regard to the Project that Developer had promised to honor and satisfy in the parties' contracts. Developer has unjustly retained the benefits to Plaintiffs' loss or disadvantage. It has failed to reimburse or otherwise indemnify Plaintiffs for advancing the funds. Developer's retention of the benefits is against the fundamental principles of justice or equity and good conscience.

103. Plaintiffs have sustained damages as a result in an amount to be proven at trial.

**EIGHTH CLAIM FOR RELIEF
(Breach of Contribution Guarantee)**

(Defendants Jeffrey Soffer and Turnberry Residential Limited Partner, LP)

104. Plaintiffs incorporate by reference all allegations contained above.

105. Guarantors entered into a Contribution Guarantee with Prudential in which Guarantors unconditionally guaranteed the timely payment by Developer of Developer's Subsequent Contribution and Cost Overruns.

106. Developer defaulted on its Subsequent Contribution obligation under the Contribution Agreement.

1 107. Developer defaulted on its obligation to fund Cost Overruns under the
2 Contribution Agreement.

3 108. Guarantors have failed to honor their Contribution Guarantee despite demand.
4 Prudential has been damaged as a result.

5 **NINTH CLAIM FOR RELIEF**
6 **(Breach of Construction Loan Guarantee)**
7 **(Defendants Jeffrey Soffer and Turnberry Residential Limited Partner, LP)**

8 109. Plaintiffs incorporate by reference all allegations contained above.

9 110. Guarantors entered into the Construction Loan Guarantee with Bank of
10 America as the Administrative Agent to the Lenders. Guarantors provided their
11 unconditional promise to punctually and fully make the Partnership's payment obligations
12 under the Construction Loan Agreement if the Partnership was unable to make the
13 payments.

14 111. Plaintiffs, for good consideration, have acquired the rights and remedies of
15 Bank of America and the Lenders under the Construction Loan Guarantee.

16 112. The Partnership did not meet its payment obligations under the Construction
17 Loan Agreement.

18 113. Guarantors have failed to honor the Construction Loan Guarantee, in any
19 amount.

20 114. Plaintiffs have been damaged as a result.

21 **REQUEST FOR RELIEF**

22 WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in
23 favor of Plaintiffs as follows: (a) for an award of compensatory damages in an amount to
24 be determined at trial; (b) for the declaratory judgment sought in Plaintiffs' Sixth Claim for
25 Relief; (c) for prejudgment and post-judgment interest on damages at the highest rate
26 allowed by law; (d) for all costs of this action; (e) for an award of reasonable attorneys'
27 fees and costs incurred by Plaintiffs in connection with defendants' breaches and this
28

1 action, with interest at the highest legal rate until paid in full; (f) for an award of all other
2 court costs and expenses incurred for collection or enforcement of the amounts owed to
3 Plaintiffs, with interest at the highest legal rate until paid in full; and (g) for all such further
4 relief as the Court may deem appropriate to award.
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6 DATED this 17th day of April, 2009.

7
8 LEWIS AND ROCA LLP

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