

1 EDMOND M. CONNOR, State Bar No. 65515
DOUGLAS A. HEDENKAMP, State Bar No. 216487
2 CONNOR, FLETCHER & WILLIAMS LLP
2600 Michelson Drive, Suite 1450
3 Irvine, CA 92612
Phone: (949) 622-2600
4 Fax: (949) 622-2626

5 Attorneys For Defendants and Cross-Complainants
Frank Family Partnership, et al.
6
7

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

NOV 21 2007

ALAN SLATER, Clerk of the Court

BY: R. LUCEY, DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE**
10 **CENTRAL JUSTICE CENTER**

11 SCC ACQUISITIONS, INC., et al.,

12 Plaintiffs,

13 v.

14 FRANK FAMILY PARTNERSHIP, et al.,

15 Defendants.

16
17 FRANK FAMILY PARTNERSHIP,
18 T.A.C.O., LLC, and PLANTATION
MOBILE ESTATES, INC.,

19 Cross-Complainants,

20 v.

21 SCC ACQUISITIONS, INC., SUNCAL
22 PLATINUM POINTE, LLC, and ROES 1
through 25, inclusive,

23 Cross-Defendants,

CASE NO. 07CC11187

**CROSS-COMPLAINT OF DEFENDANTS FRANK
FAMILY PARTNERSHIP, T.A.C.O., LLC, AND
PLANTATION MOBILE ESTATES, INC.
FOR:**

(1) **DECLARATORY RELIEF; AND**

(2) **DAMAGES FOR BREACH OF CONTRACT**

ASSIGNED FOR ALL PURPOSES TO:
JUDGE GREGORY H. LEWIS
DEPARTMENT C27

Action Filed: October 23, 2007
Trial Date: Not Set

24 As a cross-complaint (the "Cross-Complaint") against plaintiffs and cross-defendants
25 SCC ACQUISITIONS, INC., ("SCC"), SUNCAL PLATINUM POINTE, LLC, ("SPP") [SCC and
26 SPP shall hereinafter be referred to collectively as "SunCal"], and ROES 1 through 25, inclusive,
27 [SunCal and all ROES shall hereinafter be referred to collectively as "Cross-Defendants"], defendants
28 and cross-complainants FRANK FAMILY PARTNERSHIP (the "Frank Family"), T.A.C.O., LLC

1 (“TACO”), and PLANTATION MOBILE ESTATES, INC. (“Plantation”)[hereafter, the Frank Family,
2 TACO, and Plantation shall be referred to collectively as the “Frank Family” or “Cross-Complainants”
3 and Cross-Defendants and Cross-Complainants shall collectively be referred to as the “Parties”]
4 hereby allege as follows:

5 GENERAL ALLEGATIONS

6 I. Preliminary Statement.

7 1. In April 2005, the Frank Family entered into a Purchase and Sale Agreement and
8 Escrow Instructions (the “P&S Agreement”) to allow SunCal to buy 26 acres of land (the “Property”),
9 consisting of two mobilehome parks, that the Frank Family owned at the corner of Katella Avenue and
10 Haster Street in the City of Anaheim (the “City”). The escrow for SunCal’s purchase of the Property
11 was originally supposed to close six months later in October 2005.

12 2. For a period of **two years** after the originally-scheduled closing date, the Frank Family
13 waited patiently for SunCal to close escrow on the Property. During this two-year waiting period, the
14 Frank Family went out of its way to accommodate SunCal by agreeing to **numerous extensions** that
15 provided SunCal with **24 months of additional time from October 2005 to October 2007** to secure
16 the land use entitlements it felt it needed to develop a 1500-unit residential project (the “Project”) on
17 the Property. In April 2007, however, the Parties agreed in writing that--provided that certain
18 extension deposits were timely made by SunCal--the absolute outside date for close of escrow would
19 be December 21, 2007, **regardless** of whether SunCal had succeeded in securing its entitlements for
20 the Property by that date or not.

21 3. Pursuant to this April 2007 agreement--which took the form of a fifth amendment (the
22 “Fifth Amendment”) to the P&S Agreement--SunCal timely made the required extension deposit in
23 July 2007 and thereby exercised its option to extend the closing date to October 1, 2007. However,
24 when it came time for SunCal to make its last deposit of \$500,000 to exercise its final option to extend
25 the closing date from October 1 to December 21, 2007, SunCal surprised the Frank Family by failing
26 and refusing to either (a) deposit those funds with the escrow holder and exercise its final extension
27 option or (b) honor its commitment to close escrow on or before October 1, 2007.
28

1 4. Cross-Complainants allege on information and belief that the reason SunCal decided
2 not to make the October 2007 extension deposit to postpone the close of escrow until December 2007
3 was because SunCal realized that the entitlements for the Project would not be finalized by December
4 2007 and it concluded that, absent those entitlements, it could not obtain the financing necessary to
5 close escrow and consummate its purchase of the Property.

6 5. Of course, whatever SunCal's excuse was for not closing escrow by October 1, 2007, or
7 otherwise making the final extension deposit necessary to postpone the closing date to December 21,
8 2007, SunCal had expressly agreed in the Fifth Amendment that the October 1, 2007 closing date was
9 a "fixed date" and would not be extended because of any delay in the processing of the entitlements
10 that SunCal was seeking for the Project.

11 6. Accordingly, after SunCal elected not to exercise the October 2007 extension option,
12 and failed to close escrow as required on or before October 1, 2007, the Frank Family exercised its
13 contractual rights to terminate the P&S Agreement in accordance with its terms.

14 7. As clearly provided in Article 14 of the P&S Agreement, if the P&S Agreement were to
15 be terminated for any reason other than the Frank Family's default, the escrow agent appointed under
16 the P&S Agreement (the "Escrow Holder") was to record a quitclaim deed (the "Quitclaim Deed") to
17 cause all of SunCal's right, title, and interest in and to the Property to be quitclaimed to the Frank
18 Family. The P&S Agreement provides for liquidated damages in the amount of \$150,000 if SunCal
19 wrongfully instructs the Escrow Holder to refrain from recording the Quitclaim Deed.

20 8. When the Frank Family requested that the Escrow Holder record the Quitclaim Deed as
21 required under Article 14 of the P&S Agreement, SunCal wrongfully objected, and demanded that the
22 Escrow Holder refrain from recording it. Despite receiving notice from the Frank Family that SunCal
23 had defaulted under the terms of Article 14 by wrongfully interfering with the recordation of the
24 Quitclaim Deed, SunCal failed and refused to timely cure such default.

25 9. Accordingly, the Frank Family seeks (1) a declaration that, *inter alia*, the P&S
26 Agreement, as amended, has been terminated, and that SunCal has no further right, title, or interest in
27 or to the Property, nor any right to recover any of the deposits made pursuant to the P&S Agreement,
28 as amended, and (2) liquidated damages for (a) SunCal's failure to timely close escrow on the Property

1 or otherwise extend the escrow closing date specified in the Fifth Amendment, and (b) SunCal's
2 wrongful demand that the Escrow Holder refrain from recording the Quitclaim Deed after the P&S
3 Agreement, as amended, had been terminated.

4 **II. The Parties**

5 10. The Frank Family Partnership is a California general partnership, with its principal
6 place of business in Orange County, California.

7 11. TACO is a California limited liability company with its principal place of business in
8 Orange County, California.

9 12. Plantation is a California corporation, with its principal place of business in Orange
10 County, California.

11 13. Cross-Complainants allege on information and belief that SCC is a corporation
12 organized and existing under the laws of the State of California, with its principal place of business in
13 Orange County, California.

14 14. Cross-Complainants allege on information and belief that SPP is a limited liability
15 company organized and existing under the laws of the State of Delaware, with its principal place of
16 business in Orange County, California.

17 15. The true names and capacities, whether individual, corporate, or otherwise, of the
18 Cross-Defendants named herein as ROES 1 through 25, inclusive, are presently unknown to Cross-
19 Complainants who, therefore, sue such Cross-Defendants by such fictitious names. Cross-
20 Complainants will seek leave of Court to amend this Cross-Complaint to show the true names and
21 capacities of the Cross-Defendants named herein as ROES when such information is ascertained.

22 16. In performing the acts alleged hereinbelow, each of the Cross-Defendants was the agent
23 of each of the other Cross-Defendants and was at all times acting within the course and scope of such
24 agency and with the knowledge and approval of each of the other Cross-Defendants.

25 **III. Factual Background.**

26 **A. SunCal's Efforts To Obtain Entitlements For Its Proposed Project.**

27 17. Cross-Complainants allege on information and belief that SunCal planned to develop
28 the Project on the Property, consisting of 1,500 residential units, 15% of which were to be developed

1 as affordable housing units, such as apartments. The Frank Family agreed to assist SunCal in
2 obtaining the City's approval of the land use entitlements SunCal felt were necessary to develop the
3 Project (collectively, the "Land Use Entitlements") by executing any necessary applications, and
4 signing other documents "reasonably requested" by SunCal for that purpose.

5 18. For purposes of the Cross-Complaint, the term "Land Use Entitlements" shall
6 collectively refer to the local governmental approvals that SunCal initially applied for in connection
7 with the Project and that were the subject of public hearings conducted by the City's decision-making
8 bodies in 2007, specifically including: (a) General Plan Amendment No. 2006-00448 to the City's
9 General Plan ("GPA 2006-00448"); (b) Amendment No. 8 to the Anaheim Resort Specific Plan No.
10 92-2 ("Amendment No. 8"); and (c) the environmental documentation for GPA 2006-00448 and
11 Amendment No. 8, including, but not limited to, the Mitigated Negative Declaration with Addendum
12 and updated and Modified Mitigation Monitoring plan for the Project.

13 19. Importantly, the P&S Agreement was *never* made contingent upon SunCal's ability to
14 secure final Land Use Entitlements prior to the time that escrow was originally scheduled to close in
15 October 2005--or at any other time. In fact, SunCal agreed to purchase the Property "as is," subject to
16 whatever land use regulations and restrictions applied to the Property at the time the P&S Agreement
17 was executed. Notably, at the time that the P&S Agreement was entered into in April 2005, the
18 applicable zoning prohibited the development of residential uses on the Property. Instead, under the
19 City's General Plan, the Property was designated as part of the "Anaheim Resort Area," which was
20 zoned for commercial uses related to the Disneyland Resort and other tourism-oriented uses.

21 **B. The Extension Of The Original Closing Date To Afford SunCal More Time To**
22 **Pursue Its Entitlement Efforts.**

23 20. In or around October 2005, despite the fact that SunCal had agreed to purchase the
24 Property "as is," SunCal indicated that it would be unable to close on its purchase of the Property by
25 the closing date specified in the P&S Agreement, owing to uncertainty regarding its ability to obtain
26 the Land Use Entitlements in a timely manner. Accordingly, SunCal requested an extension of the
27 closing date to continue its entitlement efforts.
28

1 21. To accommodate this request by SunCal, the Frank Family agreed to extend the closing
2 date in exchange for SunCal's payment of an "Extension Deposit" in the amount of \$300,000. The
3 agreement for this initial extension was memorialized in that certain "First Amendment to Purchase
4 and Sale Agreement and Escrow Instructions" (the "First Amendment"), entered into by the Frank
5 Family and SunCal as of October 21, 2005.

6 22. Pursuant to the First Amendment, the original closing date under the P&S Agreement
7 was extended to December 22, 2005, and SunCal was required to deposit the \$300,000 Extension
8 Deposit with the Escrow Holder with instructions to immediately release such funds to the Frank
9 Family. Because the Extension Deposit was given by SunCal as an inducement for the Frank Family
10 to extend the closing date, SunCal expressly agreed that it would be non-refundable, and would be
11 deemed fully earned when deposited into escrow. For its part, the Frank Family agreed that the
12 \$300,000 Extension Deposit would be applied toward the original purchase price if and when the sale
13 closed.

14 23. Cross-Complainants allege on information and belief that, as of mid-December 2005,
15 SunCal was still uncertain of its ability to secure the Land Use Entitlements, due in large part to the
16 strong opposition to the Project that had been mounted by the Walt Disney Co. and its subsidiaries
17 (collectively, "Disney"). Accordingly, SunCal requested another extension, this time until March
18 2006, but did not offer to pay another Extension Deposit. Because such an extension could result in a
19 substantial lost opportunity cost to the Frank Family with very little corresponding benefit, the Frank
20 Family initially refused this request, but agreed to negotiate further extensions in exchange for the
21 payment of additional Extension Deposits.

22 24. Ultimately, the Frank Family agreed to an additional extension of the closing date to
23 March 22, 2006, and to a series of five (5) extension options of three-months each, which could be
24 exercised by SunCal if final Land Use Entitlements had not been secured by the specified closing date.
25 As consideration for the extension options, the Frank Family required that the notice of exercise of
26 each three-month extension be accompanied by the payment of an additional Extension Deposit.
27 SunCal also agreed to use "commercially reasonable efforts" to negotiate with the City on behalf of
28 the Frank Family regarding the condemnation of a portion of the Property for a street-widening

1 project. The terms of this agreement were memorialized in that certain "Second Amendment to
2 Purchase and Sale Agreement and Escrow Instructions" (the "Second Amendment"), executed by the
3 Frank Family and SunCal on or about December 22, 2005.

4 25. Each extension provided for in the Second Amendment specified that escrow would
5 close on the earlier to occur of (a) ten days following SunCal's obtaining final approval of the Land
6 Use Entitlements, or (b) a fixed closing date. The fixed closing dates for the initial extension and the
7 five extension options provided for in the Second Amendment were: (1) March 22, 2006, (2) June 22,
8 2006, (3) September 22, 2006, (4) December 22, 2006, (5) March 22, 2007, and (6) June 22, 2007.
9 Accordingly, under the Second Amendment, the Parties agreed that, if SunCal exercised all of its
10 extension options, the close of escrow on SunCal's purchase of the Property would occur no later than
11 June 22, 2007, *regardless* of whether SunCal had secured final Land Use Entitlements by that date or
12 not.

13 26. The Extension Deposits for the first three extensions provided for in the Second
14 Amendment were to be applied against the purchase price of the Property, if and when the sale was
15 closed. The fourth, fifth, and sixth Extension Deposits, on the other hand, were not to be applied
16 against the purchase price. Similar to the first Extension Deposit made pursuant to the First
17 Amendment, all of the Extension Deposits in the Second Amendment were to be non-refundable, and
18 were deemed fully earned by the Frank Family when deposited into escrow.

19 27. On or about December 22, 2005, and on or about March 20, June 20, and September
20 20, 2006, SunCal made the scheduled Extension Deposits under the Second Amendment, thereby
21 extending the closing date to December 22, 2006.

22 28. However, SunCal failed to make the scheduled December 2006 Extension Deposit to
23 exercise its option to extend the closing date to March 22, 2007. Moreover, SunCal failed to close
24 escrow on or before the scheduled closing date of December 22, 2006. Faced with SunCal's failure to
25 either exercise its extension option or to close escrow on its purchase, the Frank Family did not
26 immediately terminate the P&S Agreement, but, instead, sought to cooperate with SunCal in meeting
27 its request to consider renegotiating the deal because of SunCal's concerns about the slowdown in the
28 residential market and the difficulty it was experiencing in obtaining the Land Use Entitlements.

1 **C. The Planning Commission's Disapproval Of Certain Land Use Entitlements.**

2 29. On January 22, 2007, the City's Planning Commission (the "Planning Commission")
3 held a public hearing to consider the Land Use Entitlements that SunCal had applied for as of that
4 time. Representatives of Disney and other members of the public appeared at the hearing and opposed
5 the approval of SunCal's requested Land Use Entitlements.

6 30. The Planning Commission voted to recommend that the City Council approve the
7 Mitigated Negative Declaration and Addendum for the Project, but denied GPA 2006-00448 and
8 Amendment No. 8. Two members of the City Council subsequently requested that the Council review
9 the Planning Commission's actions, and the matter was set for hearing before the City Council on
10 February 13, 2007.

11 **D. SunCal's Request For Additional Concessions From The Frank Family.**

12 31. On January 22, 2007, SunCal presented its requests for a potential third amendment,
13 asking the Frank Family to make further modifications to the P&S Agreement given SunCal's
14 concerns about a downturn in the housing market and Disney's strong opposition to the Project.
15 SunCal's representatives stated that both Parties had lived up to the intent of the Agreement, but that
16 market conditions and the approval process at the City had changed to such an extent that the P&S
17 Agreement had to be amended in order for the transaction to move forward. SunCal claimed that the
18 political risk to the Project was very high, and that defeating Disney's opposition to the Project was,
19 and would continue to be, very costly.

20 32. In light of what SunCal claimed were changed circumstances, SunCal asked that the
21 Frank Family agree to substantially reduce the purchase price of the Property. SunCal claimed that a
22 substantial reduction in the purchase price was necessary to compensate SunCal for the costs it was
23 incurring, and the risks that it was taking, in going forward with its purchase of the Property,
24 including:

- 25 (a) Taking possession of the two mobilehome parks on the Property in their "as is"
26 condition;
- 27 (b) Assuming the costs involved in closing these two mobilehome parks;
- 28 (c) Assuming the risk that final Land Use Entitlements would never be secured;

- 1 (d) Incurring the time and expense of seeking final Land Use Entitlements;
- 2 (e) Incurring the costs and time required to fight lawsuits and other challenges
- 3 funded by Disney;
- 4 (f) Incurring the costs to provide affordable housing units; and
- 5 (g) Negotiating with the City over the planned taking of a portion of the Property
- 6 for an extension of Gene Autry Way.

7 33. Even though the Frank Family felt that SunCal had assumed all of the above-listed
8 costs and risks in entering into the P&S Agreement, the Frank Family, once again, was willing to
9 accommodate SunCal. Although the Frank Family was not willing to grant SunCal an open-ended
10 extension of the closing date, it was willing to make reasonable accommodations to assist SunCal in
11 its efforts to secure the Land Use Entitlements. Accordingly, the Parties entered into additional
12 negotiations, which resulted in the execution of that certain "Third Amendment to Purchase and Sale
13 Agreement and Escrow Instructions," (the "Third Amendment"), which became effective as of
14 February 12, 2007.

15 34. Under the Third Amendment, the Frank Family agreed to: (1) reduce the original
16 purchase price of the property by \$10 million, (2) extend the closing date to July 16, 2007, (3)
17 substitute SPP, the successor-in-interest to SCC, as the Buyer under the P&S Agreement, and (4) grant
18 SunCal an additional option to extend the closing date to December 21, 2007, upon making an
19 additional \$500,000 non-refundable Extension Deposit. The Frank Family specifically refused to
20 agree to an indefinite extension of the close of escrow, and insisted that SunCal close escrow on its
21 purchase of the Property no later than December 21, 2007, *regardless* of whether it had secured final
22 Land Use Entitlements by that date or not.

23 35. In consideration for the concessions made by the Frank Family in entering into the
24 Third Amendment, SunCal agreed, *inter alia*, that (1) the close of escrow would occur no later than
25 July 16, 2007 (or December 21, 2007, if the final extension option was exercised), (2) all of the funds
26 that SunCal had deposited into escrow prior to February 12, 2007 were to be deemed non-refundable
27 and non-applicable to the purchase price of the Property, (3) SunCal would pay an additional deposit
28 of \$500,000 (defined as the "Applicable Deposit") on March 15, 2007, (4) SunCal would negotiate

1 with the City on behalf of the Frank Family to recover rent for the mobilehome units that the City had
2 already started acquiring as part of its pending condemnation proceedings, and (5) SunCal would pay
3 additional compensation to the Frank Family if SunCal was successful in securing Land Use
4 Entitlements for more than 793 market rate residential units (the "Additional Compensation").

5 36. The provision for Additional Compensation was meant to offset in part the \$10 million
6 reduction in the purchase price. One of the chief reasons given by SunCal to justify the substantial
7 reduction in the purchase price was SunCal's claim that the political opposition to the Project would
8 prevent it from obtaining the City's approval of a sufficient number of residential units to justify the
9 original purchase price. From the perspective of the Frank Family, the Additional Compensation was
10 intended to ensure that the reduction in the purchase price would not result in a "windfall" to SunCal if
11 it were successful in securing the City's approval for more than 793 market rate residential units.

12 **E. The City Council's Initial Consideration Of The Project, And Disney's Suit To**
13 **Revoke The Approval Of The Environmental Documentation For The Project.**

14 37. On February 13, 2007, one day after the Third Amendment became effective, the City
15 Council considered the Planning Commission's earlier decision to (a) deny GPA 2006-00448 and
16 Amendment No. 8 plan amendments, and (b) approve the Mitigated Negative Declaration and
17 Addendum for the Project. Due to a purported conflict of interest, one of the council members recused
18 herself. As a result, the City Council reached a tie vote, effectively affirming the Planning
19 Commission's earlier actions.

20 38. On February 26, 2007, Disney filed a mandamus action (the "First Disney Lawsuit")
21 under the California Environmental Quality Act ("CEQA") in Orange County Superior Court against
22 the City, as respondent, and against SunCal, as real party in interest, to overturn the City's approval of
23 the Mitigated Negative Declaration and Addendum for the Project.

24 **F. The Final Two Amendments And The SOAR Initiative.**

25 39. After SunCal had been served with the First Disney Lawsuit, SunCal approached the
26 Frank Family to ask for another amendment to the P&S Agreement. Accordingly, on March 15, 2007,
27 as a further accommodation to SunCal without the payment of any additional compensation, the Frank
28 Family agreed to enter into that certain "Fourth Amendment to Purchase and Sale Agreement and

1 Escrow Instructions” (the “Fourth Amendment”) with SunCal for the purpose of extending the due
2 date for payment of March 15th “Applicable Deposit” to April 20, 2007. At that time, SunCal
3 expected the City Council to reconsider its earlier action on the Project on or before April 20, 2007,
4 and SunCal did not want to make the Applicable Deposit before the City Council reconsidered the
5 Project.

6 40. However, on March 19, 2007, shortly after the Fourth Amendment was executed, the
7 Save Our Anaheim Resort coalition (“SOAR”), which was funded by Disney, held a press conference
8 announcing a ballot initiative (the “SOAR Initiative”) that, if enacted, would require city-wide voter
9 approval, as well as the preparation of an Environmental Impact Report under CEQA, before any
10 housing project (potentially including SunCal’s Project) could be built in the Anaheim Resort Area.

11 41. Cross-Complainants allege on information and belief that, on or before April 13, 2007,
12 SunCal became aware that SOAR had hired the professional campaign management firm of Ford
13 Mollrich to collect signatures to qualify the SOAR Initiative for the ballot.

14 42. As of April 20, 2007, the City Council had not yet taken action on the Land Use
15 Entitlements being sought by SunCal. Accordingly, SunCal requested that the Frank Family agree to
16 yet another amendment to, among other things, delay the payment of the “Applicable Deposit” to May
17 4, 2007. This resulted in the preparation and execution of the Fifth Amendment, as described above.

18 43. In the Fifth Amendment, which became effective as of April 20, 2007, the Frank
19 Family sought to accommodate SunCal by agreeing to (a) further extend the payment date for the
20 Applicable Deposit (which had originally been set for March 15, 2007) to May 4, 2007, (b) further
21 extend the closing date to July 16, 2007, and (c) grant SunCal two additional options to extend the
22 closing date to October 1 and December 21, 2007, respectively, provided that SunCal paid a \$500,000
23 Extension Deposit on or before July 16, 2007 (the “July 2007 Extension Deposit) for the first such
24 extension and another \$500,000 Extension Deposit on or before October 1, 2007 (the “October 2007
25 Extension Deposit”) for the second such extension. Both Extension Deposits were to be non-
26 refundable when made, and were to be applied to the purchase price of the Property if and when the
27 sale closed.

1 44. Cross-Complainants allege on information and belief that, prior to entering into the
2 Fifth Amendment, SunCal knew that the First Disney Lawsuit had been filed and that signatures were
3 being gathered to put the SOAR Initiative on the ballot. Cross-Complainants further allege on
4 information and belief that, at the time it executed the Fifth Amendment, SunCal was aware that, in
5 light of these and other potential challenges by Disney, SOAR, and other opponents of the Project,
6 final Land Use Entitlements for the Project might not be secured by the end of 2007 or at all.

7 45. Nevertheless, despite this knowledge and awareness, SunCal agreed in the Fifth
8 Amendment that the close of escrow on SunCal's purchase of the Property would occur no later than
9 December 21, 2007, if all the extension options were exercised. Moreover, SunCal expressly agreed
10 in Section 2 of the Fifth Amendment that the closing date would not be extended beyond December
11 21, 2007, because of any delays in the entitlement process or for any other reason whatsoever:

12 “Buyer acknowledges and agrees that the deadlines for the Extension Deposits and the
13 Closing Dates specified above are fixed dates and shall not be adjusted on account
14 of the continuance or postponement of any public hearing or agency decision, any
other delay in Buyer's processing of its entitlements for the Property or for any
other reason except as expressly provided in this Section.” (Emphasis added.)

15 **G. The City Council's Approval Of The Land Use Entitlements; SOAR'S**
16 **Referendum To Overturn Them; And Disney's Second CEQA Lawsuit.**

17 46. On April 24, 2007, the City Council reconsidered and approved SunCal's requested
18 Land Use Entitlements on a 3-2 vote. Almost immediately thereafter, on April 26, 2007, SOAR
19 announced a referendum (the “SOAR Referendum”) to overturn the City's approval of the Land Use
20 Entitlements. On May 21, 2007, SOAR turned in the necessary signatures for the SOAR Referendum,
21 which were then certified by the registrar of voters on June 20, 2007. On May 25, 2007, Disney filed
22 its second CEQA mandamus action (the “Second Disney Lawsuit”) against the City and SunCal to
23 invalidate the City's approval of the Land Use Entitlements for the Project.

24 **H. The Frank Family's Repeated Warnings That The Closing Date Would Not Be**
25 **Further Extended.**

26 47. By May 4, 2007, SunCal finally paid the Applicable Deposit to extend the closing date
27 to July 16, 2007. Cross-Complainants allege on information and belief that SunCal made such
28

1 payment with full knowledge that the First Disney Lawsuit, the SOAR Initiative, and the SOAR
2 Referendum were “pending” within the meaning of Section 6.8 of the P&S Agreement.

3 48. Prior to SunCal’s payment of the July 2007 Extension Deposit postponing the closing
4 date to October 1, 2007, the Frank Family informed SunCal that it was not willing to further amend
5 the P&S Agreement, and that SunCal should not make any further deposits unless it was certain that it
6 would purchase the Property no later than December 21, 2007. Specifically, in a letter dated June 13,
7 2007 (the “June 13 Letter”), counsel for the Frank Family advised Sun Cal that:

8 “If SunCal performs its obligations under the current agreement, our clients will close
9 escrow and sell the property to SunCal as they are obliged to do. However, **if SunCal**
10 **asks for any further extension of time, reduction in price or any other**
11 **accommodation in this transaction, the answer from our clients will be “no**
12 **thanks.”** While our clients continue to stand ready, willing and able to perform their
13 obligations under the current agreement, **they will not make any further amendments**
14 **to their agreement with SunCal, including without limitation any amendment to**
15 **the deadline for payments called for under the agreement or to the deadline for**
16 **closing this transaction.”** (Emphasis added.)

17 49. Cross-Complainants allege on information and belief that, at the time SunCal made the
18 July 2007 Extension Deposit on or about July 16, 2007, SunCal had received the June 13 Letter and
19 (a) knew that the SOAR Initiative, the SOAR Referendum, the First Disney Lawsuit, and the Second
20 Disney Lawsuit were “pending” within the meaning of Section 6.8 of the P&S Agreement and (b) was
21 aware that these challenges made it highly unlikely that final Land Use Entitlements for the Project
22 would be secured by the end of 2007. Cross-Complainants further allege on information and belief
23 that, despite this knowledge and awareness, SunCal proceeded to make the July 2007 Extension
24 Deposit and thereby exercised its option to extend the close of escrow to October 1, 2007.

25 **I. SunCal’s Request For An Indefinite Extension Of Closing Date And Its Failure To**
26 **Close Escrow On The Property, Or To Make An Extension Deposit, On Or Before**
27 **October 1, 2007.**

28 50. Cross-Complainants allege on information and belief that, after making the July 2007
Extension Deposit, SunCal entered into confidential negotiations with Disney to, *inter alia*, convert
the Project into a mixed-use project and to reduce the number of residential units (including affordable
housing units) to be built on the Property. Cross-Complainants further allege on information and
belief that, as a result of these negotiations, SunCal considered starting the entitlement process all over

1 again to obtain the necessary approvals for this new Project alternative that was being discussed with
2 Disney.

3 51. Cross-Complainants allege on information and belief that the Project alternative being
4 considered by SunCal in or about September 2007 would have necessitated revising the Land Use
5 Entitlements to include (a) a development agreement, (b) a modification of Amendment No. 8 to add
6 commercial and retail uses and to provide for fewer market rate residential units and fewer affordable
7 housing units, and (c) the preparation of additional CEQA documentation, possibly an EIR, to address
8 the Project changes (hereinafter, these revisions to the Land Use Entitlements shall be referred to
9 collectively as the "Revised Entitlements").

10 52. In or about the first part of September 2007, SunCal's representatives began making
11 requests of the Frank Family to (a) further delay the close of escrow beyond the outside closing date of
12 December 21, 2007, and (b) waive any further Extension Deposits. Specifically, on September 12,
13 2007, SunCal sent a letter to the Frank Family setting forth a proposal (the "September 12th
14 Proposal"), which called for the Frank Family to waive and forego the October 2007 Extension
15 Deposit, and to agree to an open-ended extension of the closing date until (1) the Revised Entitlements
16 for the Project were ultimately approved by the City, (2) the time for challenging the Revised
17 Entitlements had expired without any challenges having been made, and (3) any challenges to the
18 Revised Entitlements that were timely made had been resolved in favor of SunCal.

19 53. The Frank Family was not willing to agree to the September 12th Proposal because,
20 among other things, it would have substantially and unreasonably delayed the close of escrow for an
21 undetermined amount of time, possibly a period of several years or more, as SunCal went through the
22 entitlement process a second time seeking the City's approval of the Revised Entitlements and then
23 facing potential legal challenges from opponents of the Project. On September 26, 2007, counsel for
24 the Frank Family wrote a letter (the "September 26 Letter") to counsel for SunCal, confirming the
25 Frank Family's rejection of the September 12th Proposal and noting that the Proposal had asked for
26 substantial concessions from the Frank Family without providing any consideration whatsoever. In
27 addition, counsel for the Frank Family stated in the September 26 Letter that the Frank Family "will
28

1 perform all of [its] obligations under the current agreement without further modification and expects
2 SunCal to do the same.”

3 54. As indicated by the September 26 Letter, the Frank Family fully expected that SunCal
4 would make the October 2007 Extension Deposit, and thereby cause the close of escrow to be
5 postponed until December 21, 2007. However, to the great surprise of the Frank Family, SunCal did
6 not make the October 2007 Extension Deposit, nor did it otherwise make any attempt to close escrow
7 on or before October 1, 2007.

8 55. Accordingly, on October 4, 2007, three days after SunCal had failed to comply with the
9 terms of the Fifth Amendment which called for the close of escrow to occur on or before October 1,
10 2007, counsel for the Frank Family sent a letter (the “Termination Notice”), to SunCal and the Escrow
11 Holder notifying them that the P&S Agreement was being terminated because “Close of escrow did
12 not occur as scheduled on account of the default of the buyer.”

13 56. In response to the Termination Notice, counsel for SunCal sent a letter to counsel for
14 the Frank Family, dated October 16, 2007, in which SunCal inexplicably took the position that (a) the
15 Frank Family was in breach of the P&S Agreement, and (b) the P&S Agreement was still in effect and
16 was binding on the Frank Family, notwithstanding its termination.

17 **J. SunCal’s Actions To Prevent Recordation of the Quitclaim Deed.**

18 57. As noted above, the P&S Agreement specified that, upon termination of the P&S
19 Agreement for any reason other than the default of the seller, Escrow Holder would record the
20 Quitclaim Deed and, thereupon, all of SunCal’s right, title, and interest in the Property would be
21 quitclaimed to the Frank Family. Specifically, Article 14 of the Agreement provided that:

22 “In the event of the termination of this Agreement for any reason other than Seller’s
23 default, **Escrow Holder shall record the Quitclaim Deed in the records of the**
24 **County without further instructions from either Buyer or Seller.** If this Agreement
25 is terminated for any reason other than Seller’s default and (i) Buyer gives instructions
26 to Escrow Holder not to record the Quitclaim Deed or (ii) despite the provisions of this
27 Agreement to the contrary Escrow Holder requests instructions from Buyer to record
28 the Quitclaim Deed and Buyer fails to sign such instructions within 3 business days
after receipt thereof, Buyer shall have breached its material obligations under this
Agreement.”

58. Despite the fact that the Agreement required the Escrow Holder to record the Quitclaim
Deed upon termination of the Agreement without further instruction from any of the Parties, the

1 Escrow Holder failed to record the Quitclaim Deed when it received the Termination Notice.
2 Accordingly, on November 8, 2007, counsel for the Frank Family instructed the Escrow Holder in
3 writing to record the Quitclaim Deed. However, on November 9, 2007, counsel for SunCal sent a
4 letter to the Escrow Holder, wrongfully claiming that the Frank Family had defaulted under the P&S
5 Agreement and demanding that the Quitclaim Deed not be recorded.

6 59. On November 15, 2007, in accordance with the provisions of Article 14 of the P&S
7 Agreement, the Frank Family provided SunCal with written notice that SunCal had three business days
8 within which to cure its default under Article 14. SunCal took no action to timely cure its default
9 within the time afforded under Article 14.

10 **FIRST CAUSE OF ACTION**

11 **(Against All Cross-Defendants For Declaratory and Injunctive Relief)**

12 60. Cross-Complainants reallege and incorporate herein by reference each and every
13 allegation contained in paragraphs 1 through 59 inclusive, as set forth above.

14 61. An actual controversy has arisen and now exists between Cross-Complainants and all
15 of the Cross-Defendants concerning their respective rights, duties, and obligations under the P&S
16 Agreement, as amended. Cross-Complainants contend, and Cross-Defendants dispute, that, *inter alia*,

17 (a) Cross-Defendants defaulted on their obligation to close escrow under the P&S
18 Agreement, as amended;

19 (b) Cross-Complainants did not default on their obligation to close escrow under
20 the P&S Agreement, as amended, nor were they otherwise in default under the P&S
21 Agreement, as amended, when they sent the Termination Notice to Cross-Defendants on
22 October 4, 2007;

23 (c) Regardless of whether Cross-Defendants were in default under the P&S
24 Agreement, as amended, inasmuch as the Cross-Complainants were not in default thereunder
25 and the close of escrow on Cross-Defendants' purchase of the Property did not occur on or
26 before October 1, 2007, as required by the P&S Agreement, as amended, Cross-Complainants
27 were entitled to, and did properly, terminate the P&S Agreement, as amended;

28 (d) Cross-Defendants have no further right, title, or interest in or to the Property;

1 (e) each of the monetary deposits that Cross-Defendants made under the P&S
2 Agreement, as amended, was made non-refundable by agreement of the Parties and Cross-
3 Defendants have no right to recover any such deposits from Cross-Complainants; and

4 (f) Cross-Defendants defaulted under Article 14 of the P&S Agreement by
5 instructing the Escrow Holder to refrain from recording the Quitclaim Deed and failing and
6 refusing to cure this default within three business days after Cross-Complainants provided
7 notice of such default.

8 62. A judicial declaration is necessary and appropriate under the circumstances alleged
9 hereinabove in order that the Parties may ascertain their respective rights, duties, and obligations under
10 the P&S Agreement, as amended. In addition, in order to preserve the status quo pending a hearing on
11 the merits of Cross-Complainants' claim for declaratory relief, Cross-Complainants seek ancillary
12 injunctive relief as prayed for below.

13 **SECOND CAUSE OF ACTION**

14 **(Against All Cross-Defendants For Breach of Contract)**

15 63. Cross-Complainants reallege and incorporate herein by reference each and every
16 allegation contained in paragraphs 1 through 59 inclusive, as set forth above.

17 64. Cross-Complainants have performed all covenants, conditions, restrictions, and
18 promises required on their part to be performed under the P&S Agreement, as amended.

19 65. In failing and refusing to close escrow on their purchase of the Property, or to otherwise
20 make the October 2007 Extension Deposit, on or before October 1, 2007, Cross-Defendants breached
21 the P&S Agreement, as amended.

22 66. The Parties agreed in Article 9 of the P&S Agreement that, in the event that escrow
23 failed to close as a result of Cross-Defendants' default, Cross-Complainants would be entitled to
24 recover liquidated damages in the amount of \$1,000. As acknowledged in Article 9 of, and in the
25 various amendments to, the P&S Agreement, Cross-Complainants were entitled to receive and retain
26 the deposits made by Cross-Defendants in this transaction in consideration for holding the Property off
27 the market for an extended period of time. In light of the Parties' agreement that these deposits were
28 not to be refundable under any circumstances absent Cross-Complainants' default, the Parties agreed

1 that \$1,000 represented a reasonable estimate of Cross-Complainants' damages in the event of Cross-
2 Defendants' default on their obligation to close escrow.

3 67. In instructing the Escrow Holder to refrain from recording the Quitclaim Deed, as
4 alleged above, Cross-Defendants breached their obligations under Article 14 of the P&S Agreement.

5 68. The Parties agreed in Article 14 of the P&S Agreement that, in the event of Cross-
6 Defendants' default under that Article, Cross-Complainants would be entitled to recover liquidated
7 damages in the amount of \$150,000.

8 69. Accordingly, as a result of Cross-Defendants' breaches of the P&S Agreement as
9 alleged hereinabove, Cross-Complainants are entitled to recover \$151,000 in liquidated damages from
10 Cross-Defendants.

11 **WHEREFORE**, Cross-Complainants pray for relief and judgment against each of the
12 Cross-Defendants as follows:

13 **ON THE FIRST CAUSE OF ACTION**

14 1. For a judicial declaration that:

15 (a) Cross-Defendants defaulted on their obligation to close escrow under the P&S
16 Agreement, as amended;

17 (b) Cross-Complainants did not default on their obligation to close escrow under
18 the P&S Agreement, as amended, nor were they otherwise in default under the P&S
19 Agreement, as amended, when they sent the Termination Notice to Cross-Defendants on
20 October 4, 2007;

21 (c) Regardless of whether Cross-Defendants were in default under the P&S
22 Agreement, as amended, inasmuch as the Cross-Complainants were not in default thereunder
23 and the close of escrow on Cross-Defendants' purchase of the Property did not occur on or
24 before October 1, 2007, as required by the P&S Agreement, as amended, Cross-Complainants
25 were entitled to, and did properly, terminate the P&S Agreement, as amended;

26 (d) Cross-Defendants have no further right, title, or interest in or to the Property;
27
28

1 (e) Each of the monetary deposits that Cross-Defendants made under the P&S
2 Agreement, as amended, was made non-refundable by agreement of the Parties and Cross-
3 Defendants have no right to recover any such deposits from Cross-Complainants; and

4 (f) Cross-Defendants defaulted under Article 14 of the P&S Agreement by
5 instructing the Escrow Holder to refrain from recording the Quitclaim Deed and failing and
6 refusing to cure this default within three business days after Cross-Complainants provided
7 notice of such default;

8 2. For ancillary injunctive relief, in the form of a temporary restraining order and a
9 preliminary injunction, enjoining each of the Cross-Defendants, and each of their respective officers,
10 directors, partners, members, agents, employees, representatives, and all persons acting under, in
11 concert with, or for them, during the pendency of the Action, from taking any action to hinder, delay,
12 or otherwise interfere in Cross-Complainants' sale of the Property to any third parties.

13 3. For a permanent injunction enjoining each of the Cross-Defendants, and each of their
14 respective officers, directors, partners, members, agents, employees, representatives, and all persons
15 acting under, in concert with, or for them, from taking any action to hinder, delay, or otherwise
16 interfere in Cross-Complainants' sale of the Property to any third parties.

17 **ON THE SECOND CAUSE OF ACTION**

18 4. For liquidated damages in the sum of \$151,000;

19 **ON ALL CAUSES OF ACTION**

20 5. For prejudgment interest at the maximum legal rate;

21 6. For the costs of suit incurred by Cross-Complainants herein, including reasonable
22 attorney's fees and expenses; and

23 7. For such other and further relief as the Court may deem just and proper.

24 DATED: November 21, 2007

CONNOR, FLETCHER & WILLIAMS LLP

25
26 By: 

27 Edmond M. Connor
28 Attorneys for Defendants and Cross-Complainants
Frank Family Partnership, et al.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE BY FIRST CLASS MAIL

I am employed with Connor, Fletcher & Williams LLP, whose address is 2600 Michelson Drive, Suite 1450, Irvine, California 92612; I am not a party to the cause; I am over the age of eighteen years and I am readily familiar with the practice of Connor, Fletcher & Williams LLP for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of the business practice of Connor, Fletcher & Williams LLP the document described below was deposited with the United States Postal Service on the same date that it was placed at Connor, Fletcher & Williams LLP with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of the following document:

**CROSS-COMPLAINT OF DEFENDANTS FRANK FAMILY PARTNERSHIP,
T.A.C.O., LLC, AND PLANTATION MOBILE ESTATES, INC.
FOR:**

- (1) **DECLARATORY RELIEF; AND**
- (2) **DAMAGES FOR BREACH OF CONTRACT**

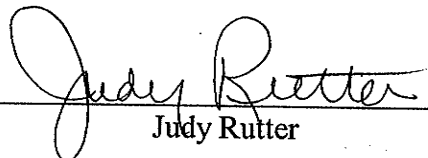
on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing via first class mail at Connor, Fletcher & Williams LLP, 2600 Michelson Drive, Suite 1450, Irvine, California 92612 in accordance with the ordinary business practices of Connor, Fletcher & Williams LLP:

Louis R. Miller
Daniel S. Miller
Miller Barondess, LLP
1999 Avenue of the Stars
Suite 1000
Los Angeles, California 90067

Attorneys for Plaintiffs SCC Acquisitions,
Inc. and SunCal Platinum Pointe, LLC

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 21, 2007, at Irvine, California.



Judy Rutter